

UNITED STATES DISTRICT COURT IN AND FOR
DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA)
)
 Plaintiff)
) Case No. 19-CR-30041-MGM
)
vs.)
)
RYAN STABILE)
Defendant)
)
)
)
_____)

RYAN STABILE’S SENTENCING MEMORANDUM

/s/Andrew S. Feldman _____
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I. INTRODUCTION

Ryan Stabile's case presents a unique case for your Honor to evaluate because there are few, if any cases, involving Tianeptine in the United States. Mr. Stabile has also served almost twice as much time as anyone else in the United States for a federal crime involving distribution or importation of Tianeptine.

In 2018 and 2019 Mr. Stabile illegally imported Tianeptine in violation of the Food Drug and Cosmetic Act (FDCA). The FDCA prohibits importation of an unapproved drug, like Tianeptine, unless doing so is for "research purposes only." As discussed in greater detail, Tianeptine is an approved drug in more than 60 countries. Studies and clinical trials show that it can assist with depression and pain treatment. Tianeptine is sold online and in commercial businesses as a dietary supplement. The FDA has taken the position that it is a drug, not a dietary supplement. Tianeptine is also not a controlled substance under federal law or an opioid. And, unlike opioids, while Tianeptine has the potential for misuse and diversion, consumer use has not resulted in the destruction of large segments of our nation's communities. Online resellers of Tianeptine are also ubiquitous and they sell Tianeptine openly and obviously on immediately accessible websites.

The Guidelines compute a sentence of 70-87 months largely based on Mr.

Stabile's criminal history Category V:

Base Offense Level Pursuant to Section 2N2.1	6
Intended Loss Amount more than 550- but less than 1,500,000	16
Role Adjustment Under Section 3B1.1	2
Acceptance of Responsibility	-3
Total Offense Level	Level 21
Total Criminal History Points	12
Guideline Range	70-87 months

Yet, as the government has already recognized, the Guidelines are not a proper barometer for measuring Mr. Stabile or his offense conduct. But, 48 months is far too much time for this offense and this offender and would represent a sentence **8 times longer** than any other defendant involved in the importation or distribution of Tianeptine. Indeed, an application of the 3553(a) factors counsels in favor of a sentence of time served (11 months) and three years of supervised release with a condition that Mr. Stabile enroll in a drug treatment program within 48 hours of his release.¹

¹ See 18 U.S.C. Section 3583(d)(3) (listing conditions of supervised release and noting "any condition set forth as a discretionary condition of probation in section 3563(b).") 18 U.S.C. Section 3563(b)(9) lists, as a condition, to "undergo available

In deciding whether to sentence Mr. Stabile to time-served with the condition above, or any other conditions your Honor deems appropriate, Mr. Stabile asks your Honor to consider three critical questions, among others:

First, is additional imprisonment necessary to deter similar offenders like Mr. Stabile?

Second, is additional imprisonment necessary to specifically punish or deter Mr. Stabile for his criminal conduct?

Third, is society better served by continuing Mr. Stabile's time in prison or by permitting Mr. Stabile to complete and continue drug treatment and reintegrate into society?

Since April of last year, for approximately 10 months, Mr. Stabile has been incarcerated at either Hyatt Detention Center in Rhode Island or Hampden County Jail in Ludlow Massachusetts.² During that time, Mr. Stabile insisted that he enroll in the MAP program. The MAP program is a program designed to assist persons with serious drug addiction while they are in custody. Mr. Stabile, as discussed herein, suffers from serious drug addiction. And, this is perhaps the very first time

medical, psychiatric, or psychological treatment, *including treatment for drug or alcohol dependency*, as specified by the court, and remain in a specified institution if required for that purpose.”

² Following his arrest in California and prior to obtaining pretrial release in this case, Mr. Stabile was detained or incarcerated for approximately 30 days.

Ryan has seriously addressed his drug addiction and accepted that he must remain dedicated to his sobriety.

In addition to his commitment to sobriety, Ryan dedicated more than 250 hours to completing classes at Wyatt, including 22 hours of college transferable continuing education classes.³ Ryan was the only person at Wyatt to complete each of the courses they offer. And, when he completed his courses, Ryan volunteered his time to teach other inmates basic business administration skills, *i.e.*, how to form business organizations, including how to file the proper paperwork.

For each of these reasons, and for the additional reasons discussed herein, a departure and/or a variance is appropriate in this case.

II. ARGUMENT

A. History and Characteristics of Ryan Stabile: (18 U.S.C. §3553(a)(1))

1. *Early Life*

Ryan was born and raised in Chino Hills in Los Angeles. Ryan had a middle-class upbringing. His father, Earl, was a plant manager for an injection molding company and his mother, Deborah, was a receptionist. Ryan is one of three children.

³ Attached as **Exhibit A** is a summary from the Cypherworx program at Wyatt Detention Center showing the classes Mr. Stabile completed along with the hours he devoted to those classes. Attached as **Exhibit A-1** are the certificates of completion from Wyatt.

One sister, Michele, lives in Hawaii and is a police officer. His other sister, Michele, lives in California. Ryan enjoys spending time with his nieces and his sisters.

Ryan graduated from Cal State University- Fullerton in 2009 having majored in English and creative writing during the second great recession. Ryan is talented and remains passionate about writing and teaching others how to write. Ryan has published dozens of books and ghost-written even more. Ryan has written articles for magazines and newspapers including the Los Angeles Times, VICE magazine, The Examiner, The Inquisitor, MXDWN music magazine, and countless others.

Unfortunately, after Ryan graduated, because of the recession and waning opportunities for aspiring writers, Ryan drifted to a bad crowd and began using drugs. Ultimately, this led to many of the poor decisions Ryan made and many of Ryan's arrests during the period of 2008 until 2013 which comprises the entirety of the 12 criminal history points attributable to Ryan in the PSI.

2. Ryan's Addiction to Methamphetamines and Heroin Addiction

After the series of arrests in 2008 through 2013, which were in large part motivated by Ryan's potentially deadly addiction to heroin and methamphetamines, Ryan was incarcerated for a year at Glen Helen Rehabilitation center.

3. *Ryan the Writer*

In or around 2014, after his release, Ryan started a publishing company called *Words Are Swords*. Ryan has authored more than 40 books under the pen names, “Ryan Stable” for fiction and business books, and “Steven Matthews”, for non-fiction, self-help style books.⁴ Ryan is a highly motivated individual devoted to helping as many people as possible through his books.

Ryan’s love for books further manifested itself in an idea to start a non-profit business called Community Book Box in 2014. The charity focuses on community-building and bringing people together by crowdsourcing materials to build large book-share receptacles for small and underprivileged cities. Community Book Box (CBB) is similar to the popular Little Free Library program, but with several key distinctions.

The Community Book Box program created and installed crowdfunded boxes for underprivileged communities. In addition to free book-share literature, these boxes were donation hubs for non-perishable food, clean clothing, and linens, and other new or unused resources that were free for everyone in the community.

⁴ Many of his Ryan’s books are available for purchase on Amazon; available at [Amazon.com: Ryan Stabile: books, biography, latest update](#)

Although Ryan ran operations at Community Book Box for over a year using his own money, it was ultimately not approved as an official 501c3 non-profit. Ryan donated several Community Book Boxes to cities around southern California.

You can watch a video of Ryan donating a Community Book Box to the city of Chino Hills⁵:



Ryan also partnered his publishing company *Words are Swords* with the non-profit organization, Ferst Readers, a national charity focused on strengthening low-income communities by providing age-appropriate books and literacy resources to children and their families who cannot afford them on their own. Their programs

⁵ https://www.youtube.com/watch?v=_trCgteQjoc

were focused on making sure that children in the earliest stages of development have access to books and educational tools. *Words Are Swords* Publishing matched every donation made by customers during checkout on the website. So, when a customer chose to donate \$20 to First Readers, Ryan donated \$20. Donations were made quarterly.

Finally, in an attempt to reach the largest audience possible to better prepare students for a career in writing, Ryan created accessible online courses. Those online classes allowed Ryan to reach the largest possible number of people around the world who were actively looking for ways to learn new skills and improve their lives.

4. Ryan Reaches out to College Students to Encourage Writing

In 2016, with the launch of Ryan's book *How to Make Money Writing Full-Time*,⁶ Ryan spoke at dozens of colleges and universities throughout New York and New Jersey, and Los Angeles, where Ryan explained how college students could find work using their passion for writing.

Ryan's commitment to connecting with college students continued. In fact, following the indictment and while Ryan was on pretrial release, Ryan spoke at several colleges to college students about careers in free-lance writing.

⁶ [Amazon.com: How To Make Money Writing Full-Time: Establishing Life-Long Skills to Find and Keep Work as a Writer: The Ultimate Resource Guide for 10 Jobs \\$50K+ Only ... How to Get One \(Writing for Writers Book 1\) eBook : Stabile, Ryan: Kindle Store](#)

For example, in June of 2022, Ryan performed a small speaking tour at 9 colleges and universities throughout California called, the *Wealth through Words Tour*. The goal of the *Wealth Through Words* speaking tour was to provide English majors, undecided students, and aspiring writers with the tools, knowledge, and resources to make a livable income using their writing skills - regardless of the state of the economy. The speaking tour was comprised of 45-minute lectures during which Mr. Stabile provided practical, real-world salary history, possible career paths, vocational-specific skills, as well as writing career-building tools.

5. *Ryan the Entrepreneurship Prior to his Detention*

Not long before his pretrial detention, Ryan launched a music inspired clothing apparel company known as Festival Drip while Ryan was living in Las Vegas. Festival Drip grossed almost \$800,000.00 in its first year. Ryan hopes to continue his work in the apparel industry, along with his writing, when he is released from prison.

6. *Ryan's Charity Work Prior to His Detention*

Ryan volunteered for Azure Lorica. Azure Lorica is a 501c3 nonprofit arts charity founded by Eugene Cordell and Stefanie Warner in 2010. They function as an Antibully Society, producing festivals, publishing books and other media to fundraise and donate to programs that aid in causes such as cyberbullying, suicide prevention, and LGBTQIA+ support. Ryan's volunteer work was spent editing and

formatting the books of poetry they then publish and sell to fund their anti-bullying efforts and community events.

Beyond this, Mr. Stabile organized and hosted both monthly and bi-monthly (2 different groups) Mastermind Group for Authors. This was a small group of authors who met to discuss ways in which they could improve each other's careers, set realistic goals, and hold each other accountable. In addition, Ryan also volunteered at Chino Hills library.

B. History and Characteristics of Ryan Stabile, Abuse During his Childhood (18 U.S.C. § 3553(a)(1); 18 U.S.C. § 3553(a)(5))

Sadly, as reflected in the PSI, Mr. Stabile was sexually and physically abused as a child. The psychological trauma from these experiences and the long-term effect of this abuse still haunts Ryan. Experiences like those can lead to drug addiction as an outlet to forget nightmarish experiences. Ryan also suffers from Aspergers and ADHD.⁷ Each of these are factors this court may consider as either a grounds for a variance under Section 3553(a)(1) and (5). (a)(1).

In addition, pursuant to 18 U.S.C. § 3553(a)(5)), which directs federal courts to consider pertinent policy statements of the Commission, this court may also consider

⁷ See e.g., *U.S. v. Patzer*, 548 F.Supp.2d 612, 617 (N.D.Ill.,2008) (where defendant convicted of multiple bank robberies and career offender, downward variance granted in part because he suffered from ADHD: “the previously-undiagnosed ADHD explains Patzer's self-medication with illegal drugs from a very young age, as well as his intolerance for past mental health treatment that did not address his actual problems...”).

U.S.S.G. §5H1.3 which states that “[m]ental and emotional conditions may be relevant in determining whether a departure is warranted, if such conditions, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines.”

Numerous courts have granted such departures. *U.S. v. Walter*, 256 F.3d 891 (9th Cir. 2001) (authorizing 41-month departure based on the sexual abuse defendant faced at the hands of his cousin, constituted the type of extraordinary circumstances justifying consideration of the psychological effects of childhood abuse and establish diminished capacity justifying departure); *U.S. v. Brown*, 985 F.2d 478 (9th Cir. 1993) (court could grant downward departure based on defendant’s severe childhood abuse and trauma); *U.S. v. Roe*, 976 F.2d 1216 (9th Cir. 1992) (court clearly erred in holding it did not have discretion to depart downward where defendant's suffered extraordinary sexual abuse as a child); *U.S. v. Pullen*, 89 F.3d 368 (7th Cir. 1996) (sentenced remanded so defendant had opportunity to establish that childhood abuse was extraordinary to enable judge to exercise discretion to depart downward); *U.S. v. McBride*, 511 F.3d 1293 (11th Cir. 2007) (affirming a downward variance from 151 to 188 months in prison to 84 months in prison in a child pornography case in which the district court found the defendant’s history of abuse was substantial).

C. Nature and Circumstances of the Offense (18 U.S.C. § 3553(a)(1))

1. *Tianeptine's Uncertain Regulatory Status in 2018-19*

Any violation of the law is serious, yet it is indisputable that no federal court has found that the importation or distribution of Tianeptine is an offense warranting serious punishment, let alone 11 months of imprisonment.

In fact, Tianeptine is not a controlled substance in the United States under the Controlled Substances Act (Title 21). It has been approved in more than 60 countries, including Western Europe, to treat depression, anxiety, and other mental health conditions.⁸

And, at the time of Mr. Stabile's offense Michigan represented the only State that had scheduled Tianeptine as a controlled substance. Moreover, there was (and still appears to be) significant uncertainty amongst sellers, distributors, or even consumers of Tianeptine⁹ as to the status of Tianeptine as a drug, dietary supplement, or a nootropic.

⁸ **Ex. F**, Article titled "The neurobiological properties of Tianeptine (Stablon): from monoamine hypothesis to glutamatergic modulation."

⁹ Hypothetically, under a plain reading of the FDCA by purchasing Tianeptine from an online seller without a prescription and without any applicable exception (*e.g.* for research purposes only), every consumer or purchaser of Tianeptine in the U.S. – whether in a gas station or online -- has committed a misdemeanor violation of the FDCA which proscribes an offense for causing the introduction of an adulterated or misbranded product in interstate commerce and/or causing delivery or receipt of same for sale. *See* 21 U.S.C. Sections 331(a) and 331(c)

Nonetheless, in late 2018, and in response to a spike in its demand and its presence in the U.S., the FDA issued several “warning letters” to MA Labs and Jack B Goods Outlet Store about misleading advertising involving Tianeptine and about its status as a drug regulated by the FDCA.¹⁰

As recently as last month, the FDA also warned consumers to stop consumption of Neptunes Elixir and cautioned sellers of that product that it was illegal.¹¹

Lastly, while it in no way excuses Mr. Stabile’s conduct, there are dozens of companies operating Tianeptine websites right now in plain sight and which engage in the identical conduct at issue in this case – importation of Tianeptine from China or another foreign country under the guise that the importation is “for research purposes only” and then subsequently distribute Tianeptine to the public via an online website. Those sites accept credit cards, perform no background checks, and do not request prescriptions.

¹⁰ Ex. **B** (Warning Letter to Jack B Goods Outlet). Other warning letters regarding similar conduct were not published by FDA until 2022. See **Exhibits G-H** (Warning Letters to Crystal Clear Supplements and Premier Trends).

Typically, in the undersigned’s experience, a warning letter invites dialogue with the agency about remediation and coming back into compliance with the FDCA. In addition, FDA may conduct an inspection and issue a Form 483 listing the organization’s legal shortcomings and a demand for a response or a compliance plan. Here, a seizure warrant was executed *prior to* the issuance of any warning letter from FDA and no 483 Form was ever issued to S4W or Mr. Stabile *prior to* the search warrant or the indictment.

¹¹ **Ex. D**, FDA Letter Re Neptune Elixir Safety Issues.

2. Clinical Trials and Studies Involving Tianeptine

What is certain though is that Tianeptine is the subject of FDA sponsored clinical trials in the United States.¹² For example, one study is being conducted in parallel at two sites: the Clinic for Aging, Anxiety and Mood Disorders (CAAM) at Columbia University/New York State Psychiatric Institute (CU/NYSPI) and the Mood and Anxiety Disorders Program at the Icahn School of Medicine at Mount Sinai (MSSM). In that study, participants received an 8-week treatment trial of Tianeptine.

In addition, Tonix Pharmaceuticals conducted a pharmacokinetic trial in specific phases and tout their findings:

“We believe that these Phase 1 findings support our upcoming Phase 2 study of once-daily TNX-601 CR for MDD that we expect to initiate in the first half of 2022,” said Seth Lederman, M.D., President and Chief Executive Officer of Tonix Pharmaceuticals. “Tianeptine products have been approved in Europe and other countries around the world and marketed as prescription drugs for the treatment of depression for more than three decades. Based on our Phase 1 results, we believe that with respect to plasma tianeptine and its primary metabolite, TNX-601 CR would meet the bioequivalence standard for daily dosing of these immediate release products. No tianeptine-containing product has been approved by the U.S. Food and Drug Administration (FDA). TNX-601 CR’s proposed mechanism of action is distinct from any antidepressant approved in the U.S for chronic or long-term use.”¹³

¹² **Ex. I**, Clinical Trial of Tianeptine Related to Resistant Treatment of Depression

¹³ **Ex. J**, Tonix Pharmaceuticals Press Release Re Phase 1 of Tianeptine Clinical Trial

Last fall, Tonix completed phase II of the clinical trial for the Tianeptine based product and in its press release reinforced that “*Tianeptine is the active ingredient of an antidepressant that has been marketed as a three-times-a-day medicine outside the U.S. for more than 30 years. Tonix has developed a novel, patented once-daily oral formulation.*”¹⁴

In addition, a study conducted by the American College of Neuropsychopharmacology, the study noted that:

Considering other groups have identified synaptic long-term depression as a key mechanism of NAc involvement in pain processing these TIAN-induced molecular pathways hold special relevance for treating neuropathic pain. Our study also highlighted potentially new links between TIAN and epigenetic mechanisms underlying chronic pain states, such as HDAC inhibition.¹⁵

In sum, studies and the medical community share the belief that Tianeptine is a potentially valuable drug in treating pain and depression but, like many drugs, there is a potential for misuse and abuse.

¹⁴ **Ex. O**, Phase 2 Tonix Press Release; **Ex. P**, Tonix Clinical Trial Summary.

¹⁵ **Ex. Q**, American College of Neuropsychopharmacology Study related to Tianeptine; *see also* Kasper S, Olié JP. A meta-analysis of randomized controlled trials of tianeptine versus SSRI in the short-term treatment of depression. Eur Psychiatry. 2002; 17:331–40 (deducing from a study involving 1348 patients that “All in all, this study confirmed that tianeptine is at least as effective as SSRI, with a trend for a better acceptability profile in the treatment of depressed patients.”)

3 Mr. Stabile's Motivation and Offense Conduct

At the inception of Supplements 4Work (S4W), it was never Mr. Stabile's intent to operate an unlawful business. Mr. Stabile had read that Nootropics or "smart drugs" like Tianeptine could heal the damage Ryan had done to his brain from his methamphetamine use. Mr. Stabile also genuinely wanted to provide a product which he believed could assist consumers in the workplace and enhance their productivity. Ryan's employees at S4W also believed that they were helping consumers with this product.

At S4W, Mr. Stabile was involved in each aspect of this process, and he oversaw the employees who were responsible for shipping, or for designing and editing aspects of the website. But, Ryan implemented an "addict tracker" program which enabled Supplements 4 Work to flag sales of Tianeptine to specific "problem" customers.¹⁶ S4W implemented a protocol for de-activating those accounts.¹⁷ Ryan

¹⁶ **Ex. C**, Addiction Tracker Sheet. **This will be filed separately under seal due to its sensitive nature.**

¹⁷ It is unknown at this time how many deaths have resulted from Tianeptine. Reported deaths from overdoses appear to be less than 10 in the United States. Many of which appear to be related to interactions with other drugs. *see also* <https://www.turningpointnj.org/blog/2021/february/an-illegal-drug-called-tianeptine-is-being-link/#:~:text=Despite%20the%20fact%20that%20the,died%20after%20overdosing%20on%20the> (Reporting 4 deaths in February of 2022). <https://www.fda.gov/consumers/consumer-updates/tianeptine-products-linked-serious-harm-overdoses-death> (reporting no figures related to deaths)

and S4W also identified and used third party laboratories with ISO-19 certification to verify the contents of the incoming shipments and attempted to ensure the integrity and purity of those products. ¹⁸

Ryan, however, ignored clear red flags and continued to import Tianeptine to evade detection by U.S. Customs and Border Protection including by advising his foreign suppliers to intentionally mislabel incoming packages to trick U.S. Customs and Borden Protection. And, once a search was executed at S4W and Ryan was placed on his notice that his business was non-compliant with the FDCA, he did not come back into compliance. Indeed, Ryan continued importing Tianeptine.

None of this conduct is excusable but, placing it in context is critical. Ryan's predisposition to addiction led him to become completely addicted to Tianeptine. Ryan also needed to continue turning a profit so he could pay off his debts including student loans. And so, Ryan, as a drug addict, continued importing Tianeptine to feed his addiction and to pay off debts.

D. Ryan's Overstated Criminal History Vaults Ryan to a Criminal History Category V (18 U.S.C. §3553(a)(1)) and 18 U.S.C. § 3553(a)(5))

Mr. Stabile's criminal history substantially over-represents the seriousness of the defendant's criminal history or the likelihood that Mr. Stabile will commit other

¹⁸ **Ex. E.**, Advanced Botanical Testing and Consulting Invoice for laboratory services.

crimes, and this is a factor the court may consider under Section 3553(a)(1). It is also a factor this court may consider under 18 U.S.C. § 3553(a)(5)) which directs federal courts to consider pertinent policy statements of the Commission. Here, a pertinent policy statement is found at U.S.S.G. § 4A1.3(b)(1) allows for downward departure if the defendant's criminal history substantially overstate the seriousness of the defendant's criminal history or likelihood of recidivism:

(b) Downward Departures. —

(1) Standard for Downward Departure. — If reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted.

Here, Mr. Stabile was awarded the following points:

- 2008- DUI and minor possession offense – 1
- 2008- misdemeanor disturbing the peace – 1
- 2009- minor possession offense and driving with a suspended license – 2
- 2010- oral copulation with a minor -2
- 2013 – petty theft at two Walmarts on January 23 and January 26 – 5

None of these offenses involved violence or distribution of drugs. And these offenses date back more than 10 years ago, and in some cases, 16 years ago. Amazingly, the back-to-back thefts at Walmarts in Los Angeles and Pomona result

in 5 criminal history points. Those offenses involved the theft of less than \$1000 in property, no one was harmed, and there was no violence or any threat of violence.

Further, the arrests in 2008, 2009, and 2012 were related to motor vehicle violations or possession offenses which were each motivated by Mr. Stabile's addiction to drugs and alcohol.

Finally, the offense alleging oral copulation with a person under the age of 18, on its face, seems horrific. Yet, it was an incident involving Mr. Stabile's ex-girlfriend and it involved entirely consensual conduct between Mr. Stabile and his girlfriend.

Numerous district courts have granted downward departures in similar circumstances where, as here, the prior offenses involved non serious felonies (minor drug offenses), motor vehicle offenses, or misdemeanors, which occurred more than 10 years ago. *See e.g., United States v. Irvin*, 2:08-CR-0009- JRG-RSP, at *1 (E.D. Tex. Feb. 17, 2023) (granting departure to category II in a child porn case finding that defendant's prior criminal history was overstated); *United States v Nelson*, 166 F.Supp.2d 1091 (E.D. Va. 2001) (district court reduced criminal history category from VI to III, because defendant's prior convictions were for primarily minor, non-violent offenses and traffic infractions which is significantly less serious than typical offenders who fall within category VI); *U.S. v. Overton*, No. 1:07-CR-84, at *2 (E.D. Tenn. Aug. 19, 2008) (granting downward departure and finding that in case

involving defendant with some violent criminal history “defendant's criminal history category substantially overstates the seriousness of his criminal history, and therefore, the court will depart pursuant to § 4A1.3(b)(3).”); *United States v. Francis*, 129 F. Supp.2d 612, 620 (S.D.N.Y. 2001) (stating that "the addition of one point for a minor offense for which a Defendant received a sentence of time served may overstate the seriousness of Defendant's criminal history"); *United States v. McFarland*, 14-CR-296 (WFK), at *9 (E.D.N.Y. Apr. 8, 2019) (granting a downward departure in firearms and drug trafficking case where “most of his convictions were non-violent and were for motor vehicle offenses.”); *United States v. Paulino-Duarte*, No. S1 00 CR 686(HB), 2001 U.S. Dist. LEXIS 3208, at *12, 2001 WL 290047 (S.D.N.Y. Mar. 26, 2001) (holding that misdemeanor offenses that totaled twenty days incarceration and time served, are legitimate factors for downward departure).¹⁹

¹⁹ *See also U.S. v. Taylor*, 843 F. Supp. 38, 50 (W.D. Pa. 1993) (granting departure where prior offenses were drug offenses and concluding “[i]t is clear from a thorough review of the entire record that a base level departure is warranted. The "significant overrepresentation" here requires a significant departure. ”); *U.S. v. Maksimenko*, CASE NUMBER: 05-80187, at *5 (E.D. Mich. June 25, 2007) (granting downward departure in alien smuggling case finding that defendant’s convictions for minor drug offenses warranted criminal history departure); *U.S. v. Pembroke*, 609 F.3d 381, 382 (6th Cir. 2010) (granting a downward departure in a drug case); *U.S. v. Crittenton*, CRIMINAL ACTION No. 03-0349-02, at *6 (E.D. Pa. July 30, 2009) (granting criminal history departure in drug trafficking case)

Thus, this court should consider the extent to which Mr. Stabile's criminal history points overrepresents his past conduct and catapults Mr. Stabile from a Level 1 (37-46 months) to a Level 5 (70-87 months) in imposing Mr. Stabile's sentence.

E. The Need to Avoid Sentencing Disparities Amongst Similarly Situated Offenders (18 U.S.C. § 3553(a)(6))

Sentencing courts must consider the need to avoid sentencing disparities amongst similarly situated offenders.

Prior to the filing of the indictment, there was a single reported case that the undersigned was able to identify involving the sale or distribution of Tianeptine. *U.S. v. Emil Koledin, et al.*, 19-cr-121 (W.D. Pa. 2018).²⁰ Mr Koledin and his company, Koledin Enterprises, Inc, plead guilty to Tianeptine-related criminal conduct from which he benefitted. Mr. Koledin was sentenced to 3 years of probation and a fine and his company was not sentenced to probation but was fined \$25,000.00.

At sentencing, the government underscored the duration and scope of Mr. Koledin's conduct and his knowledge of its illegality:

It's very strange that this gentleman would engage in a five year odyssey in which he is *selling medical products that he gets from China and Russia and dispersing them throughout the country for five years.*

He's on the Internet providing medical advice to individuals. He's getting warning after warning on the e-mails as reflected in the presentence investigation report about the illegality of his conduct. EBay tells him it's illegal. *Other people e-mail him*

²⁰ **Ex. K**, Koledin DOJ Press Release

about him engaging in illegal activity. Products are being seized by the FDA. He's in e-mail communications with people in Russia talking about the illegality of what he's doing, so the notion that he didn't know what he's doing was illegal is belied by the actual evidence as reflected in the presentence investigation report.

So the evidence demonstrates that *Mr. Koledin chose over a five year period to disperse to 5,000 customers more than 25,000 orders* of who knows what. Something in a plastic bottle that he gets from Russia or China in the packaging that's still in Russian and in Chinese and sells to it to whoever happens to click on his website. That's a serious crime over a long period of time.²¹

Despite this, Mr. Koledin was sentenced to probation.

Since then, there have been a total of 4 other defendants that the undersigned was able to identify – 1 corporate and 3 individual defendants.

The first case involved a couple in Colorado, Mark and Linda Godding. *See U.S. v. Linda Godding, et al.*, 21-cr- 345-PAB (D. Colo. 2021).²² Each defendant was sentenced to 6 months of imprisonment for the sale of Tianeptine throughout the U.S. In the plea agreement with Mark Godding, the government details at length the extensive sales of nootropics and Tianeptine.²³ Nonetheless, because the defendants commingled financial records, the government was unable to attribute more than \$45,000 to sales of Tianeptine. That figure however represented 4 months of a conspiracy which lasted close to 21 months (January 2017-September 2018).

²¹ **Ex. T**, Excerpts of Sentencing Hearing from Emil Koledin.

²² **Ex. L**, Golding DOJ Press Release

²³ **Ex. U**, Mark Godding Plea Agreement

The second case concluded this week in *United States vs. Centera Bioscience, et al.*, 23-cr-00069-TSM (D. N.H. 2023).²⁴ In that case, Centera Bioscience and Paul Eftang, its CEO, each plead guilty to a misdemeanor misbranding offense. Mr. Eftang was sentenced to one year of probation and Centera was sentenced to three years of probation and ordered to forfeit 2.4 Million dollars.

In its sentencing Memorandum, the government emphasized that Centera Bioscience earned **35 million dollars**, in part from illegally importing and selling Tianeptine:

An analysis of import and company bank records indicates that between April 10, 2017 and September 30, 2021, Centera Bioscience and Eftang purchased over \$7.4 million worth of product from known suppliers of the raw material for the **Unapproved Drugs**. PSR ¶ 42. Again, the primary source of the Unapproved Drugs was China. PSR ¶ 42. The majority of payments, approximately \$4.2 million, were made to Qingdao Sincess. PSR ¶ 42. **An FDA forensic analyst estimated that the total revenues the defendants earned from selling these drugs was \$35 million.**²⁵

Even though Centera and its CEO may have ceased its operations, stopped selling the unapproved drugs, and implemented a compliance program, it still does not alter the reality that Centera earned **nearly 20 times** the amount of money that Mr. Stabile did, and yet the CEO was sentenced to a mere year of probation.²⁶

²⁴ **Ex. R**, Docket Sheet for *United States vs. Centera Bioscience, et al.*, 23-cr-00069-TSM (D. N.H. 2023).

²⁵ **Ex. S**, Govt Sentencing Memorandum in *United States vs. Centera Bioscience*.

Accordingly, sentencing Mr. Stabile to any further term of imprisonment beyond the 11 months Mr. Stabile has already served would create an unwarranted disparity between Mr. Stabile and the 4 other defendants in the United States who were sentenced for Tianeptine related offenses none of whom have served more than 6 months of imprisonment.

F. Mr. Stabile's Attempted Cooperation and Attorney Proffers

Another factor your Honor should consider in deciding what sentence to impose is that Mr. Stabile did voluntarily provide information to the government in the form of letters and an attorney proffer..²⁷ While there is no dispute that this information did not lead to arrests or search warrants or indictments, it is worth noting that information was provided to help the FDA ferret out other online sellers of Tianeptine, and this is a factor this court may consider. *U.S. v. Jaber*, 362 F.Supp.2d 365 (D. Mass. 2005) (in meth conspiracy, downward departure granted in part because defendant tried to cooperate repeatedly but had little to offer..”).

²⁶ *Compare United States v. Gavin Burns*, 15-cr-00283-GJM (D. Md. 2015) (sentencing CEO of company selling misbranded research chemicals or peptides to public via websites).

²⁷ **Ex. M-M1**, Proffer Letter Dated 2.14.22 With Attachments (including Tianeptine Supplier Spreadsheet); **Ex. N-N1**, Attorney Proffer Letter with attachments dated July 17, 2022. **These documents will be filed separately under seal.**

G. The Kinds of Sentences Available (18 U.S.C. §§ 3553(a)(3))

The Guidelines score Mr. Stabile at Level 21, Zone C. Accordingly, the following sentences are available to Mr. Stabile under Section 5C1.1(c) if the court were to sentence Mr. Stabile in Zone C.

- **Time Served- Imprisonment for a period of 11 months.** *See* U.S.S.G. § 5C1.1(c)(1).

This sentence is within Zone C because Level 12 includes a sentence of 10-16 months. Mr. Stabile has served 11 months in jail.

- **A 22-month sentence with a period of 3 years of supervised release under Section 5C1.1 (d)(2).** In this instance, Mr. Stabile would have served 11 months of the 22-month sentence and serve the remaining 11 months in community confinement, residential treatment, or home detention.

Such a sentence qualifies as “a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e), provided that at least one-half of the minimum term (11 months) is satisfied by imprisonment.” This is consistent with the directive that under Section 5C1.1(e)(2) that Mr. Stabile spend “one day of community confinement (*residence in a community treatment center, halfway house, or similar residential facility*) for one day of imprisonment.”

H. The Need for the Sentence Imposed (18 U.S.C. § 3553(a)(2))

1. Incarceration Unnecessary to Reflect the Seriousness of Offense, Promote Respect for the Law, or to Provide Just Punishment (18 U.S.C. § 3553 (a)(2)(A))

Sentencing Mr. Stabile to additional term of imprisonment is not necessary to promote general or specific deterrence. Non-prison sentences are far from inherently “lenient.” *Gall v. United States*, 128 S. Ct. 586, 595-96 (2007)(“Probationers may not leave the judicial district, move, or change jobs without notifying, and in some cases receiving permission from their probation officer or the court. They must report regularly to their probation officer, permit unannounced visits to their homes, refrain from associating with any person convicted of a felony..”).

In addition, humiliation, loss of past and future employment prospects, shame to family and friends, and financial penalties also serve as the powerful deterrents to future crime.

2. Incarceration Unnecessary to Afford Adequate Deterrence to Criminal Conduct 18 U.S.C. § 3553 (a)(2)(B))

Empirical evidence does not establish a relationship between sentence length and specific deterrence, regardless of the type of crime. See National Institute of Corrections, Myths and Facts, Why Incarceration is Not the Best Way to Keep Communities Safe (2016) (“National Institute Study”)²⁸(concluding that longer

²⁸ Available at <https://s3.amazonaws.com/static.nicic.gov/Library/032698.pdf>

prison sentences do not prevent recidivism and community correction are more effective in reducing recidivism); Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines at 28 (May 2004).²⁹

The National Institute Study is significant. According to the study, incarceration has a negligible impact on crime prevention and a longer prison sentence may actually lead to a greater risk of recidivism and prison—by disrupting education and employment, reducing prospects for future employment, weakening family ties and exposing less serious offenders to older more serious offenders—leads to increased recidivism. National Institute Study, at 5; *see also* The Criminogenic Effects of Imprisonment: Evidence from State Panel Data 1974-2002, 6 *Criminology & Public Policy* 589 (2007). In fact, the National Study concludes that community correction programs are more effective in reducing recidivism. National Institute Study, at 5.

²⁹ Regardless of the type of crime, empirical studies show there is no relationship between sentence length and general or specific deterrence. *See* Andrew von Hirsch *et al.*, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (1999); Michael Tonry, *Purposes and Functions of Sentencing*, 34 *Crime and Justice: A review of Research* 28–29 (2006); David Weisburd *et al.*, *Specific Deterrence in a Sample of Offenders Convicted of White-Collar Crimes*, 33 *Criminology* 587 (1995); Donald P. Green & Daniel Winik, *Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism among Drug Offenders*, 48 *Criminology* 357 (2010) (all concluding there is no correlation between sentence length and crime rates).

In sum, the best available evidence from national studies, legal scholars, and the U.S. Sentencing Commission, establishes that imprisonment does not reduce recidivism more than non-custodial sanctions for Mr. Stabile.

3. Incarceration Unnecessary To Specifically Deter Mr. Stabile or to Protect Public (18 U.S.C. § 3553 (a)(2)(C))

Mr. Stabile poses no risk of committing future crimes and more time in jail is simply punitive and is not necessary to deter Mr. Stabile from committing future crimes. Nor is it necessary to adequately deter other individuals from committing Tianeptine related offenses. Mr. Stabile is committed to sobriety and to reintegration into society. Mr. Stabile is a talented young man whose lack of sobriety and direction lead him astray. Additional imprisonment is therefore not necessary to promote specific deterrence and respect for the law.

CONCLUSION

For each of these reasons, Mr. Stabile respectfully requests that your Honor grant a departure or a variance and sentence Mr. Stabile to a period of 11 months (time served) with conditions of supervised release which permit Mr. Stabile to continue treatment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed this day via CM/ECF and served on all counsel of record appearing on CM/ECF.

/s/Andrew S. Feldman_____