IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* AMANDA CHRISTIAN	Criminal Action No. 1:20-CR-296-9-JPB

United States' Sentencing Memorandum

The United States of America, by Ryan K. Buchanan, United States Attorney, and Tal C. Chaiken and Nathan P. Kitchens, Assistant United States Attorneys for the Northern District of Georgia, and Babasijibomi Moore, Trial Attorney for the United States Department of Justice, respectfully files this Sentencing Memorandum in advance of Defendant Amanda Christian's sentencing, which is set for September 13, 2022 at 10:00 a.m. Defendant pleaded guilty to conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349. As set forth below, the United States submits that a Guidelines sentence of 46 months' imprisonment – at the low end of the undisputed Guidelines range – is sufficient, but not greater than necessary, to comply with the purposes set forth in Title 18, United States Code, Section 3553(a).

A Guidelines Sentence is Appropriate Given the Section 3553(a) Factors.

1. The Nature and Circumstances of the Offense.

Defendant's offense was serious, motivated by personal greed during an unprecedented global crisis. In early 2020, the COVID-19 pandemic sent stock markets crashing and unemployment rates skyrocketing, while nationwide lockdowns ground the economy to a halt. Many American businesses – and in particular, small businesses – struggled to stay afloat as consumer demand plummeted, creating daunting uncertainty for the businesses, their employees, and the families who rely on them. Against that backdrop, Congress passed the Paycheck Protection Program (the "PPP") as one of the mechanisms for providing relief to small businesses and their employees. To obtain a loan, a business had to certify that the loan would be used to pay for payroll, lease or mortgage interest, or utilities, and the loan was forgivable if the business spent a certain percentage of the loan on payroll costs.

Because Congress's intent was to "provide relief to America's small businesses expeditiously," the PPP streamlined the Small Business Administration's typical lending requirements. Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20811-01 (Apr. 15, 2020). For example, the PPP "allow[ed] lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness." *Id.* These procedures were designed to quickly get much-needed funds to small businesses so they could keep their workers employed during an economic and public health crisis that threatened the viability of many small businesses and their ability to keep their employees on the payroll.

Defendant sought to take advantage of the PPP's streamlined procedures to line her own pockets. Indeed, she admits that "she took advantage of an opportunity designed to help businesses and people across the country during the time of a global crisis and pandemic." (DE 563 at 2.) Not only did she apply for a

$760,207 PPP loan for her own business, Advertising and Then Some ("ATS") but she also recruited and facilitated the loans of at least two other businesses: Mickies Auto and Tire ("Mickies"), which received a $787,160 PPP loan, and Transportation Management Services Inc. ("Transportation Management"), which received an $830,417 PPP loan. (PSR, ¶¶ 103-114.) Defendant was not a small business owner worried about her employees and the mouths they were responsible for feeding. Rather, she saw in the PPP an opportunity to get free money to use for personal expenses. And though approved lenders funded the loans, the funds that were stolen were taxpayer funds administered by the Small Business Administration.

As Defendant notes, she did not orchestrate the scheme – Darrell Thomas did. But while Defendant contends that she did not fill out the fraudulent PPP loan applications or submit them for processing, the evidence refutes that characterization of her role. Specifically, Defendant herself *personally* signed the fraudulent PPP loan application for her business, ATS, on July 23, 2020. (*See* Exhibit 1.) Moreover, on August 5, 2020, Mickies' owner, Rick McDuffie, came to Defendant's office to sign the Borrower Resolution form for Mickies, which was necessary for Mickies to obtain its $787,160 fraudulent loan. (*See* Exhibit 2 at 1-3, 13-15.) While Defendant did not herself prepare the fraudulent loan application or the fabricated supporting documents, she signed – or facilitated the signing of – the loan-related documents, with full knowledge of the false representations they contained.

Defendant's involvement in multiple fraudulent PPP loans – and their timing – likewise demonstrates her knowledge of the scheme. Transportation

Management received its fraudulent PPP loan on May 21, 2020. (PSR, ¶ 104.) More than two months *later*, Defendant electronically signed her own fraudulent PPP loan application and, the following month, she facilitated McDuffie's signing of his fraudulent PPP loan. Defendant's involvement in multiple fraudulent PPP loans – including one for her own business – underscores her knowledge of the scheme and her heightened culpability relative to other participants who were involved in only one loan.

Finally, while it is true that Defendant did not ultimately receive a substantial share of the three fraudulent PPP loans, that is because she and her co-conspirators got caught, not because Defendant had a comparatively smaller role (*see* DE 563 at 8). Specifically, the United States Secret Service determined that Defendant's loan was fraudulent and interviewed her. During that interview, Defendant provided a false story about her involvement in the fraudulent loan – claiming that she submitted her company information online to people she did not know – and returned the funds to the lender.[1] (*See* Exhibit 3.) And Mickies' loan was frozen by the bank and returned to the lender based on suspected fraud. (PSR, ¶ 112.) Finally, nearly all of Transportation Management's fraudulent PPP loan proceeds were seized as part of the investigation. (*See* DE 125 (ordering forfeiture of more than $480,000 seized from bank accounts of Transportation Management and its owner, Bern Benoit); DE 265 (preliminary order of forfeiture for assets seized from Darrell Thomas's accounts, of which more than $250,000 is

[1] The United States has not sought an enhancement under USSG Section 3C1.1 because Defendant's statement to the United States Secret Service, though materially false, did not significantly obstruct or impede the investigation or prosecution of her offense.

attributable to payments made from Transportation Management to Darrell Thomas).) Thus, it was diligence by others in promptly detecting ATS's, Mickies', and Transportation Management's fraudulent PPP loans – not Defendant's role in the offense – that caused her to receive a small share of the fraudulent funds for which she is held accountable.

2. Defendant's History and Characteristics.

It is evident from the character letters that Defendant attached to her Sentencing Memorandum (DE 563 at Ex. G) that she has the support of her family, friends, and community. (*See* DE 525 at 12-13 and at Exs. B-E.) The PSR also reflects that Defendant had a difficult childhood. While these are certainly matters for the Court's consideration, the Circuit has cautioned that a defendant's history and characteristics "cannot be considered in isolation and without regard to the criminal conduct for which the defendant has been convicted and the characteristics it reveals." *Howard*, 28 F.4th at 218-20 (reversing sentence of probation where the district court considered the history and characteristics of the defendant as a "single-minded focus to the detriment of all other factors"). Defendant's remorse and acceptance of responsibility likewise do not require a downward variance, as the Eleventh Circuit has recognized genuine remorse and low likelihood of reoffending as factors that "are usually present in most white-collar cases resulting in a guilty plea." *United States v. Hayes*, 762 F.3d 1300, 1308 (11th Cir. 2014). When considered in conjunction with the other Section 3553(a) factors – in particular, the nature and circumstances of the offense, the need to provide just punishment and afford adequate deterrence, and the need to avoid unwarranted sentencing disparities – Defendant's history and characteristics do not support a non-Guidelines sentence.

3. The Need for Adequate Deterrence.

A sentence within the Guidelines range is necessary to afford adequate deterrence and to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. 18 U.S.C. § 3553(a)(2).

The Eleventh Circuit has identified general deterrence as "an important goal of sentencing in a white-collar crime prosecution." *United States v. Kuhlman*, 711 F.3d 1321, 1328 (11th Cir. 2013); *see also Howard*, 28 F.4th at 209 ("General deterrence is more apt, not less apt, in white collar crime cases."); *United States v. Livesay*, 587 F.3d 1274, 1279 (11th Cir. 2009) ("[T]he threat of spending time on probation simply does not, and cannot, provide the same level of deterrence as can the threat of incarceration in a federal penitentiary for a meaningful period of time."); *United States v. McQueen*, 727 F.3d 1144, 1158 (11th Cir. 2013) (recognizing that general deterrence is one of the "'key purposes of sentencing'") (citation omitted).

A below-Guidelines sentence would do little to dissuade Defendant or others from committing a similar crime in the future. To the contrary, a lenient sentence would encourage would-be white-collar offenders to view a short prison sentence as part of the cost of doing business. Nor would a lenient sentence reflect the seriousness of fraudulently obtaining for personal gain more than $2.3 million intended for struggling small businesses and their employees in the midst of a global crisis. *Hayes*, 762 F.3d at 1308 (collecting cases where the Eleventh Circuit has "set aside sentences of little to no imprisonment" in white collar cases "because they do not constitute just punishment for the offense, do not promote respect for the law, and will not do much to deter similar activity by others"); *see also United States v. Shah*, 476 F. Supp. 3d 619, 623 (E.D. Mich. Aug. 4, 2020) (noting the seriousness of an offense that involved "bilk[ing] the government out of . . . funds that were earmarked to pay for the medical expenses of vulnerable and needy individuals").

As the Eleventh Circuit has recognized, deterrence is especially important in the context of crimes, like Defendant's crime in this case, that "may easily go undetected and unpunished." *See McQueen*, 727 F.3d at 1158-59 (reversing the district court's lenient sentence because it "sap[ped] the goal of general deterrence"); *see also United States v. Engle*, 592 F.3d 495, 502 (4th Cir. 2010) (explaining that because tax evasion offenses are infrequently prosecuted, "[w]ithout a real possibility of imprisonment, there would be little incentive for a wavering would-be evader to choose the straight-and-narrow over the wayward path); *United States v. Heffernan*, 43 F.3d 1144, 1149 (7th Cir. 1994) ("Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it.").

A recent analysis found that approximately 12.3% of the PPP loans granted to small businesses, totaling $64.2 billion, have at least one indicator of potential fraud. *See* John M. Griffin *et al.*, *Did FinTech Lenders Facilitate PPP Fraud?* (Aug. 5, 2022), available online at https://ssrn.com/abstract=3906395 (last visited Aug. 15, 2022). And because of the sheer number of PPP loans as well as the streamlined documentation necessary to obtain them, the United States is unlikely to detect and/or to prosecute most individuals who obtained fraudulent PPP loans. The need for general deterrence is therefore significant in this case. Simply put, a below-Guidelines sentence would signal to others considering engaging in white-collar crime that there is a significant benefit to be gained and little to be lost by committing the offense. A below-Guidelines sentence would undermine, rather than promote, Section 3553(a)'s purposes.

4. The Sentencing Commission's Policy Statement.

"In deciding a sentence, district courts should consider the policies behind the applicable guidelines provision." *United States v. Crisp*, 454 F.3d 1285, 1291 (11th Cir. 2006); *see also* 18 U.S.C. § 3553(a)(5) (directing district courts to consider the Sentencing Commission's policy statements). For fraud-related offenses, the Sentencing Commission has explained that "along with other relevant factors under the guidelines, loss serves as a measure of the seriousness of the offense and the defendant's relative culpability and is a principal factor in determining the offense level under [U.S.S.G. § 2B1.1]." U.S.S.G. § 2B.1.1, cmt. backg'd.

The Sentencing Commission's policy statement supports imposing a Guidelines sentence in this case, where Defendant's Guidelines are based almost entirely on the amount of loss attributable to his offense.

5. Unwarranted Sentencing Disparities.

A below-Guidelines sentence would create unwarranted sentencing disparities between Defendant and other co-conspirators who played the most similar role – namely, Denesseria Slaton and Charles Petty, who were both sentenced to 46 months' imprisonment, the low-end of their respective Guidelines ranges. *See* DE 427 (Petty); *United States v. Denesseria Slaton*, 1:21-cr-179, DE 30 (Aug. 30, 2022) (Slaton). There are some notable differences between Defendant, Petty, and Slaton, but none weighs in favor of a downward variance for Defendant. Petty and Slaton both had prior fraud convictions, but their Guidelines ranges accounted for their criminal histories. Petty, however, was held accountable for only one fraudulent loan, while Slaton provided substantial assistance to the United States, which is why Petty's and Slaton's Guidelines ranges were the same as Defendant's despite their higher criminal history categories. Moreover, Defendant's conduct is different than Slaton's and Petty's in that she obtained a loan for her own business while they did not.

Meanwhile, Defendant's conduct is unlike the conduct of the individual businessowners – some of whom received downward variances – because of her role as a recruiter and because of her involvement in multiple loans.

6. The Need to Provide Restitution.

The Eleventh Circuit has rejected the argument that a large restitution award warrants a shorter custodial sentence. *See Crisp*, 454 F.3d at 1291 (explaining that shortening a defendant's sentence "in order to increase the time for the defendant to earn money to pay restitution" would turn the Sentencing Commission's policy on its head because it would mean that the more loss a defendant inflicts, the shorter their sentence). While Defendant's restitution obligation is significant, the need to provide restitution does not outweigh Section 3553(a)'s other considerations and does not warrant a substantial downward variance.

Conclusion

For these reasons, the United States respectfully requests that the Court deny Defendant's request for a downward variance and impose a sentence at the low end of the applicable Guidelines range.

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Respectfully submitted,

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