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

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MARK DJANGO HICKS, *et al.*,

16 Defendants.

Case No.: CR 20-0108 JD
CR 13-0079 JD

**DEFENDANT MARK HICKS' SENTENCING
MEMORANDUM AND REQUEST FOR A
DOWNWARD VARIANCE**

Judge: Hon. James Donato
Date and Time: September 12, 2022, at 10:30 a.m.

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I. INTRODUCTION

1
2 Mark Django Hicks stands before the Court having pled guilty to Count One, a violation
3 of 18 U.S.C. § 1349 (Conspiracy to Commit Wire Fraud and Bank Fraud), Count Three, a
4 violation of 18 U.S.C. § 1343 (Wire Fraud), Count 13, a violation of 18 U.S.C. § 1344(1) (Bank
5 Fraud), and Count 21, a violation of 18 U.S.C. § 1028A (Aggravated Identity Theft). For the
6 reasons indicated herein, the Court should impose a sentence on Mr. Hicks to include a term of
7 incarceration of 66 months¹ and a three-year term of supervised release. For Mr. Hicks' Form 12
8 violation, the Court should sentence Mr. Hicks to an additional ten months of custody time to be
9 served consecutively, as well as an additional term of home detention for ten months as a term
10 and condition of supervised release. Such a sentence is an appropriate resolution to this case to
11 both punish Mr. Hicks for his actions, but also to take in consideration Mr. Hicks's personal
12 circumstances under 18 U.S.C. § 3553(a).

II. RELEVANT FACTUAL SUMMARY

14
15 From at least 2017, co-defendant Dioysius Costello created a scheme to impersonate
16 individuals to gain access to their bank accounts. Costello obtained the personal information of
17 other individuals and then enlisted others to withdraw cash from banks by impersonating those
18 individuals who had accounts with those banks. U.S. Probation Presentence Investigation Report
19 (PSR), ¶ 17. Costello provided counterfeit identification and other documents to co-conspirators
20 such as Susan Arreola-Martin in order to further the conspiracy. *Id.* Costello drove Arreola-
21 Martin to banks in California, Oregon, Texas, and Nevada, to impersonate individuals and
22
23

24
25 ¹ The 66-month sentence would be comprised of a 42-month sentence on the Counts One, three,
and Thirteen, and a 24-month consecutive sentence on Count Twenty-One for Aggravated
Identify Theft.

1 withdraw money from their accounts. *Id.* Arreola-Martin was paid a fee and Costello kept the
2 balance of the funds.

3 In 2018 and 2019, the conspiracy to impersonate individuals had developed further.
4 Costello and Arreola-Martin entered into a further conspiracy with Mark Hicks, Demarcus
5 Hicks, Tyrone Alexander Jones, Christopher Pool, and Leif Skorochoch to impersonate
6 individuals and using their information to obtain bank loans using their real property for
7 collateral. PSR, ¶ 18.

8 Mark Hicks and Costello obtained the personal information of previously unknown
9 individuals using a website. Thereafter, Mark Hicks, obtained credit report and other financial
10 information about the individuals. With the help of an uncharged co-conspirator, Mark Hicks
11 opened bank accounts, set up e-mail addresses, and communicated with lenders impersonating
12 the individuals in question, thereby stealing their identities.

13
14 Thereafter, Costello and Demarcus Hicks furthered the fraud, by recruiting -- in addition
15 to Arreola-Martin -- Tyrone Alexander Jones, Christopher Pool, and Leif Skorochoch to
16 impersonate individuals. These impersonations were necessary so that the co-conspirators could
17 enter into the lending institutions in order to sign loan documents and the notary book, to have
18 bank loans funded. Without this crucial step by the co-conspirators, the loans would not be
19 funded and they would not gain access to the proceeds of the fraud. *Id.*, ¶ 17. Costello and
20 Demarcus Hicks supplied counterfeit identification cards and other documents to allow Jones,
21 Arreola-Martin, Pool, and Skorochoch to carry out the conspiracy.

22 After the loans were approved and funded, loan proceeds went into fraudulent bank
23 accounts opened in the names of the individuals, without their knowledge or consent. *Id.*, ¶ 16.
24 Co-conspirators withdrew the fraudulently obtained proceeds to purchase goods and, quite often,
25

1 large quantities of gold in the identity theft victims' names from precious metal dealers from
2 across the country. *Id.*, ¶ 14. Precious metals were delivered to various addresses in the Bay
3 Area where it was picked up by various co-conspirators posing as the real individuals. PSR ¶ 14.
4 Ultimately, gold was sold for cash to at least one local jewelry store. *Id.*

5 A large amount of cash was recovered from a safe deposit box controlled by relatives of
6 Mark Hicks and Demarcus Hicks. Of the actual loss of \$2,082,260, over half of the proceeds
7 have been recovered in cash and gold. *Id.*, ¶ 16. Other proceeds represent cash which was
8 withdrawn and spent by the members of the Conspiracy, including Mark Hicks.

9 III. PROCEDURAL HISTORY

10 On February 12, 2020, Mark Hicks was arrested and taken into federal custody. On the
11 same date, he made his initial appearance and was remanded to custody. On February 13, 2020,
12 Mark Hicks was released on a \$250,000 unsecured bond with U.S. Pretrial Services' supervision.
13 Mark Hicks continues to perform well on supervised release and has not violated the terms of his
14 release in over two and one-half years.

15
16 On March 3, 2020, the government filed a one-count Information against Mark Hicks,
17 and co-defendants, Tyrone Alexander Jones, Susan Arreola-Martin, and Christopher Pool,
18 charging them with a violation of 18 U.S.C. § 1349 (Conspiracy to Commit Wire Fraud and
19 Bank Fraud).

20 On July 13, 2021, the government filed a 48-count Superseding Indictment against the
21 aforementioned co-defendants along with Demarcus Hicks, Dioysius Costello, and Leif
22 Skorochood. The Superseding Indictment alleged violations of 18 U.S.C. § 1349 (Conspiracy to
23 Commit Wire Fraud and Bank Fraud); 18 U.S.C. § 1343 (Wire Fraud); 18 U.S.C. § 1344(1), (2)
24 (Bank Fraud); 18 U.S.C. § 1028A (Aggravated Identity Theft); 18 U.S.C. § 1956(h) (Conspiracy
25

1 to Engage in Monetary Transactions in Property Derived from Specified Unlawful Activity); 18
2 U.S.C. § 1956(a)(1)(B)(i) (Engaging in Monetary Transactions in Property Knowing the
3 Transaction Was Designed to Conceal or Disguise); 18 U.S.C. § 1957 (Engaging in Monetary
4 Transactions in Property Derived from Specified Unlawful Activity); and 18 U.S.C. § 922(g) -
5 Felon in Possession of a Firearm). The Superseding Indictment contained a forfeiture allegation
6 pursuant to 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(2)(B), and 28 U.S.C. § 2461(c). The
7 Superseding Indictment charged defendant Mark Hicks in Counts 1 through 16, 18, 21, 23, 25,
8 28, and 30 through 47.

9 On March 21, 2022, Mr. Hicks pleaded guilty to Count One, a violation of 18 U.S.C. §
10 1349 (Conspiracy to Commit Wire Fraud and Bank Fraud), Count Three, a violation of 18
11 U.S.C. § 1343 (Wire Fraud), Count 13, a violation of 18 U.S.C. § 1344(1) (Bank Fraud), and
12 Count 21, a violation of 18 U.S.C. § 1028A (Aggravated Identity Theft), pursuant to a negotiated
13 plea agreement.

14 Mark Hicks is also on supervised release for another case, *USA v. Mark Hicks, et al.*, CR
15 13-0079 JD. A Form 12 Violation has been filed in that case.

16 The Court is scheduled conduct its sentencing hearing, to impose its sentence on Mr.
17 Mark Hicks, and to determine any Form 12 violation, on September 12, 2022, at 10:30 a.m.

18 **IV. OBJECTIONS TO THE PRESENTENCE INVESTIGATION REPORT**

19 Mr. Hicks has no objections to, or unresolved issues with, the Presentence Investigation
20 Report authored by U.S. Probation Department.

21 **V. SENTENCING GUIDELINES CALCULATION**

22 Pursuant to the United States Sentencing Guidelines (“U.S.S.G.” or the “Guidelines”),
23 which are advisory after the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220
24
25

1 (2005), Mr. Hicks has a total offense level of 29 for his offense. PSR, ¶ 29. This total offense
 2 level is reached by starting with a base offense level of seven for a violation of 18 U.S.C.
 3 § 1344(1), 18 U.S.C. § 1343, and 18 U.S.C. § 1349. *See* U.S.S.G. § 2B1.1(a)(1); PSR, ¶ 37. Mr.
 4 Hicks is subject to an 18-level increase due to the intended, but not actual, loss of more than
 5 \$3,500,000. *See* U.S.S.G. § 2B1.1(b)(1)(J); PSR, ¶ 38. The offense level is also increased by
 6 two levels pursuant to U.S.S.G. § 2B1.1(b)(11)(ii) for the possession of five or more means of
 7 identification, PSR ¶ 39, and another two levels pursuant to U.S.S.G. § 2B1.1(b)(17)(A) for
 8 \$1,000,000 in gross receipts from one or more financial institutions. PSR ¶ 40. This results in
 9 an adjusted offense level of 29. PSR, ¶ 27.

10 Mark Hicks's offense level is then decreased by three levels for his acceptance of
 11 responsibility. U.S.S.G. §§ 3E1.1(a) and (b); PSR, ¶¶ 51-52. Mark Hicks's offense level is also
 12 decreased by an additional two levels, based on the government's offer of a global disposition,
 13 pursuant to U.S.S.G. § 5K2.0(a)(2)(B). His final offense level is 24.²

14 Mr. Hicks's criminal history score is thirteen and his criminal history category is VI.
 15 PSR, ¶¶ 63-65. Therefore, Mr. Hicks's total offense level of 24 indexed with a Criminal History
 16 Category VI yields an advisory guideline range of 100-125 months.

17 This Court must only consider, but is not bound by, this advisory guideline range. *See*
 18 *United States v. Hammons*, 558 F.3d 1100 (9th Cir. 2009).

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 24 ² The PSR states Mr. Hicks' offense level is a 26, but only because the Probation Department is
 25 not permitted to account for global resolution discounts. PSR, ¶ 111. That discount as
 contemplated in the Plea Agreement is a two-level discount thus making Mr. Hicks offense level
 a 24.

VI. SENTENCING RECOMMENDATION

1
2 Mr. Hicks submits that the Court should sentence him to a 66-month sentence followed
3 by a three-year term of supervised release. Mr. Hicks further submits that such a sentence is an
4 appropriate variance for Mr. Hicks and is sufficient and not greater than necessary to comply
5 with the directives of 18 U.S.C. § 3553(a), namely: the nature and circumstances of the offense;
6 Mr. Hicks’s history and characteristics; the need for the sentence imposed to reflect the
7 seriousness of the offense, to afford adequate deterrence, and to provide Mr. Hicks with the
8 opportunity to address his personal health issues.

9 **A. The Nature and Circumstances of the Offense, as well as Mr. Hicks’s History**
10 **and Characteristics, Support the Recommended Sentence**

11 Under 18 U.S.C. § 3553(a)(1), “the court, in determining the particular sentence to be
12 imposed, shall consider the nature and circumstances of the offense and the history and
13 characteristics of the defendant.” These two factors support Mr. Hicks’s sentencing position.

14 **1. Nature and Circumstances of the Offense**

15 In 2018, having been out of custody for a year or so, came into contact with co-
16 defendants Dioysius Costello and Demarcus Hicks. From that meeting came the unfortunate and
17 regrettable plan to reinvolve Mark Hicks in fraudulent conduct.

18 Mark Hicks’s involvement in the conspiracy was heavy on the front end. Because Mark
19 Hicks is paralyzed from the chest down and is in a wheelchair, he is homebound and relies on
20 others for everything. While Mark Hicks did use the internet to obtain personal information on
21 individuals, obtain credit reports on those individuals, and call banks and vendors pretending to
22 be some of those individuals, Mark Hicks did not ever leave his bedroom to carry out the actions
23 of the conspiracy. Co-conspirators completed the conspiracy without Mark Hicks.
24
25

1 To argue that Mark Hicks is a planner, organizer, or mastermind, or to conclude that
2 Mark Hicks is anything but a “normal” or “regular” member of the conspiracy, is nonsensical.
3 The Court need look no further than the fact that neither the Probation Department nor the
4 government seek any kind of upward role adjustment for Mark Hicks. Great weight should also
5 be given to Costello’s development and involvement in the same kind of fraud using counterfeit
6 identification while Mark Hicks was still in custody.

7 Mark Hicks’s crime was not fueled by greed or a wish for a lavish lifestyle; he had
8 neither. He lives in a small bedroom in his mother’s home in Benicia, California. He has a room
9 in his mother’s house and lives on government aid. His mother must help him with basic
10 everyday tasks – such as bathing, urinating, or getting dressed – that we take for granted. Mark
11 Hicks’s physical condition does not allow him to drive any longer. His mother takes him to
12 every medical appointment. This is not an individual enjoying the trappings of a lavish or
13 criminal lifestyle.

14
15 Clearly, the nature and circumstances of Mr. Hicks’s conduct support a reduced sentence.

16 **2. Mark Hicks’s History and Characteristics**

17 Mark Django Hicks was born on April 21, 1980, in Oakland, California to his father,
18 Mark Hicks, Sr., and his mother Barbara Hicks. Mark Hicks has a half-brother, Demarcus
19 Hicks, and a sister, Tia Hicks. During Mark Hicks’s childhood, his father, a truck driver, abused
20 drugs and alcohol and moved the family between the San Francisco Bay Area, Las Vegas, Los
21 Angeles, and New Orleans. Even with his father’s drug addiction and long distance moving, Mr.
22 Hicks tried to have a stable childhood. He was a good student and played basketball, football,
23 and baseball, but with his father gone most of the time on the road, Mr. Hicks’s formative years
24 were quite difficult. When he was 13, his parents separated and Mr. Hicks went to live with his
25

1 mother and saw his father only during summer vacation. Even with limited contact Mr. Hicks
2 knew that his father's drug abuse became more significant as time went on. Mr. Hicks learned
3 that his father later abused heroin. He eventually passed away in 2011, at the age of 50. PSR ¶
4 73.

5 Learning from his father's shortcoming, Mark Hicks has tried to be the best father he
6 could be to his two children, Noble Mitchell (age 16) and Sparkle Hicks (age 16). PSR, ¶¶ 74-
7 75. Mr. Hicks keeps has close relationships with his children and is a regular fixture in their
8 lives. Velma Arellano, Mr. Hicks's aunt summarized Mr. Hicks' childhood well:

9 Unfortunately, Mark's parents divorced in his early teens. Mark took up the mantle of
10 "man of the house". He would take two busses to take his younger sister to school and
11 then take three buses to get to high school. He never complained but considered it his
12 duty to help care for his sister. He still exemplifies this level of commitment to his
13 family.

14 Declaration of Edwin Prather in Support of Defendant Mark Django Hicks's Sentencing
15 Memorandum and Request for Downward Variance ("Prather Decl."), ¶ 2, Exh. A, ("Letter from
16 Velma D. Arellano").

17 Mr. Hicks's sister, Tia Hicks, also confirmed Mr. Hicks's dedication to family:

18 I have known Mark my entire life. He is my big brother, nine years older than
19 me. In many ways, Mark has played more of a father role to me growing up than a
20 brother, stepping in to care and provide for me when our father wasn't always present.
21 When I was in elementary school and he was in high school, he took a bus across the city
22 to make sure I was in school on time before getting back on the bus to attend his high
23 school classes. This was helpful for me and my mom, as she had to commute to work
24 from Oakland to San Francisco in the early mornings. He bought me my first pair of
25 new, popular sneakers growing up, which may seem superficial, but was actually
extremely important for my self-esteem growing up in the 90s and early-2000s in
Oakland.

Prather Decl. ¶ 3, Exh. B, ("Letter from Tia Hicks"); *see also* Prather Decl. ¶ 4, Exh. C, ("Letter
from Kelda Williams") ("For a person in a wheelchair, he continues to stay ambitious and
creating ideas to further his brand.").

1 Mark Hicks found his life's work in music. He was always interested in music from a
2 young age. At the age of ten, Mark Hicks had a newspaper route to earn money to try to support
3 his endeavors in the music business. Eventually, Mr. Hicks was able to obtain his own used
4 studio and recording equipment and start recording his own songs. As a teenager, Mark Hicks
5 started a duo with a fellow performer and started gaining notoriety throughout Northern
6 California. Mr. Hicks started to go by stage names such as Kafani and Amir Rashad, and
7 performed at clubs, concerts and other gatherings.

8 Mr. Hicks's big break came in 2005 when he wrote and several hit records which
9 internationally known artists. Mr. Hicks was himself becoming well known outside of the Bay
10 Area. During this time, Mr. Hicks devoted himself to his music, the community, charity work,
11 and being the best person he could be.

12 Erica Denton, a longtime friend, confirmed that Mr. Hicks "still goes back to the
13 community he grew up in to motivate the youth and financially help families in need. ... I do not
14 believe the truly kind and generous need to advertise their caring generosity, as most kind and
15 generous people are also humble, which is also an attribute of Mr. Hicks despite his celebrity
16 notoriety... ." Prather Decl. ¶ 5, Exh. D, ("Letter from Erica Denton"); *see also* Prather Decl. ¶
17 6, Exh. E, ("Letter from Christensen Sanders") ("I have known him to support and mentor
18 younger artists. ... He is an important figure in Bay Area hip hop culture, and I know that he will
19 continue to inspire and make a positive impact.").

20 Unfortunately, over a decade ago, Mr. Hicks involved himself in a criminal conspiracy to
21 defraud. Mr. Hicks committed mail and wire fraud and was arrested and charged in 2013 in *USA*
22 *v. Mark Django Hicks, et al.*, CR 13-0079 PJH. However, while on Pretrial Release in that
23 matter, on September 28, 2013, Mr. Hicks was shot several times in East Oakland. Mr. Hicks
24
25

1 was effectively dead when he arrived at Highland Hospital. While the physicians saved him from
2 death, they did not save his life – he was, and is, paralyzed from mid-chest down and, according
3 to his doctors, will be for the rest of his life. He suffers substantial pain every day, and his life
4 has been considerably diminished as a result of a lifetime of complications from this horrific
5 crime. Mr. Hicks’s assailant was neither identified nor caught.

6 On July 29, 2015, Mr. Hicks received a 39-month sentence from the District Court to be
7 followed by a three-year term of supervised release.

8 After his release from the Bureau of Prisons in 2017, two things occurred:

9 First, Mr. Hicks returned to music and serving the community. He recorded new songs
10 and performed old ones. One of his songs was used during the half-time show of the NFL Super
11 Bowl and he performed with a number of musical headliners during this period. Mark Hicks
12 also revisited his involvement with Hip-Hop with Disabilities, a program operated by Solano
13 County Department of Health and Social Services, Behavioral Health Services Division.

14 Denise Coleman, a Director on Solano County’s Drug and Mental Health Advisory
15 Board, shared:

16 [Mr. Hicks] has always been a role model to the young men in my community and
17 many of the disabled artists who have been impacted by gun violence. The motivated
18 people to never give up on dreams due to the injustice or unfairness of life. I have
19 documented [Mr. Hicks’s] working on pulling his life back together after recovering from
20 jail, and the trials of living in a wheelchair. Even during his own struggles and mental
21 health challenges, he was resilient and pulled a team together to do a Hip Hop with
22 Disabilities tour.

23 Prather Decl. ¶ 7, Exh. F, (“Letter from Denise Coleman”).

24 Next, while out of custody, Mark Hicks had a newfound access to prescription painkillers
25 that he did not have previously. Mr. Hicks admits that he became addicted to those painkillers
that greatly affected his judgment. He lived in a fog based on those painkillers and his addiction

1 affected his decision to participate in the current conspiracy when he absolutely knew better. *See*
2 Prather Decl. ¶ 8, Exh. G, (“Letter from Barbara Hicks”) (“I know that this had a definite effect
3 on his mood, his mental state, and his decision making. I am sure that these painkillers had an
4 effect on him to get involved with this criminal conduct.”)

5 Through the Superseding Indictment and his change of plea in this case, Mr. Hicks has
6 continued to be a positive influence in his children’s lives. *See* Prather Decl. ¶ 8, Exh. G, Letter
7 from Barbara Hicks (“He takes interest in their well-being. He encourages them to get an
8 education and go to college to be successful.”). His son, Noble Mitchell, is an honor roll student
9 who works part-time at Walmart. Prather Decl. ¶ 9, Exh. H, Letter from Noble Mitchell. His
10 son stated that Mr. Hicks “...taught me that I need to work hard and get an education”. *Id.* Mr.
11 Hicks’s friends agree that he is a good father. *See* Prather Decl. ¶ 10, Exh. I, Letter from Randall
12 Anderson (“He is a big family man that stays involved with his children, he motivates them on a
13 regular basis and pushes them to do more than he did.”).

14 A high school friend, Keita Jones, summarized Mr. Hicks well:

15 He never let his new-found fame and popularity change who he was a person and
16 continued to have the same down to earth demeanor he had back in high school.

17 Given the kind-hearted nature Mark has, it came as no surprise to me that he has
18 used his platform to volunteer his time meeting and speaking with people who have also
19 suffered life changing accidents that have resulted in paralysis. His time, community and
20 service has also inspired paraplegics to keep their spirits up and not give up on life,
21 providing them with similar words of encouragement that he gave me when we first met
22 back in the 12th grade. I have no doubt that the time and words given to those in similar
23 situations has he, has helped them through both their physical and emotional healing
24 processes and that his words have touched them in their hearts the way they touched me
25 decades ago.

Prather Decl. ¶ 11, Exh. J, Letter from Keita Jones.

Mr. Hicks has inspired those around him through his work in the community, but Mr.
Hicks’s health will only deteriorate to the point of ending his life prematurely. Dr. Lance Stone,

1 of the Fairmont Hospital in San Leandro, California, summarized for the Court in 2015, what
2 happened to Mr. Hicks in September 2013 and what would occur subsequently. See PSR, ¶ 78.

3 All of Dr. Stone's diagnoses and predictions on Mr. Hicks's health have been confirmed.

4 Mr. Hicks was transported to the emergency room of Highland Hospital suffering
5 from multiple acute life threatening gunshot wounds. He was in pulseless, hypotensive
6 shock at the time of admission. He suffered a gunshot wound to his mandible and second
7 gunshot wound to his left arm that directly affected the nerves in his upper limb. More
8 significantly, he suffered a gunshot wound that completely severed his spinal cord at the
9 thoracic level 6. As a consequence he has absent motor control and sensation from
10 approximately the area just below his nipples down. He will never regain use of his
11 lower extremities, bowel, bladder function and will remain a complete paraplegic. He
12 should be reevaluated yearly by a neurosurgeon along with spinal x-rays to assess his
13 spinal column, he is at risk for spinal kyphosis deformity and spinal Charcot joint below
14 his level of injury which if untreated will lead to further disability.

15 As a consequence of his spinal cord injury, he will remain permanently confined
16 to a wheelchair. He continues to experience considerable central nerve pain
17 notwithstanding his paraplegia. While I have tried various narcotic and non-narcotic
18 medications to alleviate the pain, Mr. Hicks still suffers considerable daily pain and
19 suffering. He will need to continue to take opioid and non-opioid analgesic medications
20 for the foreseeable future. As a result of the spinal cord trauma, he has no control over
21 his bladder and bowel function and is incontinent of both urine and stool. A catheter must
22 be inserted 4 to 6 times a day to empty his bladder. There is an on-going risk of infection
23 including bladder and kidney damage, both of which are life threatening. He requires lab
24 testing of his urine monthly, and needs to be reevaluated by a urologist twice a year. In
25 addition, he must have his kidney metabolism checked once a year, including a renal
ultrasound, urodynamics, which is the accepted minimum standard of care.

As a result of the spinal cord trauma, he has no control over his bowels function.
At least once day, a caregiver must insert a rectal suppository and perform rectal digital
stimulation to precipitate the evacuation of his bowels. If the procedure is not
accomplished regularly or effectively, Mr. Hicks would suffer bowel obstruction,
megacolon and/or infection,

As a result of his spinal cord injuries and limited movement, he is subject to skin
breakdown or pressure wounds if he is not being repositioned every two hours and having
pressure relief on parts of his paralyzed body. He developed a pressure wound earlier
this year, that wound did not heal, resulting in major surgery to address the resulting
infection that began on the skin near his tailbone. At that time, he underwent plastic
surgery in which a muscle was rotated to the area to reduce the likelihood of reoccurrence
and heal the underlying bone infection. He should be reevaluated by a plastic surgeon
annually which is the standard of care for someone with a spinal cord injury and
established demonstrated high risk.

1 To reduce the likelihood of skin damage and infection, Mr. Hicks requires a
2 special custom wheelchair cushion and use a special low air flow mattress that varies the
3 air flow/pressure during the night to vary the pressure on his skin. If untreated or allowed
4 to develop a pressure wound will likely lead to osteomyelitis of the underlying bone
5 which is life threatening and requires long-term IV antibiotics and surgery.

6 Mr. Hicks suffers considerably from uncontrolled muscle spasms, particularly
7 around his hips and knees. The spasms can shorten his muscles, and may lead to him
8 being confined to bed and irreversible muscle contractures. As a result, it is very
9 important that at least twice day that someone provide range of motion to stretch out his
10 muscles. Someone has to assist him manage and control his lower extremity range of
11 motion. He should be reevaluated biannually by a physical therapist and physical
12 medicine and rehabilitation physician to review his equipment needs, range of motion,
13 skin, and wheelchair positioning.

14 Mr. Hicks does not have normal pulmonary function. As a result, he has a high
15 risk of pneumonia. As noted above, due to his limitations on bladder and bowel
16 movements, he has increased risk of bladder, kidney and colon infections. Collectively,
17 his greater vulnerability to infection makes it likely he will be hospitalized twice a year
18 for treatment including intravenous antibiotics. With regard to the impact of his injuries
19 and conditions on incarceration, his medical condition makes him unable to meaningfully
20 protect himself. He will need nearly constant care. He will be much more subject to
21 infection in a custodial setting than the average inmate, and he will be less able to
22 respond/survive any infection.

23 PSR ¶ 78.

24 Mr. Hicks' condition is severe and requires constant care and hospitalization. Mr. Hicks
25 has been admitted to the hospital several times this year with various infections and he has also
had multiple treatments to keep his condition from worsening. In that vein, Mr. Hicks's current
treating physician, Dr. Patricia K. Foo, of Highland Hospital in Oakland, California, reviewed
Dr. Stone's letter, as well as Mr. Hicks's medical records and history and provided, *inter alia*,
the following:

[Mr. Hicks] suffered severe and nearly lethal gunshot wounds in 2013 which
severed his spinal cord in the thoracic spine. He became and continues to be a complete
paraplegic with absent motor and sensory function from approximately the level of the
nipples down. His paraplegia has left him wheelchair dependent and requiring 24/7 care.
As a result of his spinal cord injury, he does not have bladder control, which necessitates
manual catheterization every 4-6 hours and regular botulinum toxin injections. Despite

1 excellent urologic care, he still suffers from frequent urinary tract infections and has been
2 hospitalized with urosepsis - a significant and potentially life- threatening infection -
3 approximately twice a year. This is a common complication in patients with neurogenic
4 bladder like [Mr. Hicks], and often leads to significant morbidity and mortality. Because
5 of his frequent urinary tract infections, he has also developed increasing antibiotic
6 resistance with his infections over time, which is also a common occurrence in patients
7 with neurogenic bladder. This means he will have increasing requirements for potent
8 intravenous antibiotics over time, even with more simple infections. Without the
9 excellent 24/7 care that he currently receives, it is very likely that he will suffer more
10 frequent and progressively recalcitrant urinary tract infections.

11 [Mr. Hicks] has shared with me his experiences during his last incarceration and
12 its effects on his health. The last time he was incarcerated, he was sent to wrong facility
13 and was handcuffed to a bed for 3 months. It caused him to gain rapid weight, which
14 likely contributed to his developing diabetes for which he requires regular medication. It
15 also led to reopening of a skin flap, which led to another surgery while in custody. This
16 injury contributed to the chronic pain that Mr. Rashad now has. Although [Mr. Hicks] is
17 many years out from his initial injury, he remains at high risk for pressure ulcers and
18 other injuries due to his lack of sensation below the level of his spinal cord injury. He
19 recently suffered an accidental 2nd degree burn on his toe at home because of this. His
20 24/7 care is critical to reducing the occurrence of these injuries, which could quickly
21 become limb-threatening infections if not identified and addressed promptly. Based on
22 his current medical conditions, I believe that incarceration would have a significant
23 negative impact on [Mr. Hicks's] health and could lead to shortening his life expectancy.

24 Prather Decl. ¶ 12, Exh. K, ("Letter from Dr. Patricia K. Foo").

25 Mr. Hicks has spent almost nine years in a wheelchair, paralyzed from his mid-chest
down. It is clear that his condition has deteriorated over that time. Mr. Hicks now has 24-hour
around-the-clock care. His caregiver is necessary for Mr. Hicks to bathe, to have a bowel
movement, and to move from his bed to his wheelchair. He is losing the ability to handle any
daily function by himself. Mr. Hicks's incarceration will have a "significant negative impact on
his health and "could lead to shortening his life expectancy". *Id.*, Letter from Dr. Patricia K.
Foo.

Between Mr. Hicks' history and characteristics including his background, his addiction to
pain killers, his last almost decade as a paraplegic, and his deteriorating life expectancy militate
in favor of the recommended sentence in this case.

1 **B. A 66-Month Sentence Followed by Three Years of Supervised Release Meets the**
2 **Directives of 18 U.S.C. § 3553(a)(2)**

3 18 U.S.C. § 3553(a)(2) directs the Court to consider “the need for the sentence imposed
4 to reflect the seriousness of the offense, to promote respect for the law, to provide just
5 punishment for the offense, to afford adequate deterrence, and to protect the public from further
6 crimes.” A 66-month sentence followed by three years of supervised release meets these
7 directives.

8 **1. The Recommended Sentence Reflects the Seriousness of the Offense,**
9 **Promotes Respect for the Law and Provides Just Punishment for the**
10 **Offense**

11 While all violations of federal law are to be taken seriously, there can be no doubt that for
12 certain offenses, the Court may consider certain types of crimes to be more serious than others.
13 While financial fraud and identity theft are significant crimes, the United States Sentencing
14 Commission has noted the seriousness of the offense may be lessened, for example, if the crime
15 was not violent. *See* 28 U.S.C. § 994(j) (prison is generally inappropriate in “cases in which the
16 defendant is a first offender who has not been convicted of a crime of violence or an otherwise
17 serious offense,” while some term of imprisonment is generally appropriate for “a person
18 convicted of a crime of violence that results in serious bodily injury”).

19 Mr. Hicks’s intended to be involved in a simple financial fraud which took advantage of
20 lending institutions and banks. He had previous dealings with law enforcement and fraud and
21 should have known better that to get involved with this conspiracy. Mr. Hicks makes no excuses
22 for his conduct and accepts responsibility completely. While these circumstances do not
23 minimize Mr. Hicks’s offense and the trouble and inconvenience caused to others, a 66-month
24 sentence followed by three years of supervised release, accurately accounts for the seriousness of
25 the offense, promoting respect for the law and providing for just punishment.

2. The Recommended Sentence Affords Adequate Deterrence

1
2 Empirical evidence is unanimous that no relationship exists between sentence length and
3 general or specific deterrence, regardless of the crime type. *See* Andrew von Hirsch, *et al.*,
4 *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (1999) (concluding
5 that “correlations between sentence severity and crime rates . . . were not sufficient to achieve
6 statistical significance,” and that “the studies reviewed do not provide a basis for inferring that
7 increasing the severity of sentences generally is capable of enhancing deterrent effects.”).

8 While Mr. Hicks served over three years on his previous fraud case. And while his
9 criminal history and the existence of another fraud offense reflects poorly on the individual
10 standing before the Court, Mr. Hicks is not a lost cause. Mr. Hicks is active in his community
11 and did not seek to live a lavish lifestyle through the commission of his crimes. *See* Prather
12 Decl. ¶ 8, Exh. G, Letter from Barbara Hicks (“I think he became involved with this fraud
13 scheme for the camaraderie and not the money. It has never been about the money for Mark. He
14 is such a giving person and he is able to function with very little. He does not live that musician
15 lifestyle. Mark and I are simple people and I am quite satisfied taking care of my son and his
16 daily needs.”). He is seen as someone who regularly gives back to others. He will be in a
17 Bureau of Prisons Federal Medical Center for the entirety of his sentence and a longer sentence
18 will not provide additional deterrence for Mr. Hicks.
19

20 C. A Sentence of 66 months Followed by Three Years of Supervised Release 21 Avoids Unwarranted Sentencing Disparities

22 The Court previously sentenced three co-defendants who participated in the same
23 conspiracy that is implicated in this case. The Court will also consider sentences for two other
24 co-defendants, Demarcus Hicks and Dioynsus Costello, who participated in the same conspiracy.
25

1 To be clear, the individuals sentenced and to-be sentenced were all involved in the same
2 conspiracy through various overt acts.

3 The Court sentenced co-conspirator Leif Skorochod to 14.5 months to be followed by
4 three years of supervised release for his involvement in the conspiracy. The Court sentenced co-
5 conspirator Christopher Todd Pool to 15 months to be followed by three years of supervised
6 release for his involvement in the conspiracy. The outlier is co-conspirator Susan Arreola-
7 Martin who was sentenced by the Court to 84 months to be followed by three years of supervised
8 release for her involvement in the conspiracy and also for her distribution of fentanyl which
9 resulted in the death of a family member.

10 Although the PSR recommends a variance and below guideline sentence of 87 months,
11 Mark Hicks should receive a sentence more in line with, if not similar to, the sentences the Court
12 imposes on co-defendants Costello and Demarcus Hicks.

13 In the conspiracy at hand, Mark Hicks, Donnie Costello and Demarcus Hicks were
14 involved in the creation and planning of the conspiracy to defraud financial institutions and bank
15 lenders through the use of personal information. However, Mark Hicks was not present in the
16 San Francisco Bay Area in 2017 when Costello began a conspiracy with Arreola-Martin to
17 impersonate individuals using their personal information to access their bank accounts. That
18 conspiracy was the precursor of the conspiracy at hand. It similarly utilized counterfeit
19 identification cards and involved going into the banks to pose as the victims. When Mark Hicks
20 became involved with Costello and Demarcus Hicks in 2018, Mark Hicks was able to do what he
21 could to support the conspiracy from his bedroom since he was wheelchair bound and for the
22 most part, could not leave his home. Mark Hicks required help to do his part in the conspiracy,
23
24
25

1 but the conspiracy could not have been completed without the physical step of going into the
2 lending institutions and impersonating the borrowers and signing the notary books.

3 Costello and Demarcus Hicks conspired to impersonate the identity theft victims in order
4 to sign loan documents with numerous notaries and to enter into banks to complete the
5 fraud/theft. They enlisted Skorochod, Pool, and Arreola-Martin to handle the most essential part
6 of the conspiracy. Without all members, the conspiracy could not have been accomplished.

7 As such, Mark Hicks's sentence should be similar to that of co-conspirator Costello and
8 Demarcus Hicks.

9 **D. The Court Should Allow Mr. Hicks to Surrender Directly to the BOP Federal**
10 **Medical Center to Which He is Assigned**

11 The Bureau of Prisons (BOP) classifies inmates who require 24-hour skilled nursing care
12 as "Care Level 4" inmates. *See* Bureau of Prisons Clinical Guidance, Care Level Classification
13 for Medical and Mental Health Conditions or Disabilities, May 2019. Quadriplegia is
14 specifically identified as a Care Level 4 classification. *Id.* at p.5. Because Mr. Hicks requires
15 assistance with activities of daily living such as eating, urinating, defecating, bathing, and
16 dressing/undressing, Mr. Hicks must be allowed to surrender directly to the BOP Federal
17 Medical Center (FMC) to which he is assigned. Additionally, because the BOP has a policy
18 against transporting inmates who cannot walk on their own, the decision to allow Mr. Hicks to
19 surrender in person to the FMC is as much for the BOP and U.S. Marshal's Office, as it is for
20 Mr. Hicks.
21

22 As such, the Court should note in the judgment that Mr. Hicks is a quadriplegic and a
23 Care Level 4 inmate and allow Mr. Hicks to surrender to the FMC once he receives his
24 designation.
25

1 A 76-month total custodial sentence, followed by three years of Supervised Release
2 including ten months of home detention is the right result in this case.

3 Dated: August 29, 2022

Respectfully submitted,

4 _____/S/_____
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6 PRATHER LAW OFFICES
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