United States Department of Justice

United States Attorney
Southern District of West Virginia

Robert C. Byrd United States Courthouse
300 Virginia Street, East
Suite 4000
Charleston, WV 25301

1-800-659-8726
304-345-2200
FAX: 304-347-5104

May 15, 2025

Clayton T. Harkins
Dinsmore & Shohl LLP
707 Virginia Street, East
Suite 1300
Charleston, WV 25301

Re: United States v. Damisha Brown
Criminal No. 2:24-cr-00192-6 (USDC SDWV)

Dear Mr. Harkins:

This will confirm our conversations with regard to your client, Damisha Brown (hereinafter "Ms. Brown"). As a result of these conversations, it is agreed by and between the United States and Ms. Brown as follows:

1. **PENDING CHARGES.** Ms. Brown is charged in two counts of a ten-count superseding indictment as follows:

(a) Count One charges Ms. Brown with a violation of 18 U.S.C. §§ 1344 and 1349 (conspiracy to commit bank fraud); and

(b) Count Seven charges Ms. Brown with a violation of 18 U.S.C. §§ 1344 and 2 (aiding and abetting bank fraud).

2. **RESOLUTION OF CHARGES.** Ms. Brown will plead guilty to Count One of said superseding indictment, which charges her with a violation of 18 U.S.C. §§ 1344 and 1349. Following final disposition, the United States will move the Court to dismiss Count Seven in Criminal No. 2:24-cr-00192-6 as to Ms. Brown.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Ms. Brown will be exposed by virtue of this guilty plea is as

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follows:

(a) Imprisonment for a period of 30 years;

(b) A fine of $1,000,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;

(c) A term of supervised release of 5 years;

(d) A mandatory special assessment of $100 pursuant to 18 U.S.C. § 3013; and

(e) An order of restitution pursuant to 18 U.S.C. §§ 3663 and 3664, or as otherwise set forth in this plea agreement.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Ms. Brown will tender a check or money order to the Clerk of the United States District Court for $100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Ms. Brown will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Ms. Brown fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Ms. Brown.

5. **RESTITUTION.** Notwithstanding the offense of conviction, Ms. Brown agrees that she owes restitution in the amount of at least $12,125.00 and agrees to pay such restitution, with interest as allowed by law, to the fullest extent financially feasible. In aid of restitution, Ms. Brown further agrees as follows:

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Re: Damisha Brown

(a) Ms. Brown agrees to fully assist the United States in identifying and locating any assets to be applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.

(b) Ms. Brown will fully complete and execute, under oath, a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.

(c) Ms. Brown agrees not to dispose of, transfer or otherwise encumber any real or personal property which she currently owns or in which she holds an interest.

(d) Ms. Brown agrees to fully cooperate with the United States in the liquidation of assets to be applied towards restitution, to execute any and all documents necessary to transfer title of any assets available to satisfy restitution, to release any and all right, title and interest she may have in and to such property, and waives her right to exemptions under the Federal Debt Collection Procedures Act upon levy against and the sale of any such property.

(e) Ms. Brown agrees not to appeal any order of the District Court imposing restitution unless the amount of restitution imposed exceeds the amount set forth in this plea agreement. However, nothing in this provision is intended to preclude the Court from ordering Ms. Brown to pay a greater or lesser sum of restitution in accordance with law.

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6. **PAYMENT OF MONETARY PENALTIES.** Ms. Brown authorizes the Financial Litigation Program in the United States Attorney's Office to obtain a credit report from any major credit reporting agency prior to sentencing in order to assess her financial condition for sentencing purposes. Ms. Brown agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Ms. Brown further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

Ms. Brown authorizes the United States, through the Financial Litigation Program, to submit any unpaid criminal monetary penalty to the United States Treasury for offset in accordance with the Treasury Offset Program, regardless of the defendant's payment status or history at that time.

In addition to any payment ordered by the Court, Ms. Brown shall pay all monies received from any source other than earned income, including but not limited to, lottery winnings, gambling proceeds, judgments, inheritances, and tax refunds, toward the court ordered restitution or fine.

Ms. Brown agrees that if she retains counsel or has appointed counsel in response to the United States' efforts to collect any monetary penalty, she shall immediately notify the United States Attorney's Office, Attention: Financial Litigation Program, 300 Virginia Street E., Suite 4000, Charleston, West Virginia 25301, in writing and shall instruct her attorney to notify FLP immediately of her representation.

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7. **COOPERATION.** Ms. Brown will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Ms. Brown may have counsel present except when appearing before a grand jury. Further, Ms. Brown agrees to be named as an unindicted co-conspirator and unindicted aider and abettor, as appropriate, in subsequent indictments or informations.

8. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Ms. Brown, and except as expressly provided for in paragraph 10 below, nothing contained in any statement or testimony provided by her pursuant to this agreement, or any evidence developed therefrom, will be used against her, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

9. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Ms. Brown for any violations of federal or state laws. The United States reserves the right to prosecute Ms. Brown for perjury or false statement if such a situation should occur pursuant to this agreement.

10. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Ms. Brown stipulate and agree that the facts comprising the offense of conviction include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit A."

Ms. Brown agrees that if she withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by her, and she is subsequently tried for her conduct alleged in

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the superseding indictment, as more specifically described in the Stipulation of Facts, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Ms. Brown or of any of his witnesses, or in rebuttal of any testimony introduced by her or on her behalf. Ms. Brown knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right she has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Ms. Brown understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

11. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Ms. Brown knowingly and voluntarily waives her right to seek appellate review of her conviction and of any sentence imposed by the District Court, including any term of imprisonment, fine, term or condition of supervised release, term or condition of probation, or special assessment, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742(a), except that the defendant may appeal any sentence that exceeds the maximum penalty prescribed by statute. Ms. Brown also knowingly and voluntarily waives any right to seek appellate review of any claim or argument that (1) the statute of conviction, 18 U.S.C. §§ 1344 and 1349, is unconstitutional, and (2) Ms. Brown conduct set forth in the Stipulation of Facts (Plea Agreement Exhibit B) does not fall within the scope of 18 U.S.C. §§ 1344 and 1349.

The United States also agrees to waive its right to appeal any sentence imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever, including

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any ground set forth in 18 U.S.C. § 3742(b), except that the United States may appeal any sentence that is below the minimum penalty, if any, prescribed by statute.

Ms. Brown also knowingly and voluntarily waives the right to challenge her guilty plea and conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

12. **WAIVER OF FOIA AND PRIVACY RIGHT.** Ms. Brown knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

13. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

(a) Inform the Probation Office and the Court of all relevant facts and conduct;

(b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);

(c) Respond to questions raised by the Court;

(d) Correct inaccuracies or inadequacies in the presentence report;

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(e) Respond to statements made to the Court by or on behalf of Ms. Brown;

(f) Advise the Court concerning the nature and extent of Ms. Brown's cooperation; and

(g) Address the Court regarding the issue of Ms. Brown's acceptance of responsibility.

14. **VOIDING OF AGREEMENT.** If either the United States or Ms. Brown violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

15. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Ms. Brown in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Ms. Brown in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:

LISA G. JOHNSTON
Acting United States Attorney

By:

JONATHAN T. STORAGE
Assistant United States Attorney

JTS/lab

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I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this nine-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

DAMISHA BROWN
Defendant

5/29/25
Date Signed

CLAYTON T. HARKINS
Counsel for Defendant

6/2/2025
Date Signed

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v. **CRIMINAL NO. 2:24-cr-00192-6**

DAMISHA BROWN

STIPULATION OF FACTS

The United States and Damisha Brown (hereinafter "defendant," "me," "my," "I," and "her") stipulate and agree that the facts comprising the offense of conviction (Count One in the Superseding Indictment in the Southern District of West Virginia, Criminal No. 2:24-cr-00192-6), include the following:

Coronavirus Relief Background

I agree that the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. The CARES Act authorized the Small Business Administration ("SBA") to provide forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP").

I agree that the PPP allowed qualifying small businesses and other organizations to receive PPP loans. Businesses were required to use PPP loan proceeds to cover payroll costs, interest on mortgages, rent and utilities. The PPP allowed interest and principal on the PPP loans to be entirely forgiven if the businesses spent the loan proceeds to cover these expenses within a designated time and used a certain specified percentage of the PPP loan proceeds on payroll expenses.

I agree that to obtain a PPP loan, a qualifying business was required to submit a PPP loan application. The PPP loan application required the small business (through its authorized representative) to acknowledge the program rules and make affirmative certifications that the small business was eligible to obtain the PPP loan. In addition, businesses applying for a PPP loan were required to provide documentation showing their prior gross income from either 2019 or 2020. Applicants also had to certify that the small business was in operation on February 15, 2020.

I agree that a PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were 100% guaranteed by the SBA.

Factual Basis for Plea

At all relevant times, I resided in Charleston, Kanawha County, West Virginia, within the Southern District of West Virginia.

Throughout 2021, I maintained a personal bank account with Wells Fargo Bank, National Association ("Wells Fargo"). I agree that Wells Fargo was a financial institution within the meaning of 18 U.S.C. § 20 that was headquartered in Nevada. Further, I agree that Financial Institution 1 was a "financial institution" within the meaning of 18 U.S.C. § 20 that participated in the PPP by funding loans.

In or around April of 2021, in the Southern District of West Virginia, I knowingly conspired with Kisha Sutton and others to obtain a fraudulent PPP loan. I agreed to provide my personal and banking information to Kisha Sutton so that she could apply for a fraudulent PPP loan on my behalf. I further agreed that when the PPP funds were deposited in my bank account, I would remit a portion of the money to Kisha Sutton as compensation for her facilitation of the loan.

On or about April 25, 2021, Kisha Sutton submitted, with my full knowledge and authorization, a PPP loan application on my behalf to Financial Institution 1. The application, including supplemental documents, contained materially false information in at least two respects. First, the documents falsely represented that I was a self-employed "hair dresser" who received $75,000 in gross income during 2020. Second, a fraudulent IRS Form 1040 - Schedule C: Profit or Loss from Business Forms ("IRS Form 1040"), for the year 2020. I never earned $75,000 in gross income as a hair dresser in 2020 or during any tax year. The IRS Form 1040 was also never submitted by me to the IRS; it was created for the sole purpose of obtaining a fraudulent PPP loan. This information qualified me for a loan amount I otherwise would not have been qualified to receive. Financial Institution 1 approved the fraudulent application.

On or about April 30, 2021, I received a $15,625 ACH transfer disbursed by Financial Institution 1, and the funds were electronically deposited in my Wells Fargo bank account. At the time I received the funds, I knew the $15,625 represented proceeds from the fraudulent PPP loan.

Between April 30, 2021, and May 27, 2021, I used CashApp to transfer $3,500 to Kisha Sutton from the fraudulent PPP loan proceeds, as compensation for facilitating the submission of my fraudulent loan and consistent with our agreement.

I spent the remainder of the loan proceeds on personal expenses.

This Stipulation of Facts does not contain each and every fact known to defendant and to the United States concerning her involvement and the involvement of others in the charges set forth in the Information.

Stipulated and agreed to:

DAMISHA BROWN
Defendant

5/28/25
Date

CLAYTON T. HARKINS
Counsel for Defendant

6/2/2025
Date

JONATHAN T. STORAGE
Assistant United States Attorney

6-5-25
Date