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8 **UNITED STATES DISTRICT COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

Case No. 18CR3677-W

11 Plaintiff,

SENTENCING MEMORANDUM AND
 RECOMMENDATION FOR DOWNWARD
 DEPARTURE

12 v.

13 MARGARET E. HUNTER (2),

Date: August 24, 2020

14 Defendant.
 15

Time: 9:00am

16 **I.**

17 **INTRODUCTION**

18 Rather than admit his guilt and resign his seat in April 2016 when originally
 19 questioned by the FEC, then-Congressman Duncan D. Hunter initially sought to blame his
 20 wife for his own misdeeds, and subsequently launched an improper, wide-ranging, and
 21 dangerous assault on our system of justice in order to deflect attention from his own
 22 criminal conduct. In contrast, Defendant Margaret E. Hunter admitted her guilt at the
 23 earliest opportunity, entered a guilty plea well before trial—and even before pre-trial
 24 litigation—and, remarkably, cooperated with the United States in the prosecution of her
 25 husband’s criminal conduct.
 26

27 This Court sentenced Duncan Hunter to 11 months in custody for his part in
 28 committing campaign finance fraud, then lying to the public to cover it up while he
 maintained his membership in the House of Representatives. *See* Dkt. 139. While

1 Margaret Hunter has acknowledged her vital and substantial role in this campaign finance
 2 fraud, her sentence must also reflect her lesser culpability relative to her husband (and then-
 3 boss), the important part she played in securing her husband’s guilty plea, and her role in
 4 reinforcing the bedrock principle underlying our democracy that the politicians who write
 5 our laws do not stand above the law.

6 **II.**

7 **STATEMENT OF FACTS**

8 The United States will rely on the Statement of Facts contained in the Sentencing
 9 Memorandum filed in advance of Duncan D. Hunter’s sentencing. *See* Dkt. 135
 10 (hereinafter, “DH Sent. Memo”). That filing set forth at great length the evidence
 11 supporting the conclusion that Margaret Hunter’s theft of campaign funds was enabled,
 12 condoned, and perpetrated in large part for the benefit of Duncan Hunter and their family.

13 **III.**

14 **SENTENCING CONSIDERATIONS**

15 The United States’ analysis begins with a consideration of the United States
 16 Sentencing Guidelines (“Guidelines” or “USSG”). Although the guidelines are advisory,
 17 this Court is required to properly calculate and consider them when sentencing. *See* 18
 18 U.S.C. § 3553(a)(4) and (a)(5); *United States v. Booker*, 543 U.S. 220, 264 (2005).

19 **A. Sentencing Guidelines**

20 The United States, Margaret Hunter, and the Probation Department all agree as to
 21 the appropriate Guidelines calculations:

Base Offense Level [USSG §2X1.1 / §2C1.8]	8
Value > \$200,000 [USSG §2C1.8(b) / §2B1.1(b)(1)(F)]	+10
More than 30 Transactions [USSG §2C1.8(b)(4)]	+ 2
Abuse of Position of Trust [USSG §3B1.3]	+ 2
Acceptance of Responsibility [USSG §3E1.1]	- 3
Offense Level	19

1 The Guidelines-mandated adjustments to the base offense level therefore result in an
 2 offense level 19, corresponding to a sentencing range of 30 to 37 months. None of this is
 3 disputed. But in addition to these Guidelines factors, the parties and the U.S. Probation
 4 Office¹ all agree that the following departures and/or variances should be applied:
 5

6 Departure/Variance [USSG §5K2.0 / 18 USC § 3553(a)]	- 3
7 Cooperation [USSG §5K1.0]	- 5
8 Resulting Total Offense Level	11

9
 10 An offense level 11, with no criminal history points, results in a corresponding sentencing
 11 range of 8 to 14 months.

12 The recommended departures in this case are based on a variety of factors. First, in
 13 sentencing Duncan Hunter, the Court departed 4 levels downward based on his military
 14 service, concluding that, under USSG §5H1.11, Duncan Hunter's service was present to
 15 an unusual degree and distinguished his case from the typical cases covered by the
 16 guidelines. *See Koon v. United States*, 518 U.S. 81, 96 (1996); *see also* DH Sent. Memo
 17 at 63-64. Although Margaret Hunter did not herself serve in the military, all parties agree
 18 that she played an important role in supporting her husband's service, which included,
 19 among other things, caring for their small children. Without her willingness to support
 20 their family and manage their household in his absence, Duncan Hunter could not have
 21 performed his service in the military, and therefore could not have earned his downward
 22 departure. Thus, while USSG §5H1.11 is confined to active military service and does not
 23 strictly apply, the Court should still consider Defendant's role in supporting her husband's
 24

25
 26 ¹ After considering all the Section 3553(a) factors, the Probation Officer concluded
 27 that Margaret Hunter should be sentenced at the low end of offense level 11. *See* PSR,
 28 Dkt. 127, at ¶¶ 153 and 157. It is significant that the Probation Officer recommended a
 split sentence of 8 months (four months custody and four months home confinement) even
without taking Margaret Hunter's cooperation into account.

1 military service and the sentencing disparity that would result from failing to consider these
2 factors.²

3 Indeed, as the Probation Officer described, Duncan Hunter’s military service,
4 followed immediately by his service in Congress—which took him far from the family
5 home in California—caused his physical and emotional absence and undoubtedly
6 contributed to the disintegration of the couple’s relationship, which may have factored into
7 Margaret Hunter’s decision to commit this offense as a kind of outcry and protest against
8 her husband’s series of unilateral decisions. *See* PSR at 96-97, 143.

9 **B. Cooperation (USSG § 5K1.0)**

10 A significant downward departure is appropriate based on Margaret Hunter’s
11 remarkable and effective cooperation in the prosecution of her husband and co-conspirator.
12 She provided substantial assistance in the investigation and prosecution of Duncan Hunter,
13 and the United States accordingly moves for a five level departure.³

14 **1. Significance and Usefulness of Assistance**

15 The value of Defendant’s willingness to plead guilty and publicly acknowledge her
16

17 ² Indeed, the U.S. Department of Labor recognizes that military spouses sacrifice
18 considerably for American security and prosperity, and face “labor market disadvantages,
19 frequent moves, rural base assignments, and deployments [which] all take a toll” on their
20 lives. *See generally* Report of The Council of Economic Advisers, May 2018. In addition,
21 they face “concern, worry or panic, loneliness, sadness, added family duties and
22 responsibilities, feeling overwhelmed, financial difficulties, [and] dealing with problems
23 on their own.” *See e.g., How Deployment Stress Affects Families,*
<https://www.military.com/deployment/effects-deployment-families.html>.

24 ³ In evaluating a Government motion for a substantial assistance departure, the Court
25 should consider, among other factors: “(1) the court’s evaluation of the significance and
26 usefulness of the defendant’s assistance, taking into consideration the government’s
27 evaluation of the assistance rendered; (2) the truthfulness, completeness, and reliability of
28 any information or testimony provided by the defendant; (3) the nature and extent of the
defendant’s assistance; (4) any injury suffered, or any danger or risk of injury to the
defendant or his family resulting from his assistance; (5) the timeliness of the defendant’s
assistance.” USSG §5K1.1.

1 (and Duncan Hunter's) wrongdoing cannot be diminished. Her very willingness to publicly
2 admit her guilt went far towards rebutting Hunter's dangerous false narrative that he was
3 innocent and was being framed by a corrupt Department of Justice, false conspiracy
4 theories, and disingenuous claims that the exposure of his corruption was "fake news." In
5 short, her assistance was extremely significant and especially useful.

6 **2. Truthfulness, Completeness and Reliability of Information**

7 The completeness of the information supplied by Defendant is illustrated plainly
8 through a review of the extensively detailed factual statement contained in her plea
9 agreement. *See* Plea Agreement, Dkt. 34, at ¶¶ 17(a)-(z). This information was entirely
10 consistent and corroborated by myriad bank records, bills, invoices, credit card statements,
11 scores of witnesses, and gigabytes of electronic evidence secured during the investigation
12 of Duncan Hunter's malversation.

13 **3. Nature and Extent of Assistance**

14 Putting aside the mountain of evidence assembled during the United States' multi-
15 year investigation, the single most important development resulting in Duncan Hunter's
16 admission of guilt and subsequent resignation from office was the dramatic testimony
17 provided by his wife as memorialized in her factual basis. As previously noted, this
18 information powerfully contradicted Hunter's false protestations of innocence and very
19 likely led directly to his guilty plea. As such, her assistance clearly played a critical role
20 in the prosecution.

21 **4. Injury, Danger and Risk of Injury**

22 Margaret Hunter did not face any known physical danger as a result of her
23 cooperation in this case. *C.f. United States v. Tadio*, 663 F.3d 1042, 1045 (9th Cir. 2011).
24 But her decision to cooperate against her husband and the father of her three minor
25 children—not to mention her employer and sole source of income and financial support—
26 surely caused significant psychological trauma. She was pitted against the rest of the
27 extended Hunter family. The personal cost of this decision was patently obvious to the
28

1 entire prosecution team during the extensive time they spent with the Defendant during her
2 debriefings and trial preparation.⁴

3 **5. Timeliness of Assistance**

4 To her credit, Margaret Hunter first professed a willingness to plead guilty shortly
5 after becoming aware that the United States was investigating her activities. She timely
6 entered a guilty plea rather than filing motions contesting the propriety of her prosecution.
7 *See* Plea Agreement, Dkt. 34 (filed June 13, 2019). And in doing so, she publicly
8 announced her cooperation and her willingness to testify at Duncan Hunter’s trial.

9 **C. Application of Section 3553(a) Factors**

10 After determining the correct Sentencing Guidelines, the Court must consider a
11 number of other factors to ensure that it imposes a sentence “sufficient, but not greater than
12 necessary” to achieve the purposes of sentencing,⁵ taking into account: (1) the nature and
13 circumstances of the offense and the history and characteristics of the defendant; (2) the
14 need for the sentence to achieve the statutory purposes of sentencing; (3) the kinds of
15 sentences available; (4) the kinds of sentences and the sentencing range as set forth in the
16 Sentencing Guidelines; (5) the Sentencing Guidelines policy statements; (6) the need to
17 avoid unwarranted sentencing disparities; and (7) the need to provide restitution to any
18 victims of the offense. 18 U.S.C. § 3553(a).

19 An appropriate sentence must avoid unwarranted sentencing disparities, including
20 across cases and with respect to co-defendants in the same or related cases. In short, the

21 ⁴ It is clear that this decision will haunt Margaret Hunter for a considerable time to
22 come. As the Probation Officer noted, the “collateral consequences of this case [would]
23 include a fractured marriage, public scrutiny and the need for her to rebuild her life as a
24 single mother which will undoubtedly be an arduous task.” *See* PSR at ¶152.

25 ⁵ These include the need for the sentence “(A) to reflect the seriousness of the
26 offense, to promote respect for the law, and to provide just punishment for the offense;
27 (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further
28 crimes of the defendant; and (D) to provide the defendant with any needed educational or
vocational training, medical care, or other correctional treatment[.]” 18 U.S.C.
§ 3553(a)(2).

1 sentence should support “the ... basic aim of ensuring similar sentences for those who have
2 committed similar crimes in similar ways.” *Booker*, 543 U.S. at 252.⁶ The Sentencing
3 Guidelines result in the same sentencing range for Margaret Hunter as for her husband, but
4 Margaret’s role in the overall criminal scheme and attempted coverup was far less
5 egregious. The compelling differences between the two defendants include: (1) Margaret
6 Hunter’s timely guilty plea; (2) the cooperation she provided leading to her husband and
7 codefendant’s guilty plea; (3) Duncan Hunter’s primary role in encouraging and allowing
8 the criminal acts to occur; (4) his role in covering up their criminal acts and single-handedly
9 advancing a campaign to impugn the integrity of the justice system; and (5) the additional
10 responsibility Duncan Hunter bears as result of being a sitting member of the United States
11 Congress. In sum, Margaret Hunter’s different situation calls for a different and more
12 lenient sentence than the 11-month custodial term imposed on the former Congressman.

13 When addressing the relative culpability of the two co-defendants, it is undeniable
14 that that the individual most responsible for the instant offense is codefendant Duncan
15 Hunter. Although Margaret Hunter admittedly played an active and very substantial role
16 in the theft of campaign funds, she did so only with the concurrence and support of the
17 then-Congressman. Apart from his own theft of campaign funds, it remains uncontested
18 that time and time again Duncan Hunter put his wife in a position to steal campaign funds
19 with full knowledge that she would use those funds to support a lifestyle that they otherwise
20 could not afford. As early as December 2009, he directed his Campaign Treasurer to get
21 his wife a campaign credit card, even though she had absolutely no official role whatsoever

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23 ⁶ The United States has noted the parallels between this case and the federal
24 prosecution of former Congressman Jesse Jackson, Jr. *See* DH Sent. Memo at 67. Jackson
25 was sentenced to 30 months imprisonment for converting \$750,000 in campaign funds to
26 personal use. *Id* at 67-68. His then-wife and co-defendant Sandra Jackson, who also pled
27 guilty to misusing her husband’s campaign funds for personal and family use (including,
28 for example, improvements to the family home), was sentenced to 12 months in custody.
See New York Times, *Jesse Jackson Jr. Gets 30 Months, and His Wife 12, to Be Served at
Separate Times* (August 15, 2013). Of note, Sandra Jackson received 18 months less time
in custody than her husband—even though she did not cooperate against him.

1 with the campaign. *See* DH Sent. Memo at p. 10. And, after receiving multiple warnings
2 from several sources that his wife was stealing campaign funds, Hunter only allowed her
3 spending to escalate. *See e.g.*, DH Sent. Memo at 12-13, 16-18, 21, 24, 29-30, 32, and 48.

4 Equally significant, Duncan Hunter was the duly elected United States
5 Congressman. It was his campaign and his decision to give Margaret access to enable their
6 coordinated theft of campaign funds. Against the advice of his staff, he placed his wife in
7 a position that she was not qualified for by either education or experience, so she could
8 maintain the family's lifestyle. As articulated by the Probation Officer, Duncan Hunter
9 "should have provided the first line of defense," but he did not display "the fortitude and
10 discipline to establish boundaries and manage priorities appropriately." *See* Duncan
11 Hunter PSR, Dkt. 120, at ¶174.

12 Even worse, when their theft was discovered, Duncan Hunter immediately tried to
13 evade responsibility by blaming Margaret. *See e.g.*, Vanity Fair, *Charged with Fraud,*
14 *Duncan Hunter Throws his Wife under Bus* (August 24, 2018) ("Facing an inventory of
15 campaign-finance violations that would make Paul Manafort blush, the California
16 congressman is blaming his wife."); CNN, *Duncan Hunter Just Totally Tried to Throw his*
17 *Wife Under the Bus* (August 24, 2018) ("Indicted California Congressman Duncan Hunter
18 (R) offered a glimpse into his legal strategy . . . Blame his wife for the whole thing.");
19 Washington Examiner, *Duncan Hunter Throws his Wife Under Bus in Campaign Finance*
20 *Scandal* (August 24, 2018).⁷

21 After this unsavory tactic garnered almost universal condemnation, Duncan Hunter
22 then began his relentless attacks on our system of justice, in general, and the Department
23 of Justice and the FBI, in particular. Rather than adopting her husband's efforts to raise
24

25 ⁷ If the Congressman had been innocent of the crimes which he has now admitted,
26 his nationally publicized scapegoating of his wife would be shameful at best. Rather than
27 accept responsibility for his own actions precipitating and participating in this decade-long
28 fraud, he tried to deflect attention onto his wife, who was more vulnerable and
psychologically fragile. This action, of course, likely had the predictable result of
increasing Margaret Hunter's ongoing anxiety and depression. *See* PSR at ¶96.

1 conspiracy theories, Margaret Hunter again demonstrated her relative merit by failing to
2 advance this narrative. Her actions all show that her comparative culpability is far below
3 her co-conspirator's.

4 Despite these differences, the United States would nevertheless have recommended
5 a custodial sentence of six months—roughly half the length Duncan Hunter received—
6 primarily to account for the seriousness of this long-running offense.⁸ The United States
7 believes such a sentence would have adequately addressed Margaret Hunter's case—
8 *absent her cooperation*.

9 However, it is clear that Margaret Hunter's cooperation in the present case warrants
10 additional leniency. In short, defendants who provide substantial assistance should be
11 treated more leniently—even if otherwise similarly situated to their co-defendants (which
12 in this case they are not). *See generally* USSG §5K1.1, Commentary (“A defendant's
13 assistance to authorities in the investigation of criminal activities has been recognized in
14 practice and by statute as a mitigating sentencing factor.”). In light of Margaret Hunter's
15 substantial and meaningful assistance under very difficult circumstances, the United States
16 recommends a three-year probationary sentence that includes a term of 8 months' punitive
17 home detention.

18 IV.

19 CRIMINAL FINE

20 The Probation Officer's analysis of Margaret Hunter's financial situation makes it
21 clear that she is presently unable to pay a fine. *See* PSR at ¶¶ 154, 164. Accordingly, the
22 United States concurs with Probation's recommendation that the Court impose no fine. *See*
23 USSG § 5E1.2(a) (the Court need not impose a fine if the defendant establishes that she is
24 unable to pay and not likely to become able to pay).

25
26
27 ⁸ The Probation Officer's recommendation is only slightly more lenient, calling for
28 “four months custody and four months of home detention (punitive) as a condition of supervised release.” *See* PSR at ¶153.

V.

CONCLUSION

In committing campaign finance fraud and lying to the public to cover it up all while continuing to maintain his position in the House of Representatives, Duncan Hunter came to embody the cynical idea that politicians who make the laws are not required to follow them. In admitting her guilt, timely entering a guilty plea, and cooperating with the prosecution to ensure her husband was brought to justice, Margaret Hunter did much to establish that the rule of law triumphed over dangerous tropes that the Department of Justice was falsely targeting political figures.

Due to her less culpable role in this conspiracy, and the substantial assistance she provided in the case against former Congressman Duncan D. Hunter, the United States respectfully recommends that the Court sentence Defendant Margaret E. Hunter to a term of three years' probation that includes eight months of punitive home detention.

Finally, due to the ongoing COVID-19 crisis, and to ensure that Margaret Hunter does not benefit from the restrictions in travel and lifestyle that currently face all citizens, the United States requests that Defendant begin her term of probation and home detention no earlier than January 2021.⁹

DATED: August 17, 2020

Respectfully submitted,

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⁹ Also due to the ongoing COVID-19 crisis, Duncan Hunter's surrender date has been delayed till January 4, 2021. See Dkt. 150.