

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

James Carl Wehmhoff,

Defendant.

Case No. 08-cr-387-001 (RHK)

**DEFENDANT’S POSITION ON
SENTENCING**

Pursuant to Local Rule 83.10(e), defendant James Carl Wehmhoff, through his undersigned counsel, hereby respectfully submits his position on sentencing. This Memorandum is in support of defendant’s motions, pursuant to 18 U.S.C. § 3553, for a variance from the sentencing guidelines and Section 5H1.4 of the federal sentencing guidelines for a downward departure.

INTRODUCTION

Jim Wehmhoff’s sentencing position is unique from the circumstances surrounding the other “Petters” defendants. He is the only defendant who was not involved in and did not know about the massive Ponzi scheme. And, alone among the defendants, he has had the extraordinary misfortune of suffering from a series of debilitating and life threatening illnesses—infirmities that will affect him for the rest of his life and that require ongoing treatment and rehabilitation. His lack of involvement in the Ponzi scheme, his cooperation with the government, his life story and his precarious

health and need for ongoing rehabilitation services all support our request for a non-custodial sentence of home confinement.

On December 19, 2008, Mr. Wehmhoff came before Judge Magnuson—in a courtroom filled to capacity with family and friends—and pled guilty to two tax-related charges. Judge Magnuson stated that the packed courtroom was the largest display of support he had ever seen as a judge. And for good reason. With the exception of this single episode in his life, Jim Wehmhoff has been an exemplary person, father, friend, and advisor. The standing-room-only crowd at his guilty plea was a testament to him and was remarkable because it included so many people from different facets of his life. Moreover, unlike all other defendants in this case, Mr. Wehmhoff was not involved in the Petters Ponzi scheme, and, in fact, was deliberately kept in the dark by Petters and his co-conspirators.

A lot has changed for Mr. Wehmhoff since December 2008. He has fought off alcohol dependency and depression; he has suffered through severe back and leg pain; he has been diagnosed with cancer and has undergone major surgeries. He has been hospitalized, has permanently lost much of the strength in his right leg, and has worked to rehabilitate his increasingly troublesome spinal and leg problems. He has fallen many times, injuring himself and threatening his recovery, and he avoids stairs whenever possible. On August 16, 2010, he will undergo his second spinal operation in the last seven months to reduce his constant pain. As he informs the Court in his letter attached to this Memorandum as Exhibit 1, he has spent almost a year in rehabilitation at Courage Center, working in the pool one-on-one with a therapist on his right leg. After he

recovers from his next operation (rehabilitation from this surgery will last between 6 weeks and 6 months), he would like to return to the Courage Center to work with his therapist to develop more strength and mobility in his right leg so that he can regain some of the independence he has lost in the last 18 months.

Mr. Wehmhoff's ordeal has also taken an emotional toll. At his plea, in a voice quavering with emotion, he told Judge Magnuson that after providing almost 40 years of honorable, honest professional tax and accounting work to hundreds of clients, he followed the lead of his client, Tom Petters, and lost his way:

Your Honor, in my own words, I am ashamed and embarrassed to admit that, after starting work at PGW, it was made clear to me that part of my job would be assisting in the underreporting of income by Tom Petters, his business and employees. I agreed to assist in this.

A primary way for doing this was by classifying income to Tom as loans on the books of his companies. I knowingly aided and assisted Tom and others in the preparation of tax returns that I knew were false, because taxes were avoided by calling income loans and thereby underreporting of income or by failing to report income altogether by calling income gifts. In addition, I went along with Tom Petters when he gave me what he called a gift of one million dollars at the end of 2006. I knew this was really income that should have been reported.

It was wrong. I knew it was wrong. And I apologize to the court, my family and everyone who was counting on me to do the right thing. Before I joined PGW, I had not engaged in such conduct during my entire years as an accountant. These crimes are my responsibility, but they do not reflect who I truly am. When I got to PGW, I lost my way, and I apologize.

Transcript of Plea Hearing at 40-41 [Docket No. 8].

Jim Wehmhoff's deep and profound sense of remorse at his plea hearing was unmistakable. With his guilty plea, cooperation and focus on his remarkable family, Mr. Wehmhoff was returning to the person he once was. Despite all of the physical and

psychological challenges he has faced, Mr. Wehmhoff has worked hard to return to the honorable path that represented the vast majority of his life. He has cooperated with the government, with the court-appointed receiver, and with private parties seeking to recover money lost to Petters. Even as his painful conditions prevented him from sitting still for long periods at a time, or when recent falls caused him great discomfort, Mr. Wehmhoff has concentrated on helping those who work to repair the damage done. Mr. Wehmhoff is on the eve of yet another major operation, and has long since testified in the Petters trial, but still he continues to cooperate in the various “clawback” and other ongoing actions.

The proof that Jim Wehmhoff is not someone who needs to be incarcerated is contained in the Pre-Sentence Report, in the letters submitted with this memorandum and the facts of his precarious physical condition. Starting with the moving letter jointly written by Wehmhoff’s five children, and including the letters from Mr. Wehmhoff’s clients, Mr. Wehmhoff’s own personal letter to the Court and his doctor’s recitation of his health issues and need for ongoing care, these submissions make clear that Jim Wehmhoff is not a typical white-collar defendant. He has lived an honorable and kind life; he raised a caring and loving large family and took his professional and ethical responsibilities to heart. At a point in his life when he was preparing for retirement, he entered a new world filled with deception, high stakes finances, and a lack of integrity. He lost his way and engaged in uncharacteristic conduct. There are no excuses for what he did, but his conduct should be placed in the context of who he was and who he strives to be again.

The question now before this Court is whether Mr. Wehmhoff should be sent to prison. In this memorandum, we will set forth the factors that warrant a non-custodial sentence for this defendant—a sentence of home confinement.

ARGUMENT

A. 18 U.S.C. § 3553(a) Supports A Non-Custodial Sentence.

The factors of 18 U.S.C. § 3553(a) strongly support the imposition of a non-custodial sentence. “Under the current advisory guidelines regime, the district court ‘should begin all sentencing proceedings by correctly calculating the applicable Guidelines range,’ because that determination provides an ‘initial benchmark’ that helps ‘secure nationwide consistency.’” *United States v. Vickers*, 528 F.3d 1116, 1120 (8th Cir. 2008) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). Once done, the court “should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party.” *Gall*, 552 U.S. at 49-50.

In so doing, the court “may *not* presume that the Guidelines range is reasonable.” *Id.* at 50 (emphasis added). Because the range at best reflects only a “rough approximation” of what might achieve Section 3553(a)’s objectives, *Rita v. United States*, 551 U.S. 338, 350 (2007), the court “must make an individualized assessment based on the facts presented.” *Gall*, 552 U.S. at 50. “It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113 (1996). As *Gall* itself teaches, rather ordinary circumstances can

support a non-custodial sentence far below the suggested range. *See Gall*, 552 U.S. at 40-58.

An examination of Jim Wehmhoff's life—before, during, and after the chapter that was his time at Petters Group Worldwide—justifies a non-custodial sentence here. While the conduct he admitted to results in a guidelines range of 70 to 87 months, that range does not take into account Jim Wehmhoff as a person, and overstates his culpability in a scheme he did not propose and did not direct. *See The Challenge of White Collar Sentencing*, 97 *Journal of Law and Criminology* 731, 753 (2007) (“[A] system that employs a mathematical calculation to determine an individual's sentence omits proper recognition of the offender, the offense, and the need to protect society from future dangerousness.”). As explained below, a fair assessment of Jim Wehmhoff and his conduct through the factors listed in 18 U.S.C. § 3553(a) supports the non-custodial sentence of home confinement that he hereby requests.

1. § 3553(a)(1)—The Nature and Circumstances of the Offense.

As recognized in the presentence investigation report (hereinafter “PSR”), Mr. Wehmhoff “did not know that PCI was not engaged in purchasing and reselling merchandise, and he was not involved in the other defendants’ scheme....” PSR ¶ 11. His isolation from the Petters defendants was first set forth in his plea agreement, which recited his ignorance of the fact that PCI was not engaged in the business of purchasing and reselling merchandise and that he was not involved in the other defendants’ scheme to defraud third party lenders by providing false invoices and purchase orders. *See Plea Agreement* pp. 4-5. The government’s investigation confirmed that the Petters

defendants “intentionally hid their scheme from Wehmhoff.” The PSR affirmed this fact. PSR ¶ 11.

Jim Wehmhoff’s ignorance of the Petters/PCI fraud alone justifies treating him much differently in sentencing from the remaining Petters defendants. In addition—and also unlike the other Petters defendants—Jim Wehmhoff did not take the kind of *affirmative* steps to advance the crimes to which he pled guilty: his culpability stems primarily from his failure to act once he learned that Tom Petters was underreporting his income. While he repeatedly explained to Tom Petters that the funds in question would have to be documented as loans and repaid, he did nothing more when it became clear that Tom Petters was not going to do so. *See* Transcript of Plea Hearing at pp. 37-38, 40-43. As he has explained, there came a point when he should have “rung the bell” and walked away. Instead, he accepted bonuses that he should not have taken and let Petters bury him with ever-increasing responsibilities that made the unresolved tax issues easy to ignore—and he kept quiet and assisted in the filing of false returns.

While Mr. Wehmhoff’s failing is significant, his conduct is of a different magnitude than the crimes perpetrated by the other Petters defendants. This is not an excuse for Jim Wehmhoff’s failure to act. But it places his crime in context. Knowing Jim Wehmhoff well, Tom Petters kept the Ponzi scheme from him because Petters knew he would not tolerate it. The nature and circumstances of Mr. Wehmhoff’s offense are unique among all of the Petters defendants. This factor therefore weighs in favor of a non-custodial sentence.

2. § 3553(a)(1)—The History and Characteristics of the Defendant.

The Section 3553(a)(1) factor for consideration of the history and characteristics of the defendant also weighs heavily in favor of a non-custodial sentence. Mr. Wehmhoff's history and characteristics are best described by those who know him best—his family.

After Mr. Wehmhoff's guilty plea, his family asked how they could explain to the Court that the current conduct did not represent the true person Mr. Wehmhoff is. When counsel advised the family that they could express their thoughts in writing, we had no idea how powerful a message they would produce. Attached as Exhibit 2 to this Memorandum is the heartfelt expression of Mr. Wehmhoff's five children about their father. This letter provides a window into the life and character of a beloved father, loving husband, and loyal friend:

The Honorable Judge Kyle,

We are the children of James Wehmhoff; his three sons and two daughters. We are writing to you in support of our father, knowing that this may very well be the most important letter that we will ever compose. Still, our words come with a sense of optimism that you will develop a better understanding of what kind of a person he truly is. Most importantly, we hope that you will see what he means to us. Although we have a profound respect for the judicial system as well as faith in your fairness, it is our intent to appeal to your compassion. We acknowledge that there are inevitable consequences for his actions while employed at Petters Group Worldwide. Still we humbly ask, Your Honor, that his sentence considers a holistic perspective of a man whose sixty-nine years have been filled with honesty, integrity, and love.

...

Like many children, we grew up hearing a variety of groan-inducing "Dad-isms" that inevitably meant that we would not get our way. "Eat it or wear

it,” was common, as were “money doesn’t grow on trees” and his all time favorite, “Nice to meet you, I’m Jim” (after a whine of I’m hot/cold/hungry or whatever the complaint consisted of that day.)

...

Were we children of privilege? Hardly. Our cries regarding deprivation from the latest and greatest toys or video games, our less than designer clothes, or lack of vacations beyond Mount Rushmore or Wisconsin Dells were often met with his notorious response of “too bad, so sad.” But were we spoiled? Absolutely. He gave us rides on the lawn mower-and let us steer. He had as much enthusiasm for our t-ball wins as he did our college graduations. . . He was there for everything from flat tires to bad relationships.

As his children, though we were not “rich” in the financial sense, we clearly never went without; especially when it came to participation in activities that would build our character or develop our sense of self.

Most importantly, he also did what many fathers fail to realize is crucial to a child’s upbringing—he loved and respected our mom in his every word and action. For forty-five years he has made sure that she has never had to rise to an alarm, and has had hot coffee and the newspaper waiting for her in the kitchen when she wakes up. After she suffered a miscarriage while he was away hunting, it took a decade before he could bring himself to go again. He never, ever speaks an ill word about her, and makes sure that nobody else does either.

And when she suffered a heart attack shortly after the FBI raided the offices at PGW, he broke down in the waiting room at Methodist hospital and it was all we could do to convince him that it wasn’t his fault.

...

Thankfully, when traumatic events happen so do miracles. People come out and carry you in the little ways that they can. We had a lot of really amazing people holding us up ... including each other. We talked to one another every single day. It was even comical at times, with all of the conferencing, call waiting and putting each other on speakerphone to provide constant updates on our parent’s well-being. . . To help our parents, one of us showed up at their house every single day for months. And not just surrounding the intense Petters events. When our mom was recovering. When our dad was recovering.

We all firmly believe that we are the better for it, especially our Mom and Dad. The people they are today are even more remarkable than the ones we knew before September 2008. Our dad is kinder, gentler, and more humble than before. Our mom is stronger, more confident, and more content than ever. Despite all of this, they still give to others all that they have to give. They are still our heroes. Their marriage did not falter as many would in times of intense stress and conflict; instead, their bond grew deeper and they hold each other a little closer. It was evident to all of us that they both emerged from their profound psychological distress by holding each other up and eventually, by putting each other's needs before their own.

Our mom's need for more rest and breaks throughout the day results in our dad simply picking up where she's left off in day to day tasks. They accompany each other to appointments and remind each other to take medications.

Ultimately, you may ask, what did we learn from all of this? Unconditional love. Undeniable support. Strength in numbers. The impact of kind words. The power of prayer.

Judge Magnuson, told us that he was blown away by the packed courtroom and outpouring of support. However, we were not at all surprised, as we have always felt the great respect and admiration that so many have for our dad. In the eyes of the law he may be imperfect, but to us he remains a moral compass by which to follow. As a family, we are choosing to celebrate his undeniable success in marriage, parenting, friendship, and business rather than focusing on one single aspect of his life that will never define him, no matter what the outcome.

Exhibit 2, Letter from Wehmhoff Children.

The words of the Wehmhoff children are echoed by Mr. Wehmhoff's former clients. We submit two letters (Exhibits 3 and 4) from former clients that make clear how he practiced accounting and tax preparation for the overwhelming majority of his career.

From Adeline Benjamin:

Jim Wehmhoff was our accountant for many years, through many trials and tribulations. During that time he was the most caring, honest, thoughtful man imaginable. He was our accountant when we sold our four bowling centers through contracts for deed. We got all of them returned . . . Jim went to court with me every day for a week while we and the owner of the

building fought over the lease and the substantial assets we owned . . . If it had not been for Jim Wehmhoff's support and knowledge, I don't know if I could have lived through those hard times. He is a wonderful accountant and friend, always exceedingly honest, kind and knowledgeable.

Sherry Brier, another former client, has similar things to say about Mr. Wehmhoff's character:

I first met Jim Wehmhoff in the early to mid-1990s. At the time, I had a partnership in a restaurant.

From that point on Jim became my accountant for the restaurant until it was sold. Then my sister and I became owners of a printing company which still operates today, and Jim was our accountant for many years.

Jim retired about 2004. However, in the many years I worked with him, he always operated as an honest, ethical professional. He never suggested doing anything as my CPA that was not in accordance with state and federal tax laws.

Jim was a true professional and I had total trust in him as our CPA. He also was a pleasure to work with as he always had a fabulous sense of humor. I never spoke to him without a good laugh.

Jim is a man of good character and no one is paying the price more than he is right now (along with his family who we often talked about during a visit to consult on our tax and accounting needs). Jim is a good caring individual. If there were more people who had as much integrity as him, the world would be a better place.

Through these letters, and the outpouring of support he received at his guilty plea, one fact is made clear: Jim Wehmhoff is someone who still has the love and respect of his family and friends despite his admission of serious wrongdoing. This depth of support speaks volumes about his history and character.

Judge Magnuson recognized the extraordinary level of support for Mr. Wehmhoff at his plea:

[MR. LUGER]: On behalf of Mr. Wehmhoff, his wife and children, cousins, nieces, nephews, boyfriends, girlfriends, and all of the above, are all in court today. We didn't recruit them to come here, they wanted to be here for him, and I just wanted to thank them for coming.

[THE COURT]: Thank you. I will second that suggestion, Mr. Luger. And I will tell the people that are in the room—I've obviously been doing this for a very, very long time—this is the largest gathering of support for a person that I've ever seen in my career as a judge. And I also want to say how important that is. When you leave today there will be three young people that will be sitting at the table over here who are defendants in trial, not one of them has had one person here in support, and that's something that we see over and over and over again in our courts. And I do express appreciation on behalf of Mr. Wehmhoff for the support that you're giving him. With that, we thank you very much.

Transcript of Plea Hearing at p. 43 (emphasis added) [Docket No. 8].

There could be no better testament to Jim Wehmhoff's history and character than the words of his children, the demonstration of support from his family, friends and clients, and the words of the judge who saw firsthand the depth and breadth of Jim Wehmhoff's support. Mr. Wehmhoff's history and characteristics weigh heavily in favor of a non-custodial sentence.

3. § 3553(a)(2)(D)—The Need for the Sentence Imposed to Provide Needed Medical Care in the Most Effective Manner.

Jim Wehmhoff's deteriorating health and ongoing need for medication and rehabilitation therapy are important factors in favor of a non-custodial sentence. As summarized in the presentence report and in the letter from Dr. William Conroy, Mr. Wehmhoff was already facing serious medical issues including hypertension and obesity in 2007 when his health started on a steep downward trajectory that continues to the present day. The letter from Dr. Conroy is attached to this Memorandum as Exhibit

5.

When he appears before the Court for sentencing, Mr. Wehmhoff likely will be in the middle of a rehabilitation program that involves intense physical therapy for up to six months, after undergoing his second major spinal surgery in the last year. This program, however, is only related to his recovery from the second operation. When that is completed, Mr. Wehmhoff should return to the therapy he was receiving at Courage Center to add strength and mobility to his damaged right leg. As he explains in his letter to the Court, he has a strong working relationship with a therapist there, and would like it to continue if possible. This therapy could help reduce Mr. Wehmhoff's propensity to fall. And, depending on what he learns in the near future, he may need to receive treatment for the prostate cancer that was discovered this year.

Mr. Wehmhoff's Spinal Condition

Mr. Wehmhoff's first spinal surgery, performed in February 2009, did little to improve his pain or alleviate the loss of function in his right leg. Recently, after trying other less invasive techniques, his doctors explained that he suffered from degenerative spinal stenosis, and urged a second, more serious operation. As recited in the presentence report, his condition is prohibiting the nerves and muscles in his right leg from receiving the necessary commands to function properly. Consequently, Mr. Wehmhoff experiences numbness and swelling in his right leg, and pain that does not subside even with the serious medication he takes daily.

Mr. Wehmhoff currently takes a multitude of pills each day, including two types of blood pressure medication, cholesterol medication and once-daily doses for his

prostate, medication for depression and morphine for pain. It is expected that he will require additional medications after his August 16 surgery.

Mr. Wehmhoff's Recent History of Falls and Resulting Injury

Because of the condition afflicting his right leg, Mr. Wehmhoff has fallen many times during the last 18 months and has suffered significant injuries (from serious wrist sprains to strained cruciate ligaments) that require still more rehabilitation. Counsel was with him when he fell just outside the courthouse as he walked to a meeting at the United States Attorneys' Office. Mr. Wehmhoff's blood soaked through a bandage provided by a nurse and trickled down his leg and through his pants as he worked with the prosecutors and investigators that day. On another occasion, during a period when it was difficult for Mr. Wehmhoff to drive, counsel went to his home to take him to another meeting at the United States Attorneys' Office. Before counsel arrived, and while he was getting dressed, Mr. Wehmhoff fell in front of the closet and hit his head and body against the closet organizer. Afterwards, he took his pain medication and became disoriented and fell asleep. When his wife and counsel discovered him, counsel called 9-1-1. Doctors at Methodist Hospital then evaluated Mr. Wehmhoff for the next four days. That evaluation led to counseling for alcohol abuse, his first spinal surgery, and weeks of physical therapy.

There have been other falls, before and since, as his condition did not improve and his weak leg made him unstable.

Even if the second spinal surgery is more successful than the first, Mr. Wehmhoff will never fully recover from the nerve damage he has suffered. As Dr. Conroy reports:

“Neither consultant felt that Mr. Wehmhoff’s chronic focal muscle weakness would improve with surgery.” The damage to Mr. Wehmhoff’s right leg—the damage that has led to frequent falls and difficulty climbing stairs—will be with him the rest of his life, and can only be mitigated.

Mr. Wehmhoff’s Need for Ongoing Rehabilitation Therapy

Mitigating the damage to his right leg requires that Mr. Wehmhoff attend frequent therapy sessions. As detailed in his letter to the Court, Mr. Wehmhoff has spent a great deal of time in pool therapy at the Courage Center working on improving strength and mobility in his right leg. After he completes the rehabilitation for his second back operation, he would like to return to his one-on-one sessions at Courage Center. This provides Mr. Wehmhoff with some hope that he may regain enough use of his right leg that he will fall less often.

Courts have repeatedly recognized the need for ongoing services to address medical needs as a basis for a variance from the sentencing guidelines. In *United States v. Wadena*, the Eighth Circuit addressed this very issue:

The 2005 Guidelines, which the district court applied in this case, state that courts may consider departing downward to a non-prison sentence for an infirm defendant because “home confinement might be equally efficient as and less costly than incarceration.” While that section of the Guidelines does not apply directly to this case (because the district court chose to vary from the Guidelines rather than depart from them) the overarching policy contained in that language is clear: in some situations a district court may impose a non-prison sentence when a defendant has serious medical needs. Section 3553(a)(5) directs the district court to consider the policies of the Sentencing Commission when determining a sentence, and § 3553(a)(2)(D) explicitly states that the effective provision of necessary medical care is an appropriate factor for the court’s consideration in sentencing.

United States v. Wadena, 470 F.3d 735, 739 (8th Cir. 2006). Similarly, in *United States v. McFarlin*, 535 F.3d 808, 811 (8th Cir. 2008), the court held that a district court may take into account an infirm defendant's need for ongoing medical care in considering alternative forms of incarceration.

The policy of this particular sentencing guideline has recently become more clear. Congress amended the Sentencing Guidelines in a manner that alters the presumption regarding downward departures for health reasons. Previously, Guideline 5H1.4 stated that physical condition "is not ordinarily relevant in determining whether a departure may be warranted." The new 5H1.4, effective November 1, 2010, clarifies that physical condition "may be relevant" as follows:

Physical condition or appearance, including physique, may be relevant in determining whether a departure is warranted, if the condition or appearance, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines. An extraordinary physical impairment may be a reason to depart downward; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.

See Notes to 18 U.S.C. Appx. § 5H1.4 Amendment of Guideline.

This change plainly demonstrates the Sentencing Commission's intention that courts presume the relevance of a defendant's physical condition. And the Commission contemplates in this new language that circumstances other than "extraordinary physical impairment" can necessitate a departure.

Mr. Wehmhoff suffers from a complex cross section of infirmities, including a leg injury that causes him to fall. The facts of this case mirror the concerns that gave rise to

§ 3553(a)(2)(D) and Guideline 5H1.4. Mr. Wehmhoff is infirm, will require substantial care, is in danger of repeated falls and can serve a term of home confinement in a manner that is far more efficient than if incarcerated.

Mr. Wehmhoff May Require Treatment for Prostate Cancer

Moreover, as is evident from the presentence report and Dr. Conroy's letter, Mr. Wehmhoff's serious back and leg issues are hardly the only medical complications he is facing. Just two months ago, he underwent prostate surgery during which cancer was discovered. The cancer will be re-evaluated in October and treatment may be required. Dr. Conroy was concerned because the cancer had appeared despite prostate surgery that Mr. Wehmhoff had a year prior.

The result of these and other medical issues that have arisen during the last two years—beside the constant pain—has been a dramatic loss in Jim Wehmhoff's independence. Again, given his condition, a sentence of home confinement is thus appropriate.

The precipitous drop in Mr. Wehmhoff's health did not occur in isolation: Bonnie Wehmhoff, his wife of 45 years, suffered a heart attack in December 2008 that required surgery and three stents to treat the 70% blockage to her arteries. As his children allude to in their letter to the Court, their father and mother, by clinging fiercely together, have so far been able to stay living together in their home of more than 30 years. Mr. Wehmhoff has received excellent medical treatment and has a substantial support system in place. Denying Mr. Wehmhoff either the excellent treatment he is receiving or ready access to his support system could very well accelerate his deterioration.

Mr. Wehmhoff's serious myriad health concerns thus weigh heavily in support of a non-custodial sentence.

4. § 3553(a)(2)(a)-(c)—The Need for the Sentence Imposed to Provide Just Punishment, Deterrence, and to Protect the Public.

The PSR and the letters submitted with this Memorandum make clear that there is no need for a sentence of imprisonment to provide a just punishment or deterrence for Jim Wehmhoff. Approaching 70, with multiple physical impairments and a history of honest conduct as an accountant, Mr. Wehmhoff is not a danger to the public and will not offend again. The record here is clear that the short, tragic chapter that was his time at Petters Group Worldwide was an aberration in an otherwise remarkable life. When the time came to accept responsibility for his actions, Jim Wehmhoff did. And ever since that moment, he has worked hard to restore his reputation and honor by helping untangle the web of lies and deceit spun by the Petters defendants.

There is no question that Mr. Wehmhoff's assistance was valuable. The United States Attorney's Office valued his cooperation. The Chapter 11 bankruptcy trustee for the Palm Beach entities described him as "extremely cooperative" in providing information "on how monies flowed among different entities within the various Petters related entities and the interaction of various senior-level employees and professionals with Mr. Petters" (Exhibit 6). The Receiver, with whom he spent many hours before the trial, and many hours after in connection with the Acorn and Ritchie clawback litigations also praised his work, stating that "the information he has provided expands and confirms information we had gathered from other sources and directs us to specific individuals

who worked directly on particular transactions. . .” (Exhibit 7). The communications by those seeking Mr. Wehmhoff’s assistance share a common theme: he impressed everyone during his cooperation sessions with his determination to recall events issues at the core of the fraud investigation. He has held nothing back and helped them all immensely.

Jim Wehmhoff cooperated fully and without hesitation—even as he was simultaneously struggling with the health and financial issues that still dominate his life. The guilt he feels for the shame and humiliation he has brought to himself and his family will never completely disappear. But there is no question that he has found the right path. He is working hard to recover his reputation—and saw his cooperation as one of the means by which he could do so. He takes pride, and his family takes pride, in the information and assistance that he has provided.

Through that work, the United States Attorneys’ Office, the Receiver, and others saw a glimpse of his true character. They were all able to see him as the principled, tenacious, experienced and wise business advisor that he was known to be by those who worked with him for most of his nearly 40 years as a certified public accountant. While he did lose his way, he has been working hard for the last two years not to let his tragic chapter at Petters Group Worldwide define his life. There is no doubt that Mr. Wehmhoff will never repeat his grave mistake. This factor therefore also weighs in favor of a non-custodial sentence.

5. § 3553(a)(7)—The Need to Provide Restitution.

In October 2008, the Receiver took possession of almost all of Mr. Wehmhoff's assets. While a former client has given him a small book-keeping role that provides him with some income, he and his wife face a bleak financial future, given his age, serious medical issues and criminal record. In addition, Mr. Wehmhoff will be held responsible for more than \$500,000 in unpaid taxes and resulting interest and penalties that the IRS will collect and impose. We are in the process of working with the government, the Receiver, and soon the IRS to resolve the remaining financial issues relating to this matter. They will be finalized prior to sentencing.

B. A Non-Custodial Sentence is a Reasonable and Appropriate Sentence.

The court's obligation to consider a defendant's personal traits and characteristics has been clear since *Booker*. Section 3553(a), "as modified by Booker, contains an overarching provision instructing courts to 'impose a sentence sufficient, but not greater than necessary,' to achieve the goals of sentencing." *Kimbrough v. United States*, 552 U.S. 85, 101 (2007). As the Court well knows, the Sentencing Guidelines are just but one of several factors to consider when imposing a sentence, and should not be given more or less weight than any other. *United States v. Carty*, 520 F.3d 984, 989 (9th Cir. 2008). Nor is there a requirement of "extraordinary" circumstances to justify a sentence outside the Guidelines range. *Gall*, 552 U.S. at 47.

When Jim Wehmhoff's personal traits and characteristics are considered, it is evident that the proposed Guideline sentence is unnecessarily disproportionate to the crime he committed and the demands of justice.

Whatever remains of Mr. Wehmhoff's life, it has been forever altered. He has worked hard to right his wrongs by helping the government in every way he could to untangle the lies at the heart of the largest fraud in Minnesota's history. His cooperation continued long after the Petters trial and has been praised by the United States Attorneys' Office, the Receiver, and the bankruptcy court trustee in the related Florida litigation. He has done all of this while coping with the myriad of serious health issues that still threaten his life. He has done so knowing that he has no financial safety net to protect him or his wife, who has her own medical issues.

Based on the above, we submit that a sentence of home confinement is consistent with the goals of sentencing and all relevant sentencing factors.

CONCLUSION

For each of the reasons set forth above, Jim Wehmhoff respectfully seeks a downward departure or variance from the Guideline range pursuant to 18 U.S.C. §3553(a) and Guideline 5H1.4 and asks for a non-custodial sentence of home confinement.

Dated: August 11, 2010

GREENE ESPEL P.L.L.P.

s/ Andrew M. Luger

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Attorneys for Defendant James Wehmhoff

EXHIBIT 1

United States of America v. James Carl Wehmhoff
Case No. 08-cr-387-001 (RHK)

**JAMES C WEHMHOFF
4595 OAKVIEW LANE
PLYMOUTH MN 55442**

August 4, 2010

The Honorable Judge Kyle

It is very difficult for me to write this letter but I want you to understand that I am the person I described in my statement to Judge Magnuson at the plea agreement hearing. I know I did the wrong thing and made decisions that I should not have and for this I am truly sorry. I know that I got caught up with Mr. Petters charismatic personality, believed in his visions and his promises and the bonus money and gifts. I know that a day does not by that I do not go through the mental anguish of what I should of, could of, or would of done. I also know that individuals were affected by my actions and I am truly sorry.

Throughout my entire sixty plus years before working for Mr. Petters, I have lived my life being honest, with integrity, compassion and humility. The case before you is the one exception. As I told Judge Magnuson, I am guilty for what I did, but it does not represent who I am.

I am blessed with a loving wife of forty-five years, five children and six grandchildren. They have stuck with me through this and our relationships have never been better. I cannot express how much this has meant to me over the past two years. My family has grown in many positive ways as a result of this tragedy, however, my wife Bonnie suffered a heart attack in December, 2008 and I believe the stress of this case and my guilt for what I did brought on my need to have the back surgery which has left me with constant back pain, partial loss of mobility with my right leg and continuous physical therapy.

I know you are deciding what sentence to impose on me, and I want to make certain you have all of the information you need. I don't know what facilities or services are available at federal prisons, but I expect and hope to continue physical therapy after my next surgery. For about one year, I have been working one-on-one with a therapist at the Courage Center. This is to improve the strength and mobility in my right leg, the leg that has had nerve damage. I have sessions twice a week at the Courage Center pool with the therapist. After I recover from the next surgery, I would like to return to the Courage Center pool, and my therapist, for twice a week sessions. I believe these sessions are helping me gain some strength and some mobility in my leg.

During my thirty plus years in practice as a Certified Public Accountant, I cannot recall my work ethic ever being questioned or challenged. I did my best to satisfy the clients needs, charged reasonable fees and treated each client as if he/she were the most important client to the firm, regardless of size or annual fees generated. That was the person I want to remember, the person who represented the real Jim Wehmhoff.

In 2004, I left public accounting and accepted the position with Petters Group Worldwide to form a tax department, have reduced hours and an excellent salary with benefits. As a result of this dream position I accepted more and more duties and responsibilities and failed by doing and not doing certain things I knew or suspected were wrong. Financially I was rewarded and in many ways I believe I was a different person during the years 2004 to 2008. As I said in 2008, I lost my way. I have now come back to the person I was before.

I cooperated with the federal prosecutors and private lawyers, truthfully answering all questions and providing them with more information and my knowledge of certain transactions and events then I believe they expected. Judge Kyle, we have all made decisions and mistakes in our lives and wish for the ability to go back in time and change our decisions. My mistakes and decisions were criminal. I will never get over that. I look back on my life and I am angry with myself for acting in such a way that I am now a felon. I know that my life and the lives of many others would be substantially different and substantially better. For that reason I apologize to everyone directly or indirectly involved. Again, I am truly sorry. I have done everything I can since 2008 to show the government and private parties the real me. The person who lived an honorable life before going to work for the Petters companies, before losing my way. The person my wonderful children wrote about in their letter. Whatever you decide to do with my case, I will never go back to the person who worked at the Petters companies, I will never act unethically again and I will cherish my time with my family.

Thank you for taking your time to read this.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James C. Wehmhoff", with a stylized, cursive script.

James C Wehmhoff

EXHIBIT 2

United States of America v. James Carl Wehmhoff
Case No. 08-cr-387-001 (RHK)

The Honorable Judge Kyle,

We are the children of James Wehmhoff; his three sons and two daughters. We are writing to you in support of our father, knowing that this may very well be the most important letter that we will ever compose. Still, our words come with a sense of optimism that you will develop a better understanding of what kind of a person he truly is. Most importantly, we hope that you will see what he means to us. Although we have a profound respect for the judicial system as well as faith in your fairness, it is our intent to appeal to your compassion. We acknowledge that there are inevitable consequences for his actions while employed at Petters Group Worldwide. Still we humbly ask, Your Honor, that his sentence considers a holistic perspective of a man whose sixty-nine years have been filled with honesty, integrity, and love.

In this contemporary age of geographically distanced families, it is certainly unusual to have a family of five children all reside within 35 miles of what is still considered "home." This strong foundation and deep connectedness reflects the family values with which we were raised. Admittedly, we are proud to share the same qualities that define the person we call dad. As adults we see the significance of this; and aspire to emulate these ideals within our own growing families.

Tom, 42, lives in Plymouth with his wife of 19 years, Rochelle. They have three children, Erika, 18, David, 15, and Pete, 5. Like our dad, Tom has a strong work ethic. After graduating from St. John's University and completing his accounting education at the University of St. Thomas, Tom chose to follow in his footsteps. He had the privilege to work with our Dad for seven years and while he learned from him, he also learned a great deal about him as well. They both are solution oriented and have a passion for

problem solving. When our Dad retired from public accounting, Tom naturally took over his practice. Today, he strives to carry out his work with the same emphasis on strong relationships that our dad modeled over the course of 25 years. It has been instilled in Tom to go beyond what is absolutely necessary for clients in order to achieve more ideal outcomes. Tom is currently a partner at Gerhardson, Warner and Wehmhoff, CPAs, a public accounting practice in Plymouth.

Janet, 40, lives in Ramsey with her husband of 17 years, Joe. They have one daughter, Allison, 13. Janet is a graduate of the College of St. Catherine's with a B.A. in Education. She went on to receive a Master's in Education from Hamline University. We like to playfully tease Janet for inheriting our dad's "Type A" tendencies. They are both the kind of people who never go without a plan, insist on writing lists, and have perfectly organized everything--desks, brief cases--even sock drawers. Janet worked with him temporarily while she awaited a teaching job, and because of their similarities they made a great team. It was evident to Janet that he took pride in his profession, and she admired how he made each of his clients feel as though they were his most important. Every day she takes these lessons, and the gift of our dad's unwavering patience, to her first grade classroom at Lakeview Elementary in the Robbinsdale Area School District.

Mike, 33, lives in Zimmerman with his wife of 10 years, Jessie. They have two children, Dominic, 8, and Lainie, 4. Mike attended St. John's University. In addition to owning a landscaping/home remodeling business, he has also been the assistant hockey coach at his alma mater. An undeniable love for Minnesota's most beloved sport bonds Mike with our dad. During games, our dad always stood in the same spot to watch his sons play, and to this day Mike catches himself glancing up to find comfort in this

familiar figure. Surely, if our dad hadn't picked accounting, we're certain that he would have instead chosen to be a professional Zamboni driver. Mike is now continuing our dad's tradition of teaching his children to skate on self-made flooded backyard hockey rinks. In the winter months, you will find our dad enjoying Dominic playing hockey as a mite as much as he enjoys watching the St. John's games. An uncanny resemblance also exists between the two, and Mike shares his quiet demeanor, thoughtful expression, and even temper.

Dan, 31, lives in St. Louis Park with his beagle, Pebbles (for which our dad has particular affection). He has a girlfriend, Michelle, and has been dating her for three years. Dan is a graduate of the University of Minnesota-Twin Cities with a degree in communication. Like our dad, Dan is instantly likeable. He inherited his ease in relationship building and sustainability, sense of humor, and infectious laugh and this serves him well as an Internal Sales Manager at Hanratty and Associates. Dan is an avid Minnesota sports fan, and just as our dad does, closely follows the Vikings and the Twins. It isn't uncommon to see Dan and our dad's (his own father's 1985 Alumacraft) fishing boats tied up next to each other at the dock on Big Pine Lake. All of the Wehmhoff boys cherish their time together on various fishing trips throughout Minnesota and Canada, if only to score the title of best or most caught fish.

Susan, 29, lives in Golden Valley with her husband of 3 years, Neil; they are looking forward to a growing family. Sue obtained her baccalaureate degree in nursing from the University of Minnesota. This past December she also obtained her master's degree. Like our Dad, Sue believes whole-heartedly in the good of people and is always generous with her time, talent, and resources. During her time as a public health nurse for Community Health and Environmental Services in Anoka County she often called on

her mom and dad for donations of food, clothing, and even cribs to help the families she served-and never once returned empty handed. Neil also worked at Petters Group Worldwide as a senior accountant. He welcomed the opportunity to again work alongside our dad after his first experience with him and Tom in public accounting at Blanski, Peter, Kronlage and Zoch.

Like many children, we grew up hearing a variety of groan-inducing "Dad-isms" that inevitably meant that we would not get our way. "Eat it or wear it," was common, as were "Money doesn't grow on trees" and his all time favorite, "Nice to meet you, I'm Jim" (after a whine of I'm hot/cold/hungry or whatever the complaint consisted of that day.) There were also certain things about him that we could always depend on, much to our dismay. For example, being the morning person that he is, he relished in the opportunity to wake us up and often sang off key at the top of his lungs or used pots and pans to welcome us into the day. He also has an absolutely unbelievable God-given ability to whistle louder than a freight train, and to this day we are all conditioned to come running when we hear it.

In all seriousness, his best gift was simply his presence. It is true that our Dad sacrificed for his success. He would often work long hours, and spend Saturdays with clients. Yet when he came home from work, his focus shifted to his wife and his children. We always ate dinner together as a family, and went to church every Sunday-even when away from home. When it came to discipline he was consistent and fair. He rarely raised his voice to get his point across. We received no allowances, unlike many of our friends. There was simply an expectation that we would all contribute to the household chores. If there was something we desired, we could perform "extra work" to earn that privilege. They approached grades in a similar manner. Our best effort was

the rule, not the exception. Ultimately, these standards instilled in us a deep sense of faith, devotion, and unconditional love.

Were we children of privilege? Hardly. Our cries regarding deprivation from the latest and greatest toys or video games, our less than designer clothes, or lack of vacations beyond Mount Rushmore or Wisconsin Dells were often met with his notorious response of “too bad, so sad.” But were we spoiled? Absolutely. He gave us rides on the lawn mower-and let us steer. He had as much enthusiasm for our t-ball wins as he did our college graduations. He let us bike past Larch Lane (which is a *huge* deal when you’re 9 years old.) He let us dip our doughnuts in his coffee as we read the comics together on Sunday mornings. Though he often referred to hockey games as his essential “therapy,” he never missed a dance recital either. He gave up his garage spot so that we wouldn’t have to scrape our car windows before leaving for high school in the winter. He takes off of work to go to Grandparent’s Day lunches at elementary schools and is proudly introduced as “Papa Jim.” And if you ever need a ride to or from the airport (even at 3:00 am)—believe us, he is definitely your guy. He was there for everything from flat tires to bad relationships. As his children, though we were not “rich” in the financial sense, we clearly never went without; especially when it came to participation in activities that would build our character or develop our sense of self. It was very important to our parents that we all felt that we belonged in some way. In a big family it is easy to feel lost in the crowd, but our parents celebrated our individualism.

Most importantly, he also did what many fathers fail to realize is crucial to a child’s upbringing—he loved and respected our mom in his every word and action. For forty-five years he has made sure that she has never had to rise to an alarm, and has had hot coffee and the newspaper waiting for her in the kitchen when she wakes up. After

she suffered a miscarriage while he was away hunting, it took a decade before he could bring himself to go again. He never, ever speaks an ill word about her, and makes sure that nobody else does either. He has created work to empower and support her siblings' families when they were struggling to get by and has always done their taxes pro bono. He was the one clapping the loudest when she earned her college degree at the age of sixty after thirty years of staying home to raise children. And when she suffered a heart attack shortly after the FBI raided the offices at PGW, he broke down in the waiting room at Methodist hospital and it was all we could do to convince him that it wasn't his fault.

"The cabin" was our Mom & Dad's dream for 35 years. Essentially, it has become their mental and spiritual home even if they currently "reside" in Plymouth. It was purchased in 2002, before Dad went to work for Petters Group Worldwide. It needed quite a bit of work, and we all pitched in to fix it up. That little red two-bedroom cabin was his pride and joy. With help from our uncle and a friend, our Dad put in hardwood floors, built "the best dock on the lake-strong enough to dock the Queen Mary," and created "Jim's lounge" (the garage) where he could work with a view of Big Pine Lake. We even won the pontoon parade for best decoration the first two summers that we participated. As time passed, our parents decided that they wanted to retire "up north." In order to do so, the little red cabin would need to be torn down so that they could live there through the winter, and they also hoped to expand it to accommodate our ever-growing family (for visits, of course.) With heavy hearts, we tore it down and built what is there today. A painting of the original home still hangs above the fireplace to represent a dream come true, and in our dad's heart that is how it remains. Yes, the new cabin was built in part with money he had earned while working at Petters Group

Worldwide. He was grateful for the income for which he worked tirelessly, for so many years. Yet this was what he chose to spend it on; a gathering place for those most dear to him-his wife, children, and grandchildren. He did not take elaborate vacations, gamble, buy fancy cars, or spend money on other seemingly frivolous things. It was their simple wish to have a much-needed retreat, complete with a small flower garden and fountain that Mike designed for our mom. While our dad is escaping to “Jim’s Lounge” to lose himself in miscellaneous projects, she uses this space for prayer and reflection.

The Aftermath

In August of 2008, our family was seated at one of the elaborate tables at the John T. Petters Foundation gala. Sue recalls that as she watched Tom Petters walk in, he was smiling and waving as he weaved his way through the crowd like a politician in a parade. Something about the look in his eye struck her as cunningly insincere. Ever blunt, she turned to our dad and said, “He is such a ‘Slick Willy’ Dad, don’t you think?” Unaware of what was to come, Dad said, “No, definitely not him.” He truly believed in Tom Petters. Looking back, it may have been naiveté, or maybe it was simply the fierce professional loyalty that defined him and many of the men of his generation. One month later everything changed.

September 24, 2008: Petters Group Worldwide is raided by the FBI.

October-November, 2008: Our dad is diagnosed with depression and persistent anxiety, he begins pharmaceutical treatment and counseling. Our mom also experiences a reoccurrence of depression and follows a treatment regimen of drugs and psychotherapy.

December 8, 2008: Our mom is admitted to the hospital with chest pain. She has a heart attack and cardiac stents placed. Intensive cardiac rehabilitation follows.

December 15, 2008: Official charges are filed.

December 19, 2008: Plea Agreement.

January, 2009: Our dad suffers from a series of lower-body numbness and falls. Ultimately, 911 is necessary, and ambulance assistance to the emergency room. A three-day hospitalization ensues for monitoring and observation.

February 17, 2009: He has surgery for severe spinal stenosis followed by two weeks of inpatient rehabilitation to regain the ability to walk. Intensive physical and occupational therapy have filled each week to date to improve significantly reduced mobility and decreased independence.

March, 2010: Severe chronic back pain and ongoing leg weakness results in further appointments with a neuro and orthopedic surgeon for treatment recommendations. A second surgery is planned as a final effort to repair his extensive spinal nerve damage.

May, 2010: During his pre-operative physical for back surgery, a significant blockage to his bladder is discovered that required immediate surgical intervention. Extensive infection had resulted from this blockage, caused by an enlarged prostate and nerve and cellular damage to the urinary system. Biopsy results revealed prostate cancer cells. The surgeon recommended at least six weeks of bladder recovery before back surgery.

July 26, 2010: Spinal fusion of 3-4 lumbar disks planned. This surgery is expected to be a six-hour procedure requiring both abdominal and spinal incisions. The recovery will likely involve a five to seven day hospital stay, followed by two weeks to one month in a rehab facility. The overall recovery is expected to take up to six months requiring substantial physical and occupational therapies.

In December of 2008, we received a card from a family friend who gave us the following poignant words of wisdom to temporarily live by:

“You don’t get over it, you just get through it. You don’t get by it, because you can’t get around it. It doesn’t ‘get better’; it just gets different.” Wendy Feireisen

We gratefully admit that we have been blessed in life and before this had never been through such turmoil. When the raid occurred and the subsequent whirlwind began, a part of us felt compelled to climb up to the rooftops and start shouting about all of the injustices our dad faced, begging the world not to believe them-including false reports and malicious portrayals of him in the media. Eventually, we had to realize that this wasn’t possible or even important. We managed to get through it in part by reminding ourselves that the people that matter know the truth about our dad. The people out there that don’t, well, they just don’t and that’s that.

Thankfully, when traumatic events happen so do miracles. People come out and carry you in the little ways that they can. We had a lot of really amazing people holding us up...including each other. We talked to one another every single day. It was even comical at times, with all of the conferencing, call waiting and putting each other on speakerphone to provide constant updates on our parent’s well-being. We learned to

appreciate our individual coping mechanisms that got us through another day. Still, there were tough days. Cry-yourself-to-sleep kind of days. To help our parents, one of us showed up at their house every single day for months. And not just surrounding the intense Petters events. When our mom was recovering. When our dad was recovering.

We discovered that we needed to thank God that we are all so different, yet made so much the same. We knew what needed to be done. Tom helped with the complexities of their new financial situation and corresponded with the legal team. Janet brought meals, ran errands, and helped to organize necessary documents. Mike took care of the yard, of snow removal, and brought his kids over to play with Grandma Bonnie and Papa Jim. Dan helped to create a sense of normalcy, to keep everyone positive and still laughing. Sue kept track of the medical appointments, followed-up with doctors, and monitored their symptoms. When collectively it all simply made them not want to get out of bed anymore, ***we showed up.*** And it worked. We got through.

We have learned that these events do indeed create change, but because we come from such a strong foundation we did not crumble. Instead, as Wendy Feireisen suggested, we accepted the “new normal” that emerged. We all firmly believe that we are the better for it, especially our Mom and Dad. The people they are today are even more remarkable than the ones we knew before September, 2008. Our dad is kinder, gentler, and more humble than before. Our mom is stronger, more confident, and more content than ever. Despite all of this, they still give to others all that they have to give.

They are still our heroes. Their marriage did not falter as many would in times of intense stress and conflict; instead, their bond grew deeper and they hold each other a little closer. It was evident to all of us that they both emerged from their profound psychological distress by holding each other up and eventually, by putting each other's

needs before their own. As inevitably happens after major medical events, they succumbed to depending on each other's strengths to make up for their resulting individual weaknesses. Our mom's seventy-one year old legs became our dad's second set as he became unable to navigate the world as well as he used to be able. Our mom's need for more rest and breaks throughout the day results in our dad simply picking up where she's left off in day to day tasks. They accompany each other to appointments and remind each other to take medications. We know that he watches her closely along with her physicians, in the back of his mind aware that despite her procedure a major artery in her neck remains occluded and at risk. She too recognizes that he remains in almost constant pain in his back and leg and accommodates daily activities for this. This pain we now know is so intense that he has succumbed to the reality of more invasive surgery, weeks of recovery, and months of intense rehabilitation.

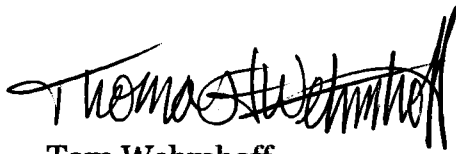
Ultimately, you may ask, what did we learn from all of this? Unconditional love. Undeniable support. Strength in numbers. The impact of kind words. *The power of prayer.*

Are we disappointed in him? Never. Are we proud of him? Incredibly. We know why he did what he did. In his statement to the court he apologized to his family, and we forgive him without hesitation. We know that his choices were difficult and that ultimately, he made a regrettable decision that was uncharacteristic of him. We know that he was manipulated and betrayed by people he wholeheartedly trusted...we all were. But he also stood up like a man and took responsibility for what he knew was wrong when he pled guilty on December 19th, 2008. The courtroom was filled that day with family members, friends, past clients, business partners, the entire accounting and finance department from Petters Group Worldwide, plus the five of us, our spouses, and

his beautiful wife to stand with him. The prosecution hugged him, and then shook our hands. Judge Magnuson told us that he was blown away by the packed courtroom and outpouring of support. However, we were not at all surprised, as we have always felt the great respect and admiration that so many have for our dad. In the eyes of the law he may be imperfect, but to us he remains a moral compass by which to follow. As a family, we are choosing to celebrate his undeniable success in marriage, parenting, friendship, and business rather than focusing on ***one single aspect*** of his life that will never define him, no matter what the outcome.

With hopeful and grateful hearts, we thank you Judge Kyle, for your time and consideration.

Sincerely,



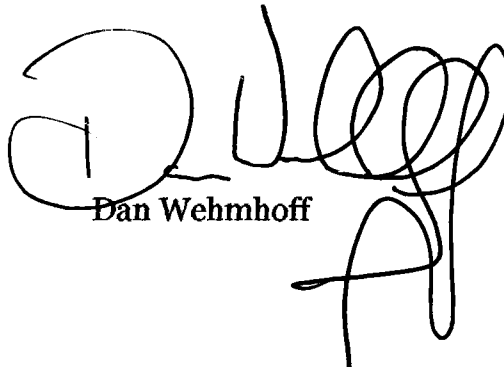
Tom Wehmhoff




Janet Rein



Mike Wehmhoff



Dan Wehmhoff



Susan Johnson

EXHIBIT 3

United States of America v. James Carl Wehmhoff
Case No. 08-cr-387-001 (RHK)

November 18, 2009

The Honorable Judge Paul Magnuson
United States District Court

Dear Judge Magnuson:

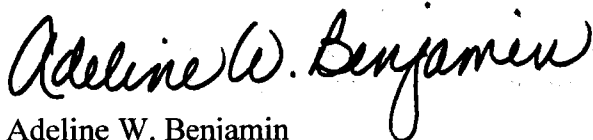
Jim Wehmhoff was our accountant for many years, through many trials and tribulations. During that time he was the most caring, honest, thoughtful man imaginable. He was our accountant when we sold our four bowling centers through contracts for deed. We got all of them returned; two of them we eventually had to surrender after pouring large sums of money into them; a third we renegotiated the sale and the fourth we dropped into a Chapter 11 to save it. Jim went to court with me every day for a week while we and the owner of the building fought over the lease and the substantial assets we owned. We were in Federal Court and Ramsey County Court numerous times. I would go with 2 or 3 bankruptcy attorneys, our personal attorney and Jim, our CPA. We eventually prevailed in Ramsey County with regard to the lease much to the chagrin of the opposing attorneys, Meshbesher, Singer & Spence, and the landlord who had not lost a case before and said he would appeal. Jim had found a banker for us and we were able to fund the past due real estate taxes of a quarter of a million and legal fees. Eventually the landlord decided not to appeal if we would pay his legal fees, which we agreed to in order to get on with our lives. If it had not been for Jim Wehmhoff's support and knowledge, I don't know if I could have lived through those hard times. He is a wonderful accountant and friend, always exceedingly honest, kind and knowledgeable.

After 10 years, we were able to negotiate the purchase of the property in Maplewood and sold the business to AMF and were able to retire. Had not Jim been there through all those rough times, this probably would not have happened.

We were very dismayed when he told us he was leaving BPK&Z and going to work for Mr. Petters. We knew he wanted to cut his hours and stress. I cannot, in my wildest imagination, Jim ever leaving had he known what was going on at the Petters organization. I have seen Jim once since we sold our business when I called him and went to see him at the Petters company on a matter relating to our business. When I walked into the main entry to speak to the receptionist to see Jim, it felt uncomfortable with guards behind the desk; it felt like an "armed camp" where one was suspect.

I am so greatly saddened by these development involving Jim. I hope that this letter will be of use for judging the character of this wonderful man and will be of help to Your Honor in deciding his sentence. He is, without a doubt, one of the most special people in my life and I miss his bear hugs. Any consideration you can give to this wonderful man who got mixed up in something he had no knowledge of will be sincerely appreciated.

Thank you.



Adeline W. Benjamin
18465 Ixonia Avenue
Lakeville, MN 55044
952-435-7925

EXHIBIT 4

United States of America v. James Carl Wehmhoff
Case No. 08-cr-387-001 (RHK)



SHERRY BRIER

E6168 819th Avenue
Colfax, WI 54730

T 715-232-9489

November 22, 2009

Dear Judge Magnuson,

I first met Jim Wehmhoff in the early to mid-1980s. At the time, I had a partnership in a restaurant, Gallery Family Restaurant in West Bloomington, Minnesota.

Prior to our meeting, a person named John Durocher had presented my business partner and I with a plan to purchase the business. His venture was called Pizza Video. The concept was to buy pizza restaurants and incorporate delivering videos with a pizza.

Jim Wehmhoff had been involved with some Godfather Pizza restaurants and those companies were also approached by John Durocher.

This whole scenario brought Jim and I together. My existing CPA at the time was retiring and I was looking for a new accountant.

The whole reason I bring this up here is because both Jim and I were skeptical if Mr. Durocher was for real or crooked.

We were not certain if he really just wanted to take the restaurants cash flow and make off with the money.

Jim took every precaution to ensure that the pizza owners involved were not going to get ripped off by a scam artist. Jim worked with the State of Minnesota to accomplish getting John Durocher convicted. My partner and I were able to keep our restaurant and not lose it.

From that point on Jim became my accountant for the restaurant until it was sold. Then my sister and I became owners of a printing company which still operates today, and Jim was our accountant for many years.

EXHIBIT 4

U.S. v Wehmhoff

Case No. 08-cr-387-001 (RHK)

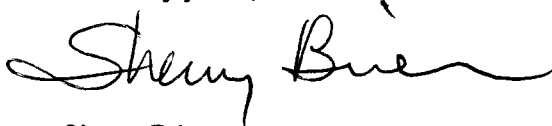
Jim retired about 2004. However in the many years I worked with him, he always operated as an honest, ethical professional. He never suggested doing anything as my CPA that was not in accordance with state and federal tax laws. In fact, often, he was the first one to advise me of changes in the law when these would come into existence.

Jim always completed our taxes so they were filed on time. He helped my business partner and I with advice such as when to purchase equipment and whether to lease it or buy it. Jim also advised on the purchase of the building we have now been in for over 15 years.

Jim was a true professional and I had total trust in him as our CPA. He also was a pleasure to work with as he always had a fabulous sense of humor. I never spoke to him without having a good laugh.

He made a bad decision to come out of retirement and work for Tom Petters. I certainly do not feel all of the good he did accomplish and professional competency prior to this current scene can be discounted or be considered irrelevant. Jim is a man of good character and no one is paying the price more than he is right now (along with his family who we often talked about during a visit to consult on our tax and accounting needs). Jim is a good caring individual. If there were more people who had as much integrity as him, the world would be a better place.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sherry Brier". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Sherry Brier

EXHIBIT 5

United States of America v. James Carl Wehmhoff
Case No. 08-cr-387-001 (RHK)



Park Nicollet Health Services

3800 Park Nicollet Blvd.
St. Louis Park, MN 55416-2699
952-993-3123 tel
www.parknicollet.com

July 23, 2010

Regarding:
Mr. James C. Wehmhoff
DOB 8/19/1941
PNC MR #10342091

To Whom It May Concern,

I am writing on behalf of Mr. James Wehmhoff, for whom I have provided primary medical care since November, 2007. Mr. Wehmhoff has requested a written summary of his medical history since December, 2008, which I will review in this letter.

On January 12, 2009, Mr. Wehmhoff was evaluated for fatigue, breathing difficulty, and right knee discomfort. Knee x-rays were unremarkable; an ultrasound of his right leg showed an intramuscular thrombosis, without evidence of a deep venous thrombosis; CT pulmonary angiogram was negative for pulmonary embolism; an echocardiogram was notable for left ventricular hypertrophy, with normal systolic and diastolic function. He was prescribed albuterol, an inhaled bronchodilator, to treat bronchospasm, and trazodone, for management of insomnia.

After he reported back pain and symptoms of lumbar radiculopathy, an MRI of the lumbar spine was completed on January 15, 2009. This study showed advanced multilevel degenerative changes, with significant central canal narrowing at L2-3 and L3-4, without significant change compared with December 27, 2007. For management of his acute pain, a fluoroscope-guided epidural steroid injection was performed on January 19, 2009.

On January 21, 2009, Mr. Wehmhoff presented emergently to Methodist Hospital with right leg pain, depression, and exacerbation of his chronic obstructive pulmonary disease. During his 4-day hospitalization, his respiratory problems were managed aggressively, and he was treated for depression and chemical dependency. He discontinued all use of alcohol at that time.

With his report of having developed right foot dorsiflexion weakness, he was evaluated in our department of neurosurgery on February 9, 2009. He was

This isn't just about health care. This is about you.

Park Nicollet Health Services • Park Nicollet Clinic • Park Nicollet Foundation • Park Nicollet Institute • Park Nicollet Methodist Hospital

EXHIBIT 5
U.S. v Wehmhoff
Case No. 08-cr-387-001 (RHK)

Re: James C. Wehmhoff
Page 2
July 23, 2010

advised to proceed with surgery. On February 17, 2009 he underwent an L2-L4 decompressive laminectomy with partial L5 decompressive laminectomy. Despite use of a muscle stimulator, he noted persistent right foot dorsiflexion weakness and back pain, for which he was referred for pool therapy. For evaluation of persistent symptoms, he was scheduled for an MRI, which showed evidence of decompression of the thecal sac and the possibility of arachnoiditis. An EMG showed evidence of persistent polyradiculoneuropathy secondary to spinal stenosis.

On June 29, 2009, Mr. Wehmhoff presented for evaluation of elbow and knee pain. Subsequent evaluation of his knee showed evidence of ACL and PCL sprains, with a full-thickness chondral defect in the femoral trochlea, for which a hinged knee brace was recommended. His elbow pain was felt to be the result of olecranon bursitis, which was treated with steroid injections on June 29 and July 7, 2009.

A lumbar CT myelogram performed on July 8, 2009 showed clumping of nerve roots at L3-4, possibly representing arachnoiditis. The impression of Mr. Wehmhoff's neurosurgeon was that his spinal stenosis had led to arachnoiditis with persistent weakness of the right leg. He was provided an AFO device for management of weakness, and he was treated with gabapentin to address associated dysesthesias; continued physical therapy was recommended.

To address his continued back and leg pain, for which he had required chronic use of hydrocodone, he was prescribed extended-release morphine sulfate on June 22, 2009. Continued physical therapy was recommended by a consulting physical medicine and rehabilitation physician. A steroid injection for olecranon bursitis was repeated on September 30, 2009.

A neurosurgery consultation on February 9, 2010 suggested that his chronic pain might improve with multi-level spinal fusion surgery. Subsequent consultation with a spinal orthopedic surgeon similarly concluded that spinal fusion surgery might provide improvement in Mr. Wehmhoff's level of pain. Neither consultant felt that Mr. Wehmhoff's chronic focal muscle weakness would improve with surgery.

Mr. Wehmhoff developed symptoms of a urinary tract infection in late March, 2010. Despite antibiotic treatment, he was noted to have gross hematuria, for which finasteride and a second antibiotic were provided. When his symptoms persisted despite these measures, he was scheduled for a TURP procedure, which was performed on May 7, 2010. Pathologic evaluation of the

Re: James C. Wehmhoff

Page 3

July 23, 2010

removed prostate tissue showed an incidental finding of adenocarcinoma of the prostate. He was advised to return after 6 months for a PSA test and examination by his urologist.

On a chest x-ray arranged as part of a preoperative evaluation on July 21, 2010, an infiltrate suggestive of pneumonia was identified. His planned spinal surgery was postponed, and he was prescribed a course of antibiotics to cover possible pneumonia.

Mr. Wehmhoff is now scheduled to undergo surgery for an AP spinal fusion at levels L2-S1 with decompression at L4-5 on August 16, 2010, under the direction of Kevin J. Mullaney, M.D.. It has been estimated that recovery will require a hospital stay of approximately 1 week, with an even chance that he will require further inpatient management at a transitional care facility for extended rehabilitation. It is further estimated that an immobilizing brace will be required for 3-6 weeks.

In summary, since December, 2008, Mr. Wehmhoff has developed a number of new medical problems, including severe spinal stenosis, with associated arachnoiditis, persistent back pain, and a chronic foot drop despite a surgical procedure that included an L2-L4 decompressive laminectomy and a partial L5 decompressive laminectomy. He has undergone transurethral resection of the prostate, with an incidental finding of adenocarcinoma of the prostate. Other recent medical problems include a COPD exacerbation requiring inpatient management, refractory olecranon bursitis treated with multiple steroid injections, anterior and posterior cruciate ligament sprains of the right knee, depression, and presumed pneumonia. He has remained abstinent from alcohol use since a problem with chemical dependency was identified in January, 2009.

Please do not hesitate to contact me with any questions regarding this information.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Conroy", with a stylized flourish at the end.

William E. Conroy, M.D.
Internal Medicine

EXHIBIT 6

United States of America v. James Carl Wehmhoff
Case No. 08-cr-387-001 (RHK)



Meland · Russin · Budwick

ATTORNEYS AT LAW

JONATHAN S. FELDMAN
JFELDMAN@MELANDRUSSIN.COM

July 30, 2010

Honorable Judge Richard H. Kyle
316 North Robert Street
772 Federal Building
St. Paul, MN 55101

Re: Jim Wehmhoff

I am writing in connection with the upcoming sentencing hearing for Jim Wehmhoff.

I am bankruptcy and litigation counsel to Barry E. Mukamal. Mr. Mukamal is a forensic accountant and partner with the Marcum Rachlin accounting firm. In January 2010 Mr. Mukamal was appointed by the Office of the United States Trustee to serve as the Chapter 11 Trustee for two hedge funds: Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the “*Palm Beach Entities*”). The Palm Beach Entities lost tremendous sums in the Thomas Petters related fraud and as a result are now debtors in bankruptcy proceedings pending in the Southern District of Florida.

The claims filed by the Palm Beach Entities in the *Petters* bankruptcy cases exceed \$1 billion. Mr. Mukamal's function is to maximize the value of these claims and in turn the distribution to creditors of the Palm Beach Entities. In that regard, Mr. Mukamal and my firm are investigating a number of potential litigation claims against third parties under various legal theories.

During the week of July 11th, 2010, I traveled from Miami to Minneapolis to meet with a number of witnesses, including Mr. Wehmhoff. I met with him at his counsel's office on two separate days. Each meeting lasted several hours.

I found Mr. Wehmhoff to be extremely cooperative and interested in assisting us in our function; he answered my questions in what appeared to be an open and forthright manner. He provided information on how monies flowed among different entities within the various Petters related entities and the interaction of various senior-level employees and professionals with Mr.

EXHIBIT 6

U.S. v Wehmhoff

Case No. 08-cr-387-001 (RHK)

Meland Russin & Budwick, P.A.



Petters. I expect that this information will prove useful to my client in maximizing the value of the Palm Beach Entities's claims in the *Petters* bankruptcy cases.

As Your Honor carefully weighs the sentence to impose in order to accomplish the necessary goals of the criminal justice system, I respectfully request that the Court consider Mr. Wehmhoff's cooperation in assisting my client.

Regards,

A handwritten signature in black ink, appearing to read 'JSF', is written over the printed name.

Jonathan S. Feldman

EXHIBIT 7

United States of America v. James Carl Wehmhoff
Case No. 08-cr-387-001 (RHK)

August 10, 2010

Judge Richard H. Kyle
United States District Court
District of Minnesota
United States Courthouse
316 North Robert Street
St. Paul, MN 55101

Re: United States v. James C. Wehmhoff
Criminal No. 08-387

Dear Judge Kyle:

James Wehmhoff, through his counsel, David Wallace-Jackson, asked me in my position as the Receiver for Mr. Wehmhoff to describe for the Court Mr. Wehmhoff's efforts to respond to my requests for information.

I understand that Mr. Wehmhoff has plead guilty to one count of conspiracy to commit tax evasion in violation of 18 U.S.C. § 371 and one count of aiding and assisting tax fraud, in violation of 26 U.S.C. § 7206 (2) for which he faces sentencing penalties. This letter does not address his criminal conduct, but speaks to the extent to which he has assisted me in my court-directed duty to identify, acquire, and manage receivership assets and claims.

On October 14, 2008, I was appointed by Judge Montgomery to be the Receiver for Mr. Wehmhoff personally. My immediate concern was to identify Mr. Wehmhoff's personal assets so that they could be preserved. Shortly thereafter, Mr. Wehmhoff provided the information and documentation requested by me or my representatives regarding his assets and their preservation. He continues to do so.

DOUGLAS A. KELLEY
STEVEN E. WOLTER
DANIEL M. SCOTT



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EXHIBIT 7
U.S. v Wehmhoff
Case No. 08-cr-387-001 (RHK)

Judge Richard H. Kyle
August 10, 2010
Page 2

Mr. Wehmhoff and various family members operated a company, Intrepid Investments, LLC, under which they purchased and refurnished residential properties and then resold the properties. At the time of the receivership, Intrepid owned two properties. Mr. Wehmhoff turned over the Intrepid assets to the receivership including the two properties. During my sale of the properties, Mr. Wehmhoff readily assisted my team members in providing copies of his purchase agreements, title documentation and other items we required to sell these properties.

Mr. Wehmhoff agreed to meet with my representatives to discuss issues related to clawback litigation and asset procurement. His attorney, David Wallace-Jackson, placed no restrictions on the content of our questions during the ensuing interviews.

On March 30, 2010, Mr. Wehmhoff met with representatives of my office and his attorney, David Wallace-Jackson at the Greene Espel offices for three hours. He identified documents he had prepared or was aware of relating to Tom Petters individually and to the various Petters' related companies. He also discussed banking, investor and corporate issues that may be relevant to clawback and other potential causes of action brought through either the receivership or in my capacity as bankruptcy trustee for PCI or PGW.

On April 2, 2010, Mr. Wehmhoff met for another half day with a representative of my office, members of the Lindquist and Vennum firm, and a representative of PricewaterhouseCoopers at the Greene Espel offices. He discussed investors, the Polaroid acquisition and financing, employee bonuses, charitable contributions, bank involvement and the Sun Country acquisition.

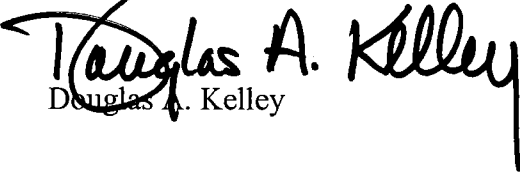
On April 8, 2010, Mr. Wehmhoff met with a representative of my office and a representative of Lindquist and Vennum at the Greene Espel offices for an additional half day. Particular hedge fund loans in 2008, the involvement of various employees, employee bonuses, and the Polaroid acquisition were all discussed. In addition, Mr. Wehmhoff voluntarily turned over his home laptop for imaging, in response to inquiries raised during earlier interviews.

Judge Richard H. Kyle
August 10, 2010
Page 3

There are currently no additional interviews scheduled with Mr. Wehmhoff, but he remains open to additional interviews if necessary. He agreed to and was deposed in the Ritchie and Acorn matters. The information he has provided expands and confirms information we had gathered from other sources and directs us to specific individuals who worked directly on particular transactions or with particular lenders and investors. The information is helpful in identifying others to be interviewed for additional details necessary for the forthcoming clawback and other potential causes of actions. His input will be helpful to my assessment of such claims.

Sincerely,

KELLEY, WOLTER & SCOTT P.A.


Douglas A. Kelley

cc: David Wallace-Jackson
Joseph T. Dixon, AUSA