IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALETA NECOLE THOMAS,

Defendant.

Case No. 21-CR-239-GKF

Response in Opposition to Defendant's Objections to the Presentence Investigative Report

The Court should overrule Ms. Thomas's Objections to the Presentence Investigative Report (Doc. 98) because the PSR accurately describes Thomas's role in submitting 33 fraudulent Paycheck Protection Program ("PPP") loan applications and correctly applies the enhancement for obstruction of justice related to Thomas's false statements to the grand jury. Further, the PSR conservatively calculates the actual loss of $774,753.50 attributable to Thomas and correctly applies the enhancement for Thomas serving as an organizer or leader of a group of more than five other participants in her fraud scheme.

1. The PSR accurately describes Thomas's role in recruiting and assisting other participants in her loan fraud scheme.

The PSR at ¶ 14 accurately states that Thomas actively recruited and instructed other people in making false statements to receive PPP loans. Moreover, the PSR correctly details that loan proceeds were deposited into Thomas's bank account, although some other participants in fact possessed their own bank accounts.[1] Thomas falsely claims that she received no consideration for assisting other people in their PPP loan applications. These claims are false because witness interviews reveal instances in which Thomas retained tens of thousands of dollars in loan proceeds in exchange for assisting two people with the typing and preparation of loan applications and supporting documents.[2] Thomas's Facebook Messenger communications show that Thomas recruited participants into her fraud scheme. In one instance, Thomas initiated contact with a friend and offered to assist this friend with her PPP loan in exchange for 30 percent of the loan.[3]

The PSR at ¶ 14 accurately describes Thomas's offense conduct and relevant conduct, consistent with USSG § 1B1.3(a)(1)(A). In this case, the grand jury indicted Thomas for making false statements in five separate fraudulent "PPP" loans she obtained on behalf of her purported businesses (Doc. 48, Counts 1-5). The grand jury also indicted Thomas for making false statements in loan applications in which she claimed to be a self-employed individual and received the maximum allowed amount of $20,833.00 per loan. (*Id*. Counts 6-7). The grand jury indicted Thomas for recruiting and assisting others in making false statements in their PPP loan applications. (*Id*. Counts 8-15).

Under the Sentencing Guidelines, relevant conduct includes "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or

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[1] J. Hudson Tr. pp. 11; K. Pittman Tr. 23.
[2] K. Pittman Tr. p. 13, 19; K. Hudson Grand Jury Tr. pp. 15-19.
[3] Aleta Thomas Facebook Messenger Search Warrant Return p. 11978-81.

willfully caused by the defendants; . . . ." USSG § 1B1.3(a)(1)(A). In other words, Thomas is responsible for the acts of the other people she recruited, assisted, and caused to submit fraudulent PPP loan applications. Here, the discovery contains multiple statements by Thomas's friends and family describing how she encouraged and helped them to apply and assisted them with their applications for PPP loans.[4]

For example, in her May 18, 2021 interview, Katrina West explained how she learned about the PPP loan program from her sister-in-law, Aleta Thomas, and that Thomas helped West prepare her PPP application and the supporting tax documents. Disc. p. 6713-73; West Tr. pp 7-8. Further, West met with Thomas at Thomas's house, and Thomas typed West's information into electronic forms while West dictated information to her. *Id*. pp. 10-11. After Thomas completed the PPP application, West electronically signed it, and the loan proceeds were deposited into Thomas's Tulsa Federal Credit Union account. Similarly, Danee Thomas described how her aunt, Aleta Thomas, completed Danee Thomas's PPP loan application and supporting tax documents while the two of them sat together. Disc. pp. 6685-6699; D. Thomas Tr. pp. 4-5. Likewise, Gail Herrin testified that she completed the supporting tax documents for her PPP loan with Thomas. Together, the two women searched the internet (Google) to identify what numbers to include in the forms. Disc pp. 9303-35, Herrin Tr. pp. 20-21.

[4]; Jayveon Hudson Interview Disc. pp. 8249-69; J. Hudson Tr. p. 2 lns. 50-61; p.7, lns. 721-5; Kyren Pittman Interview Disc. pp 8284-9320, Pittman Tr pp. 2-3 lns. 50-56; 107-113; Kennedy Hudson Interview Disc. pp 9433-9461, Hudson Tr. p. 10-14. Pepper Jones Interview, Disc. pp. 9904-9983; Jones Trans. pp. 26-27; 34

Similarly, the discovery contains 30 pages of emails between Thomas's friends and family members and the case agent. In these emails Thomas's friends and family notified the government that they gave Thomas permission to apply for PPP loans and deposit the loan proceeds into her account.[5] Furthermore, the loan application supporting documents corroborate the fact Thomas aided other people in submitting fraudulent PPP loan applications. For example, Thomas's 2019 IRS 1040, Schedule C *Profit and Loss from Business* attachments are identical to the same documents Thomas prepared for Pepper Jones, Marqwesha Davis, Jayveon Hudson, and Katrina West.[6]

Consistent with the relevant conduct definition and the evidence, the PSR accurately describes Thomas's role in recruiting, instructing, and assisting friends and family in making false statements in their PPP loan applications. Consequently, the Court should overrule Thomas's objection to PSR ¶ 14.

2. Thomas obstructed justice when she made false statements to the grand jury and federal agents about paying two complete strangers who allegedly assisted her with her first four PPP loan applications resulting in needless delay and allowing Thomas to continue her lengthy fraud scheme.

The PSR at ¶ 16 correctly applies the sentencing adjustment for Obstruction of Justice because Thomas made materially false statements under oath before the grand jury on February 19, 2021, and five days later to federal agents. The Sentencing Guidelines include a non-exhaustive list of conduct for which the obstruction of justice enhancement applies. USSG § 3C1.1, cmt. n.4. Thomas's

[5] Disc. pp. 3019-49 *Aleta Thomas Email Correspondence MOA_Final 04-09-2021*
[6] Disc. pp. 7698, 7741, 8127, 8165, 7612, 6942, and 7018

statements caused federal agents to take unnecessary and time-consuming investigative steps to attempt to validate the existence of Joniayah Harrison and Gail Jackson and locate them. These efforts included securing two federal search warrants and reviewing tens of thousands of communications all while Thomas continued to commit loan fraud during the Spring of 2021. Here, Thomas's false statements to the grand jury about Joniayah Harrison and Gail Jackson are analogous to the cmt. n.4(G) because Thomas made materially false statements to the grand jury and federal agents that significantly obstructed or delayed their investigation.

During her grand jury testimony, Thomas stated that despite her existing banking relationship with Tulsa Federal Credit Union, where she received a $75,000 PPP loan, she looked for assistance in applying for PPP loans from strangers who she met on Facebook. PSR ¶ 19; A. Thomas Tr. p 16. Without even a telephone number and during the height of a pandemic, Thomas allegedly went alone armed only with her computer, to complete PPP loan applications at Woodland Hills mall with complete strangers, later identified by Thomas. *Id*. pp. 17-8; 45-6.

According to Thomas, she allegedly provided Harrison with her email account password and bank account information so that Harrison could track the status of Thomas' PPP loan applications. *Id*. pp. 27, 50, and 71. This level of trust is incredible, given the fact that Harrison and her associate "Gail Jackson" refused to give Thomas their telephone numbers or other contact information. *Id*. pp.45-6; 50.

Five days after her grand jury testimony, the agents served Thomas with a grand jury subpoena for records of her purported businesses. At this time, Thomas maintained that she messaged Harrison using Facebook Messenger.

Based upon Thomas's statements to them and grand jury testimony about Joniayah Harrison and Gail Jackson, federal agents obtained two federal search warrants – one for Thomas's Facebook account and a second for Thomas's Gmail account to attempt to identify and locate these two accomplices. While awaiting these search warrant returns, Thomas continued to violate the law, this time securing $120,000 from Arvest Bank and more than $40,000 in PPP funds for allegedly being self-employed. (Doc. 48, Counts 5-15).

Thomas's email and Facebook Messenger messages reveal no communications between Thomas and Joniayah Harrison or Gail Jackson. There are also no communications with anyone related to a meeting at Woodland Hills mall. Instead, Thomas's Facebook Messenger communications show Thomas recruited Heather Overstreet and ShaRita Yarbrough to apply for PPP loans during the same time frame she allegedly requested Harrison's and Jackson's assistance.[7]

In this case, the overwhelming evidence supports the conclusion Thomas lied in her grand jury testimony to deflect the attention of federal agents and downplay her role in her loan fraud scheme. In fact, Thomas's statements about Joniayah Harrison and Gail Jackson resulted in significant, time-consuming investigation and allowed

[7] Facebook Search Warrant return, p. 9549;11978-81 (The timeframe of Thomas's first four fraudulent PPP loan applications includes May 4 until June 16, 2020. The Facebook Search Warrant covers Facebook Messenger messages sent to and from Thomas between April 1 to September 1, 2020. Disc. p. 9591.

Thomas to recruit 10 other people to violate the law with her. To the extent that Pepper Jones believes she met Joniayah Harrison or Gail Jackson at the mall, Ms. Jones' credibility is highly questionable given the fact she remembers limited information about the woman, and Jones herself admitted to lying to the United States government to obtain PPP loan proceeds she was not entitled to receive. Consequently, and given Thomas's materially false testimony before the grand jury and to federal agents that resulted in them securing two additional search warrants and analyzing tens of thousands of additional pages of evidence, the two-level enhancement for obstructing justice contained in PSR ¶ 16 is appropriate.

3. The PSR conservatively calculates the loss amount attributable to Thomas and her fraud scheme.

No ruling by the Court is necessary with respect to Thomas's objection to PSR ¶ 21 because that objection does not affect sentencing. Consistent with the rules, "for any disputed portion of the presentence report" the Court must "rule on the dispute or determine that a ruling is unnecessary . . . because the matter will not affect sentencing. . . . " Fed. R. Crim. Pro. 32(i)(3)(B). The PSR at ¶ 21 conservatively accounts for the actual losses Ms. Thomas caused.

According to her own filing "Thomas accepts responsibility for the loan applications she personally submitted." (Doc. 71, p. 1). Here, Thomas herself received $621,152.50 in fraudulent PPP loan proceeds as alleged in counts one through seven of the second superseding indictment. (Doc. 48). Consequently, the application of a 14-level increase under USSG § 2B1.1(b)(1)(H) for a loss of greater than $550,000 but less than $1,500,000 is appropriate based entirely upon Thomas's fraud alone. Nevertheless, for the reasons above, Thomas's recruiting and assisting other people in fraudulently obtaining PPP loans proceeds and inflicting actual losses to banks and the government constitutes relevant conduct consistent with USSG § 1B1.3(a)(1)(A) and is proper for the Court's consideration.

While the 17 approved fraudulent PPP loans in this case total $795,158.50 (*see* PSR ¶ 14) in harm, Thomas fraudulently applied for 33 PPP loans on behalf of herself and others with a total intended loss of $1,842,068.50. Because USSG § 2B1.1(b)(1)(H) applies in ¶ 21 entirely because of the PPP loan proceeds Thomas alone received, the Court need not rule on Thomas's third objection. In the event the Court identifies a material dispute, the PSR at ¶ 21 conservatively calculates the loss amount attributable to Thomas and this objection should be overruled.

4. ***Thomas served as an organizer or leader by recruiting at least 10 accomplices, directly participating in submitted applications on behalf of 10 or more people, and leading a fraud scheme that included numerous loan applications submitted over the course of 12 months.***

The PSR at ¶ 23 correctly applies the four-level adjustment in USSG § 3B1.1(a) because Thomas served as an organizer or leader of five or more people by recruiting and assisting 10 or more people in applying for fraudulent PPP loans and ultimately controlling the funds granted to each participant by directing the loan proceeds through her bank account. In distinguishing an organizer or leader from a role of management or supervision, the Court should apply the following factors:

> the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of

> participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

USSG § 3B1.1, cmt. n.4. In applying these factors, the Tenth Circuit has ruled that a defendant may be an organizer without actually exercising control over any other person. *United States v. Tagore*, 158 F.3d 1124, 1131 (10th Cir. 1998) (internal citations omitted).

These factors support the four-level enhancement for Thomas's role as an organizer or leader. As previously described, Thomas actively recruited and assisted at least 10 people in preparing fraudulent PPP loan applications by typing them on her computer or giving them detailed instructions about how to apply. Disc. pp. 3019-49.

As documented in emails to the case agent and in the statements of witnesses and co-defendants, Thomas directly participated in preparing numerous individuals fraudulent PPP loan applications by typing the applications on her laptop computer, usually at Thomas's home.[8] For example, Pepper Jones advised "Aleta Thomas gave me info on how to apply for the ppp. . . . I gave her access to my personal info willingly. I also gave her permission to have my funds deposited to her personal checking account at Tulsa Federal Credit Union." Disc. p. 3036. Kobe Eubanks also stated in an email message "I gave Aleta Thomas my info and permission to deposit my ppp funds in her acct. . . ." *Id.* at 3037.

[8] Disc. pp. 3019-49 *Aleta Thomas Email Correspondence MOA_Final 04-09-2021*.

In many instances Thomas also prepared fake tax returns on behalf of herself and others she assisted including Katrina West, Marqwesha Davis, Pepper Jones, and Jayveon Hudson.[9] Thomas's Facebook Messenger messages also detail active recruitment and direct involvement in this fraud scheme.

In several instances, Thomas also claimed a right to a substantial share of the fruits of the crime. For example, on July 5, 2020, Thomas stated to Ms. Yarbrough "I can do it I do 30 %" after Yarbrough reported someone else offered to help her in exchange for half of the loan. Facebook Search Warrant return pp. 11978-81. Kryen Pittman elaborated that in exchange for helping Pittman with his loans, Thomas would keep one half of the loan proceeds. Pittman Interview Tr. lns. 538-558. In another instance, Kennedy Hudson testified that the loan proceeds from Hudson's first PPP loan were placed in a TFCU account that Hudson and Thomas shared with $10,000 remaining in the account after Kennedy Hudson received her first $10,000 payment. K. Hudson Trans. p. 14-5. From the proceeds of her second PPP loan, Hudson transferred $10,000 to Thomas. *Id*. pp. 18-19.

Thomas also played a direct role in the planning and organizing the criminal activity by drafting loan documents for others and showing them where to apply. For example, while in the company of other individual participants, such as Katrina West, Danee Thomas, Kyren Pittman, Kennedy Hudson, and Pepper Jones, Thomas typed their loan applications on her computer. Without Thomas's recruitment and

[9] Disc. pp. 7698, 7741, 8127, 8165, 7612, 6942, and 7018

advice, it appears none of these individuals would have known where or how to apply for a PPP loan.[10]

The nature and scope of Thomas's illegal activity also supports the application of this four-level leader or organizer enhancement. Thomas started fraudulently applying for PPP loans in May 2020 and possessed 10 months of knowledge and experience when she first recruited and assisted friends and family with their PPP loans. As a result, Thomas secured more than $150,000 on behalf of other participants in her fraud scheme during a two-month long period of time.

Even if Thomas did not directly exercise control over the others, she certainly exercised control over their money and personal identifiable information. In one instance involving Kyren Pittman, Thomas used Mr. Pittman's information to apply for a second loan, unbeknownst to Mr. Pittman. While Thomas clearly controlled the money in this case, under the law, Thomas need not actually control the actions of others in her fraud scheme.

Consequently, the Court should overrule Thomas's objection to the enhancement in punishment in the PSR ¶ 23 because she qualifies as an organizer or leader for her direct participation requesting PPP loan proceeds on behalf of at least 10 people she recruited and aided as a part of her fraud scheme. Additionally, the nature and scope of Thomas's fraud spanned months and included 33 total fraudulent loan applications that resulted in approximately $775,000 in loss in taxpayer dollars.

[10] West. Tr. pp 7-11; Pittman Tr. lns. 50-192; Hudson Tr. pp. 10-13; Jones Trans. pp. 26-27; 34.

Finally, the PSR at ¶ 29 conservatively calculates Thomas's Total Offense Level of 24 because the PSR correctly applies the obstruction of justice enhancement in ¶ 16, conservatively calculates the loss amount in ¶ 21, and correctly applies the enhancement for Thomas's role as an organizer or leader of a group of more than five people in ¶ 23. For these reasons, the government respectfully requests the Court overrule Thomas's objections to the PSR.

Respectfully submitted,
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Certificate of Service

I hereby certify that on the day of May 25, 2022, I served the foregoing document via electronic email, on the following:

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