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

UNITED STATES OF AMERICA,	)	
	)	
	)	
-VS-	)	DOCKET NO. 1:20-CR-00296-JPB
	)	
DARRELL THOMAS,	)	
	)	
DEFENDANT.	)	

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
MAY 9, 2022

APPEARANCES:

ON BEHALF OF THE GOVERNMENT:
TAL COHEN CHAIKEN, ESQ.
NATHAN PARKER KITCHENS, ESQ.
BABASIJIBOMI MOORE, ESQ.
ASSISTANT UNITED STATES ATTORNEYS

ON BEHALF OF THE DEFENDANT:
BENJAMIN BLACK ALPER, ESQ.

STENOGRAPHICALLY RECORDED BY:

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

(PROCEEDINGS HELD IN OPEN COURT AT 11:09 A.M., ATLANTA)

THE COURT: Ms. Oduka, if you want to call the case, please.

COURTROOM DEPUTY CLERK: The Court has set aside time for a sentencing hearing in case United States of America v. Thomas, et al. Case Number 1:20-CR-296.

Counsel, will you please make your appearances for the record.

MS. CHAIKEN: Good morning, your Honor, Tal Chaiken for the United States. Seated with me at counsel table is AUSA Nathan Kitchens and DOJ fraud trial attorney CG Moore. And seated behind us is Special Agent Joseph Stites from FBI.

THE COURT: Good to see all of you this morning.

MR. ALPER: Good morning, your Honor. Benjamin Alper **here with Mr. Thomas.**

THE COURT: Good to see you, Mr. Alper. And good to see you as well, Mr. Thomas.

And we also have Officer Ridley.

OFFICER RIDLEY: Good morning, your Honor.

THE COURT: How are you?

OFFICER RIDLEY: I'm well. Thank you. How are you?

THE COURT: I'm well. Thank you.

Mr. Thomas pled guilty on June 16th, 2021, to Counts 1 and 18 of the indictment for conspiracy to commit bank fraud and wire fraud and money laundering.

In accordance with Rule 32 of the Federal Rules of Criminal Procedure the United States Probation Office has conducted a presentence investigation and prepared a presentence report, a copy of which has been provided to both the government and the defense.

Mr. Alper, have you and your client had an opportunity to read and discuss the presentence report?

MR. ALPER: Yes, your Honor, we have.

THE COURT: Do you have any questions about the presentence report or any amendments now other than what's been previously filed?

MR. ALPER: No, sir.

THE COURT: According to the presentence report we have one unresolved issue. The government and probation agree the defendant should receive a four-level enhancement under 3B1.1(a) to account for the defendant's role in the offense. And the defendant objects to this enhancement.

I have reviewed the presentence report as well as the memoranda on this issue. But I would be happy to hear more from counsel on this issue before I rule on that objection.

Ms. Chaiken.

MS. CHAIKEN: Would your Honor like me to address the Court from the podium?

THE COURT: Wherever you're more comfortable.

MS. CHAIKEN: Your Honor, I'll be brief. I think our sentencing memorandum lays out our position on this.

Mr. Thomas, based on the evidence and based on the undisputed facts in the PSR, was clearly the mastermind of this PPP loan scheme. Of the 14 loans that are charged in the second superseding indictment, which is the most recent charging instrument in this case, he is responsible for every single one. There's only one other defendant who has been charged with each of those loans. That's Teldrin Foster, who assisted the defendant in fabricating documents related to those loans. But it was Mr. Thomas who was communicating with the recruiters, was directing them as to what documents to request, what documents he needed, what documents needed to be created. All of the documents were being sent to him from the recruiters. He was at the center of the scheme. The money trail bears that out as well.

Every single business owner that received PPP loan proceeds -- other than two businesses whose funds were frozen before we could do anything with them, but the 12 other business owners who received money sent hundreds of thousands of dollars to accounts that Darrell Thomas controlled. It was initially to his business, Bellator Phront Group and Elite Executive Services. Those were two businesses he controlled, that those businesses sent money to. Later on in the scheme he switched to using an account at Rapid Pay Card. And each of the businesses sent hundreds and hundreds of thousands of dollars to those accounts, which Mr. Thomas then used to buy luxury vehicles, jewelry and engage in other expenses for himself. And so his claimed right to such a large share of the proceeds, more than half of the proceeds flowed through his accounts, shows his leadership role.

We submitted some evidence with our sentencing memorandum that showed he was directing his co-conspirators about fabrication of documents. For example, we attached an e-mail where he directed Ricky Dixon to -- in the fabricated bank statement for D. Parker Holdings, which is one of the businesses that Ricky Dixon recruited, to make the payroll $324,000 for the month of February. And Ricky Dixon then sent back a fabricated bank statement with two payroll payments that added up to just about $324,000 in payroll.

We also attached some documents that showed that the recruiters were all sending their documents to Darrell Thomas, and that Darrell Thomas was then fabricating those documents with his co-conspirators.

So, again, he fabricated the documents. He's responsible for all 14 loans. He directed the recruiters. He is the one who set up the accounts that received the proceeds from the businesses. And every defendant that has been before the Court thus far has expressed in some way or the other that they were not the most culpable in this offense, that they were receiving instructions from others about what needed to be done, about what they needed to submit and that they were essentially following those instructions. And the evidence shows that it was

Mr. Thomas who was the one who was giving those instructions.

THE COURT: All right. Thank you.

Mr. Alper.

MR. ALPER: Thank you, Judge. I'll also be brief.

Obviously this was a large conspiracy and everyone had their own roles in it. Mr. Thomas's role was to process these applications, submit them and then disburse the proceeds. The other roles of the other people were to generate these false documents, submit them to Mr. Thomas and then receive the proceeds from him. So it's more of a service he's providing, and I don't think that equates to leadership, you know, compared to an accountant who prepares my tax return and tells me, hey, I need your 1099s, I need your receipts, I need this and a third, and then she files the return and I get the funds back from the refund, if I hopefully get a refund.

So he's not the mastermind. He's a piece of it. So I don't think the government has met its burden to establish a four-level role enhancement, which for him at his level correlates to seven more years on a guideline sentence, which I'll talk about when I talk about reasonableness. But I don't think -- when we're talking about that much time and you have all these different parts of this conspiracy, it doesn't show that he's the mastermind, the orchestrator or the leader. He's a participant. He's doing his job. The other folks in the conspiracy are doing theirs.

Thank you.

THE COURT: All right. Thank you.

Mr. Thomas is potentially seeking a significant sentence here. And as noted by Mr. Alper, this 3B1.1(a) would amount to an additional four levels and a lot more time. So I'm going to give a fairly extensive ruling on this, perhaps a little bit longer than you might expect. But I think given the gravity of the charges here and the what I think is a potentially very severe guideline range, I mean, if I apply 3B1.1(a), the guideline is 235 months to 293 months. I've been here for almost three years now and I am not sure I've seen a guideline sentence this high in that three years. Or if I have, it's only been -- it's been less than a handful. So bear with me while I read through my logic in my ruling here.

Where criminal activity involves five or more participants or is otherwise extensive, a defendant's offense level can be increased by four levels if the defendant was an organizer or leader of the criminal activity.

To receive 3B1.1(a), to receive adjustment under this section, the defendant must have been organizer, leader, manager or supervisor of one or more participants. That's application note two. I would also reference the *Brackins* case.

The defendant need not be the sole leader or kingpin of the conspiracy to be considered an organizer or leader. It applies -- the leadership enhancement applies even if the

defendant led or organized only one person.

To distinguish a leadership and organizational role from one of management or supervision, the Court should consider the following factors:

Exercise in 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.

That's application note four.

Not all these elements must be present in every case but the government must show the defendant's leadership or organizational role and extensive criminal activity. And that's from the *Alred* case, 144 F.3d 1405.

As to the first factor, 3B1.1 requires the exercise of some authority in the organization, the exertion of some degree of control, influence or leadership. And the government bears the burden.

In this case the defendant pled guilty to two counts of

the indictment. Count 1, conspiracy to commit bank fraud and wire fraud. And Count 18, money laundering. The defendant was involved in a fraudulent Paycheck Protection Program loan and money laundering scheme. The government and probation agree that the defendant should receive a four-level enhancement while the defendant objects to that enhancement.

Turning to the facts at hand. As to his particular role in the offense, the defendant submitted or assisted in the submission of 14 fraudulent PPP loans totaling a loss of over 11 Million. He also participated in the fabrication of supporting documents for each of these loans. And a substantial portion of the proceeds from the fraudulent loans were sent to Bellator Phront Group, Inc., or Elite Executive Services, Inc., companies owned by the defendant, and/or defendant's Rapid Pay Card account.

Having reviewed the facts related to the defendant's role in the offense, I'll consider these facts in light of the factors sentencing guideline 3B1.1, application note four. Under this analysis I find that the government has shown by a preponderance of the evidence that the defendant should receive a four-level enhancement for his role in the offense. I make this finding based on the factors set forth in the guidelines and Eleventh Circuit case law applying these factors.

First is the consideration of whether the defendant was a leader or organizer of the offense. Application note four sets out these factors. And they're also discussed in the *Gupta* case,

463 F.3d 1182.

The exercise of decision-making authority weighs heavily in favor of finding the defendant had a leadership role. He was responsible either directly or indirectly for procuring 14 fraudulent PPP loans. As part of that process he fabricated IRS documents and bank statements. The government has pointed to evidence that he instructed co-defendants in the fabrication of supporting documents and fabricated documents himself that he received from businesses seeking to obtain PPP loans. These facts show that he exercised decision-making authority.

As to the nature of the participation in the commission of the offense, that similarly supports the conclusion that he was a leader or organizer. His participation in the offense was extensive. He either submitted or assisted in the submission of these PPP loan applications. And an over $11 Million loss is attributable to him.

As to recruitment of accomplices, there is evidence that he directed third parties to recruit fake employees to advance the fraudulent loan scheme.

And as far as the claim right to a larger share of the fruits of the crime, that also points to the defendant as a leader of the activity. Nearly every business that obtained a fraudulent PPP loan with his assistance sent payments to accounts or businesses owned or controlled by the defendant. Nearly half of the -- or about half of the proceeds was deposited into a bank

account owned by him or his businesses.

Further, because he was involved in submitting 14 fraudulent loan applications, fabricating documents and submitting information, his degree of participation or organizing the offense weighs again heavily in favor of the government's argument that he held a leadership role.

The nature and scope of the illegal activity also supports a finding that he was a leader or organizer. The illegal activity in this case was serious and substantial in scope. As previously noted, the defendant's responsible for a loss of at least 11.2 Million and for defrauding multiple institutions.

And the government has presented evidence that the defendant exercised a notable degree of control and authority over others. He directed his co-conspirators to obtain fabricated documents such as false bank statements and to provide those documents for him for the purpose of obtaining the fraudulent loans.

Every factor need not be present to find that he had a leadership role as noted in the *Ramirez* case, 426 F.3d 1344. However, the factors weigh heavily here in favor of finding that he was a leader of the offense at issue -- the offenses at issue. He exercised a substantial decision-making authority here as well as his participation in the offense, his claimed rights to the fruits of the crime, the degree of his participation, the nature and scope of his activity all support this conclusion.

And as far as a determination whether the criminal activity involved five or more participants or was otherwise extensive, I think this factor is straightforward based on the number of individuals involved here.

It involved more than five participants and was extensive in scope. Therefore, I conclude that he had a leadership role and he did so in an extensive criminal offense that involved at least five participants. Ultimately, when comparing his role in the conspiracy compared to others and under the factors described above, I find that the government has shown the defendant should receive a four-level enhancement to account for his role in the offense.

And I will add that I think that that -- you know, the government's argued that it's overwhelming evidence here as to application of 3B1.1(a), and I agree that it's overwhelming in this case. And it does show that he was the mastermind here.

I think the cases that the government cited, including the *Galindo*, *Stinfort* and *Brackin* case, were all helpful as well.

Any additional objections or amendments other than that to the presentence report that we need to address?

MR. ALPER: Not from the defense, Judge.

MS. CHAIKEN: No, your Honor.

THE COURT: I will adopt the findings of fact and conclusions of law in the presentence report to which no objection was made.

As to the findings of fact and conclusions of law to which the defense objected, the Court finds that the defendant should receive a four-level enhancement for his role in the offense.

Based on the findings of fact and conclusions of law the guideline calculations for Count 1, conspiracy to commit bank and wire fraud, are as follows:

Base offense level of 7 and adjusted offense level of 39.

Based on the findings of fact and conclusions of law the guideline calculations for Count 18, money laundering, are base offense level of 33 and adjusted offense level of 41.

Under USSG 2S1.1, application note 6, Counts 1 and 18 are grouped pursuant to 3D1.2(c). The greater the adjusted offense level above is 41, which is therefore used as the adjusted offense level.

Accordingly, the guideline calculation offense levels is as follows:

Total offense level of 38;

Criminal History Category of I;

Recommended sentencing range of 235 to 293 months;

Fine guideline range of 50,000 to $29,497,572.70, or twice the loss;

Term of supervised release for Count 1 is two to five years, for Count 18 one to three years;

And a special assessment of $200.

Any objection to the guideline calculations as stated by the Court?

MS. CHAIKEN: No, your Honor.

MR. ALPER: No, Judge. Thank you.

THE COURT: I will now hear from the parties as to recommendations for a reasonable sentence concerning the 18 USC Section 3553(a) factors. I have reviewed the presentence report as well as the memoranda from the government and the defense and the character letters that were provided on behalf of Mr. Thomas.

Are there any other documents or letters for the Court?

MS. CHAIKEN: No, your Honor.

MR. ALPER: Judge, I had two that came in last night that I didn't get a chance to file. I was just going to mention them when I talked about 3553(a). They track -- they're from his sisters and they track what the other letters say. I don't think you need to review them, but I wanted you to be aware we did have two additional letters.

THE COURT: Thank you. I'm looking forward to hearing from you and your argument as to those as well.

Are there any victims present that wish to speak or present evidence in connection with the sentence in this case?

MS. CHAIKEN: No, your Honor.

THE COURT: Any witnesses on behalf of the defense?

MR. ALPER: No, your Honor.

THE COURT: Mr. Alper, I would be happy to hear from you now as to any argument in addition to your sentencing memorandum on behalf of your client. And then I'll hear from him as well.

MR. ALPER: Thank you, Judge.

You kind of, Judge, took the words out of my mouth when you said earlier that this 230 guideline range was one of the highest you've seen, if not the highest. I've been doing this for about 13 years, which is hard for me to say or believe, but I've never had a fraud case, you know, white collar fraud case where a client has pled guilty, accepted responsibility and is still looking at a potential 20-year -- close to 20-year guideline sentence.

The only fraud case that I had where a guy got 20 years, it was a tax fraud case in front of Judge Pannell many years ago. He went to trial. He testified against my advice, so he didn't get acceptance. And he had aggravated identity theft as well on top of that. And he got 20 years after that trial.

So for Mr. Thomas's situation I think it's a great illustration of how out of whack these guidelines are, especially when you start getting more down the chart or more up in levels, however you want to say it. As I said, 4 levels, from a 34 to a 38, is 7 years. When you do 4 levels and you add a 10 to a 14 or 12 to a 16, you're looking at maybe 10, 11 months, something like that. So once you start tacking on to an already lengthy sentence, it just shoots up by factors of a lot.

So I think, again, this just shows that the guideline, especially in fraud cases, as they are in other cases, are not equipped to deal with every type of situation. And that's why thankfully your Honor has discretion to deviate from those guidelines. And I think that's appropriate here.

The other problem with the guidelines in a fraud case is that they equate loss amount equally; meaning, if you steal money or defraud the government of $10 Million or if you have a Ponzi scheme and you wipe out $10 Million of folks' life savings, individual family victims, that's treated equally under the guidelines. And I don't think that's appropriate because the intents there are different. They're both wrong. I'm not diminishing defrauding the government, but I think the intent there is much more different and much more sinister when you're robbing from individual victims.

I had a case like that where -- that was in front of Judge Jones. He ran a Ponzi scheme and he took about two-and-a-half million dollars from 30 immigrant families here in Atlanta. And he just spent it all. He knew exactly what he was doing when he took their money and used it for his own purposes, knowing that it was going to bankrupt them. And he did it anyway and he got 70 months.

So, again, when you look at intent, when you look at harms to the community, I just don't think that adds up. Again, I'm not diminishing what he did. Neither is he. But I think you need to compare the overall harm and the impact on the community when you look at loss in this case.

PPP cases are huge now. I'm going to be doing them for the next five years or more probably because when this program started, everyone started ripping off the program. The government acknowledges that a large percentage of this money -- of all this money is probably fraudulent or has indicia of fraudulent activity. And that's not surprising. When I hear my PPP clients talk to me, they say -- they almost always say the same thing, that, Well, I knew I shouldn't have done it, I knew it was wrong, but to me it was a loan that I could pay back. And if there was a problem with the process, if there was a problem with what I did, I would just say all right and I would find a way to pay the money back.

Again, that's not an excuse. You can't get a loan fraudulently and expect to not suffer some consequences. That's why we're here today. But I do think when you look at the intent of Mr. Thomas, that wasn't just to rob the government blind and go crazy. He had a business, he was developing a real estate project. He expected to be earning a substantial portion of money from that project. And he felt he would use it as a form of a bridge loan in order to get the project up and running and then pay the money back.

Did he spend it on some things he shouldn't have as well? Yeah, he did. And he takes responsibility for that. But it wasn't this let's just rob everyone blind and go party.

So I think in this case for the reasons that I talked about, the guidelines just don't do it justice. I can't understand how we can rationally say that Mr. Thomas should be looking at 20 years in prison for a first-time offender in a fraud case with no history of violence, nothing like that.

So I respectfully ask the Court to consider that and consider a variance downward below the guidelines because, you know, the guidelines, they're not mandatory, thank God they're not, because they don't always make sense. And this is exactly that type of situation.

So we would ask for, as I said, a below-guideline sentence, your Honor. Thank you.

And Mr. Thomas, do you want him to address the Court now?

THE COURT: Yes. I was about to ask. Although let me explain to him.

Mr. Thomas, I've had the benefit of hearing from your counsel both through the materials that he's provided, but I would also be happy to hear from you in a moment.

Mr. Alper, before I do that, I think you referenced a couple letters you were going to tell me about from his sisters. Do you want to tell me about those?

MR. ALPER: Yes, your Honor. I forgot to mention that. Thank you.

But, yes, I did receive two additional letters from both of his sisters, all stating that he is a very important member of their family and having him being taken away from them for so long would be extremely difficult on the family. And they just ask your Honor for leniency. They understand that he has done wrong, he's made mistakes, but they're asking that your Honor show him mercy and let him come home soon. Thank you.

THE COURT: Thank you.

And, Mr. Thomas, your counsel stated you did want to make a statement, so I would be happy to hear from you now, sir.

THE DEFENDANT: Stand?

THE COURT: You can stand if you like. You can move that mic closer to you. You can stay seated. Actually it might be easier to talk into the mic while staying seated.

THE DEFENDANT: Excuse me, I'm a little nervous.

Thank you for -- thank you for your time today. First -- can you hear me?

THE COURT: Yes.

THE DEFENDANT: First I wanted to just elaborate on what my attorney said. There's a lot of documentation showing the development, which is very important to me. And I hope to still be able to get it done, you know, no matter where I'm at. But I do want to let the Court know that for all intents and purposes, yes, that was my -- I went about it the wrong way but that's exactly what I initially wanted to do this for.

I wrote a letter, I wrote a letter to you, so I'm going to read it now.

Your Honor, thank you for your time today. First and foremost, I would like to say I take full responsibility for my actions and I apologize.

Growing up I was exposed to love, both parents and wonderful siblings, along with a few adopted children that I helped my parents raise. My parents made sure that we never experienced poverty, but I saw the constant worry and fear of losing the things that they worked for. When my father's health deteriorated to the point where he was admitted to hospice care, I understood then watching my mother struggle to hold things together poverty is always a decision or a paycheck away.

I experienced firsthand the sacrifices that you make for family when I had my first son. The feeling of his heartbeat as we slept together a few nights after he was born and just touching him, I realized then and I vowed that I would do anything to keep my family close.

Leaving from Louisiana after doing construction following Katrina I obtained a job doing maintenance in an apartment complex. And due to squabbles in the family I was homeless at the time, but the manager allowed me to live there while working on the vacant units until I earned enough money to get a place for my family. That situation always stayed with me, your Honor, and it's the driving factor for me to always achieve

the things that I set out for. Unfortunately, I took improper steps to get there, which has led me here today.

I've never been in trouble, Judge Boulee. I've always been the person to steer people away from things that could get them into trouble and try to be a voice of reason. I don't plan on ever being in trouble again.

During this incarceration the violence, beatings, stabbings and death that I've witnessed, coupled with the loneliness and inability to touch my children has broken me. If given -- if given the opportunity by you, I would like to be able to take my youngest son to his first day of kindergarten. Hearing him call me dad through a video visit, it makes me happy but at the same time it breaks my heart because -- I'm sorry, I'm sorry -- because I know I should be there with him now.

Any stipulations that could release me to these boys, my three, they're welcomed. They'll be followed. I'm a very hard-working person. And I've always went above and beyond in any endeavor that I tried to undertake, from construction to going overseas to procure rough diamonds to come back and sell. That determination and drive I know will help me pay back my restitution in full. But it will also provide jobs for other people, which is one of the things that I've always tried to do but unfortunately I did things the wrong way.

I do have a clear-cut plan for my future and for this restitution. From a person whose last brush with the law was a

speeding ticket and last brush with violence involved me being pistol whipped and robbed over the course of hours while overseas to being exposed to living with men who have been locked up, some before puberty, this last year has been a living nightmare. Incarceration hurts. And you don't realize it until you've been through it.

So, your Honor, I'm asking you to make an investment in me and go below the guidelines so that I can come out and do better and be an example that there are other ways to rehabilitate without oppressive sentences. I know I can achieve the goals that I've set out for, even after this setback and my poor decisions.

Thank you.

THE COURT: All right. Thank you, sir.

Does the government wish to respond?

MS. CHAIKEN: Yes, your Honor.

THE COURT: Okay. Go ahead.

MS. CHAIKEN: I'm going to come to the podium because it's easier.

THE COURT: Sure.

MS. CHAIKEN: Thank you, your Honor.

I want to start out by acknowledging that we recognize that this is a very significant sentence, especially in a white collar case. Like you, it's the highest one that I have seen in my time practicing, which I think is similar to yours in this building.

However, that is a guideline range that is largely driven by the various guideline enhancements that squarely apply in this case. And we think it does support the recommendation of a low-end guideline sentence. We think that the very unique conduct in this case does support that recommendation.

Starting first with the seriousness of the offense. As the Court knows, it happened in the context of an unprecedented global crisis. Many struggling small businesses were not able to stay open, were struggling to pay their employees, which had far-ranging impacts on the employees, their families and the entire community. And the PPP program was purposefully designed to have streamlined procedures so that business owners could get this money into their hands quickly. And part of that streamlined procedure was not very many checks and balances within the program. The lenders could rely on representations in the application and on documentation without verifying it. And Mr. Thomas took advantage of those streamlined procedures in order to get money for himself quickly knowing that he would be able to do it without much of a dive into the supporting documentation that he had fabricated.

And one of the aspects of this program was that there was a limited pot of money. There was only a certain amount of money that was available and whichever businesses got to it first were able to apply, were the ones that got the money. So every single dollar that was taken by Mr. Thomas was a dollar that was

not made available to other legitimate small business owners who needed that money in order to keep their employees on the payroll, to support their families and to try to stay open during this pandemic.

Mr. Alper spoke about impact on the community and taking someone's life savings versus stealing from the government. But this was not just government funding, it was funding that was made available to try to keep struggling small business owners in business and to keep their employees employed. And the money that Mr. Thomas took did have an actual impact on those other businesses that were not otherwise able to get funding or to have the opportunity to apply for that funding.

Mr. Thomas's actions also caused harm to his co-defendants who have been before this Court. There are 22 other defendants who have been or are still before this Court in connection with Mr. Thomas's scheme. And to be clear, they made their choices and they made bad choices and wrong choices to steal this money and to participate in Mr. Thomas's scheme. But I think from the people that the Court have seen before it, many of whom did not have criminal histories, many of whom have never engaged in this kind of conduct, they would not have engaged in that conduct if it were not for Mr. Thomas bringing them into his scheme, encouraging them, enabling them to commit this fraud. And they've also been impacted by his actions. He's brought all of those people down with him.

Mr. Thomas's offense was motivated by greed. He has tried to say that this was meant to be for a development or for a property and that this was some sort of investment, but the money shows otherwise. He used the money to buy luxury cars, to buy jewelry. He took out massive amounts of cash. And after his arrest when he still had $3 Million that he laundered, and I'll get to that in a moment, he didn't use that to buy property or to make an investment, he took that money out in cash, millions and millions of dollars in cash. And so the fact is there is -- I think the government seized around $4 or $5 Million of the $11 Million in PPP funds. The rest of the money is unaccounted for. There's no development, there's no property, there's no investment to show for it, so that belies the claim that this was motivated by some sort of investment.

I think it's also important to note, your Honor, that this wasn't a momentary lapse in judgment. The applications and money laundering continued for more than six months, including after Mr. Thomas's money had been frozen by the FBI, after it had been seized, after he had been served with subpoenas, after he had been arrested. It wasn't a split-second, heat-of-passion decision. It was a calculated ongoing decision to continue to commit this fraud every day for months, even after he knew that he was under investigation and even after he had been indicted for this conduct.

Another important aspect of the seriousness of the offense is the sophistication. And, in particular, I think the Rapid Pay Card money laundering is the most -- is the part that most underscores that. And so I'll just explain a little bit of that because I'm not sure how much of that was in our sentencing memo.

But Rapid Pay Card is a legitimate payroll company that allows employers to issue payroll cards to their employees so that instead of doing direct deposit or instead of giving them paper checks, each employee gets a debit card that they can then use to make cash withdrawals, to make purchases, to transfer money, et cetera. And Mr. Thomas used that legitimate company in order to try to conceal the fraud and to launder the proceeds from it. So he recruited over 100 people who gave their personal information, some voluntarily and some not, to serve as fake employees. And he issued over 150 payroll cards in those people's names. When he was arrested, 9 of those payroll cards were found in his home. So those fake employees didn't actually have the cards, those were cards that Mr. Thomas used for himself and for his co-conspirators to launder the money and to make it look as if these businesses were sending money for payroll when really they were just sending money to Mr. Thomas and his co-conspirators.

And that also, your Honor, undercuts the claim that this was just going to be a loan that could be paid back. There was never a plan to pay back this loan. The entire scheme was designed to obtain fraudulent forgiveness. That's why all the money that the businesses spent and sent to Mr. Thomas were labeled as being for payroll or for rent because those were approved expenses. And the plan was to then submit to the lender documentation showing that when the business received its proceeds, it sent the money to Rapid Pay Card for payroll, when really that was just Mr. Thomas taking the money out in cash on the back end.

So this offense was serious, your Honor. It lasted for a long time. It involved a significant amount of money. And it was money that was stolen from people who desperately needed it during a time -- an unprecedented time in our country.

As far as history and characteristics and deterrence, your Honor, I'll address those together because there's some overlap. Both specific and general deterrence are critically important here and are relatively unique in the context of a white collar offense.

This is Mr. Thomas's first time being charged with a crime, but it's not his first time committing a crime. He just didn't get caught last time. He committed a massive auto loan fraud scheme before he started his COVID relief fraud scheme. He's accepted responsibility in his plea agreement to that separate scheme, which involved at least 44 fraudulent automobile loans totaling more than $2.4 Million. So that was another separate fraud that he committed. That shows this is not the first time he's done this.

As far as this offense the timeline here really shows the need for specific deterrence and the fact that Mr. Thomas has not been deterred by any steps in the criminal justice process that normally would deter a first-time offender. Bellator and Elite's accounts, which were Mr. Thomas's accounts, were frozen by mid-June of 2020, at which point he would have known there was some indication that he was being suspected in engaging in some sort of fraudulent activity. The funds in those accounts were seized, all of them, around the end of June of 2020.

On July 1st we served grand jury subpoenas on both Bellator and Elite, which would have put Mr. Thomas again on notice that there was an FBI investigation or an investigation into PPP loans associated with those businesses. At that time he continued submitting loan applications. There's at least five loan applications that were submitted after the time that his funds were frozen. And even more after the time that the grand jury subpoenas were served. Mr. Thomas was indicted under seal on August 5th of 2020 and arrested on August 6th of 2020.

And one thing to mention, your Honor, is that one of the things that Mr. Thomas agreed to in his plea agreement and that the evidence shows is that he provided fabricated documentation to the grand jury in response to that subpoena. So, again, not deterred, continued to believe that he could perpetuate his fraud and that he could get out of it.

He continued submitting fraudulent loan applications.

And then after he was arrested and released on bond, he laundered more than two-and-a-half million dollars through the Rapid Pay Card account between August and around October of 2020. That's the conduct that ultimately led to him having his bond revoked by Judge Vineyard.

And the government agreed as part of the plea agreement not to file an enhancement under Title 18 United States Code, Section 3147 for committing an offense while on release. But if the government had done so, that would have increased Mr. Thomas's guidelines by three levels. It would have taken him to 324 months as the low end, nearly seven-and-half years higher. So he's already received a benefit from the plea agreement. But the fact that he continued to commit what in and of itself would have been a massive money laundering scheme, almost $3 Million, while he was on release for these very serious charges shows that he was not deterred by any of those steps that for everyone else in this case deterred them from continuing to engage in those actions. It didn't have that impact on him. And that's why significant sentence is needed to deter him from committing fraud in the future.

He has accepted responsibility. He pled guilty. He as part of his cooperation agreement did come in for a lengthy proffer. He provided information that is -- was relevant to our investigation as well as to a separate investigation in another district. And we do view that as a good first step in the

cooperation. We're not at the position at this point that we could file a 5K. And we think there's more work that he would need to do before we would be in a position to file a Rule 35 motion it would be at that point. But we did want to let the Court know that he has engaged in those activities.

But despite his acceptance of responsibility, he continues to minimize his conduct and to show that he does not fully grasp the impact that it had on those around him, on the community. He does not acknowledge his role as the mastermind of the offense. He attempts to paint it as some sort of investment or property development that he was going to do when the evidence shows otherwise. So his acceptance of responsibility and his expression of remorse, while it's obviously worthy of being considered, it doesn't outweigh the other very significant factors here with respect to his history and characteristics and deterrence.

General deterrence is also a key factor here in this kind of sentencing because it's a white collar case. White collar crime is a rational decision. It's not a heat-of-the-moment, split-second decision. It's an economic decision that what is to be gained is worth the potential of what is -- what the cost is. And a 48-month sentence, which is what Mr. Thomas has requested, for the scale of the fraud that he committed here would be a slap on the wrist. It would be unlikely to deter almost anyone from committing this type of fraud especially because, your Honor, as I

said, more than half of the money that has been taken is unaccounted for. We seized $4 or $5 Million of it, but we don't know where the rest of it is. And it may be sitting somewhere in a bank account in someone else's name waiting to be used once Mr. Thomas comes out of prison. We don't know. But if someone can commit this type of fraud and get over $11 Million and then get a 48-month sentence and come out on the other side a millionaire, there's people who would choose that bargain. There's people who would deem that worth the cost especially since this type of crime is difficult to detect and prosecute. And that's something that the Eleventh Circuit has highlighted a particularly relevant area for general deterrence where there's not a high likelihood of getting caught.

In the context of the PPP there was a lot of fraud and the government has limited resources. People are not going to be prosecuted for every fraud that they committed as part of the PPP program. And for that reason when people do get caught and do get prosecuted, a significant sentence is needed in order to send that message.

As far as unwarranted sentencing disparities, your Honor, every defendant that the Court has sentenced thus far has been involved in only one loan, either as a recruiter or as a business owner, but only one loan. Mr. Thomas was involved in 14 loans and was the mastermind, as the Court has found.

With two exceptions all of the defendants received a low-end guideline sentence according to their guidelines. And the exceptions were Charles Hill, who had a rare autoimmune disease. And for that reason we recommended that he serve the same length of time as his low-end guideline sentencing but in home confinement rather than in prison. And Andre Gaines, who pleaded guilty to making false statements to law enforcement, he did not plead guilty to a conspiracy count. And he had unique circumstances in terms of his age and his cognitive condition that warranted a downward variance.

But Mr. Thomas's conduct was vastly different than the conduct of each of the defendants that the Court has sentenced thus far. And giving him a sentence that varies so far below his guideline range would create unwarranted sentencing disparities with those defendants who are serving guideline sentences.

Finally, your Honor, with respect to restitution, the Eleventh Circuit has held, and we cited a case in our brief, that the fact that there's a high restitution amount doesn't weigh in favor of a lower sentence because that would create backwards in sentence essentially where a higher loss amount would be to lower prison sentences so people could pay restitution.

There has not been a financial disclosure made in this case. There has not been any voluntary restitution payment made. And the evidence in the case shows that Mr. Thomas has used accounts in other people's names and has put assets in other people's names in order to hide -- and to hide those assets. For

example, your Honor, when Mr. Thomas was arrested, we had a seizure warrant for a Mercedes vehicle. At that time Mr. Thomas told the agents that the car had been sold and so we didn't seize it at that time. We later learned that Mr. Thomas moved to Florida after he had been arrested and released on bond and that he was living in a condo building down there in a lease that was signed in other people's names and the Mercedes was parked in that parking garage where Mr. Thomas was living and we were then able to seize it.

But multiple of the money laundering transactions that are involved in this scheme involve accounts that were in other people's names. And we have text messages between Mr. Thomas and those people showing that he was the one directing all of those transactions through those accounts. But that is money that, you know, is in another individual's name. And we have no way of knowing what other assets he has out there that are in other people's names. All we know is his practice and what he has done so far is to prevent us from being able to find those assets as easily by putting them in other people's names. So the ability to pay restitution I don't think should way in favor of a downward variance in this case.

So, again, your Honor, based on the seriousness of the offense, the history and characteristics of the defendant, the very unique need for specific deterrence and general deterrence and the need to avoid creating unwarranted sentencing disparities

we recommend a sentence of 235 months.

THE COURT: Thank you, Ms. Chaiken.

MS. CHAIKEN: Thank you.

THE COURT: Is there any other matter that the Court needs to take up or anything else from either side before I issue a sentence in this case?

MR. ALPER: Not from the defense, Judge.

MS. CHAIKEN: No, your Honor. Thank you.

THE COURT: All right. Thank you.

Mr. Thomas, if you could please stand, sir.

Pursuant to the Sentencing Reform Act of 1984, it's the judgment of the Court that you, Darrell Thomas, are hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 180 months custody as to Count 1 and Count 18 to be served concurrently. Sir, you can have a seat while I read the remainder of your sentence.

You must pay the United States a special assessment of $200 due immediately. The assessment should be paid to the Clerk, US District Court, Northern District of Georgia.

The Court finds you do not have the ability to pay a fine and cost of incarceration, the Court will waive the fine and cost of incarceration in this case.

It is further ordered that you shall make restitution in the amount of $13,206,752.10 to the following victims:

CDC Small Business Finance, $2,406,727.80. And that will be -- each of these will be -- well, this one will be jointly and severally with Meghan Thomas, Amanda Christian, Charles Hill, IV, Teldrin Foster, Dwan Ashong, Denesseria Slaton, Jesika Blakely, Ricky Dixon, El Hadj Sall, Ryan Whittley and Rick McDuffie.

Harvest Small Business Finance $2,285,341.68 jointly and severally with Meghan Thomas, Derek Parker, Ricky Dixon, Teldrin Foster, Dwan Ashong and Charmaine Redding.

Cross River Bank $2,393,113.19 jointly and severally with Khalil Green, Jesika Blakely, Teldrin Foster, Bern Benoit, Amanda Christian, Charles Petty, Denesseria Slaton, Jerry Baptiste, John Gaines, Andre Gaines and Carla Jackson.

Small Business Administration DFC $1,478,198.82 jointly and severally with Meghan Thomas, Amanda Christian, Charles Hill IV, David Belgrave, Teldrin Foster, Dwan Ashong, Denesseria Slaton, Jesika Blakely, Ricky Dixon, El Hadj Sall, Ryan Whittley, Jerry Baptiste, John Gaines, Andre Gaines, Carla Jackson, Charles Petty, Bern Benoit, Khalil Green and Derek Parker.

Customers Bank $1,456,940 jointly and severally with Meghan Thomas, Amanda Christian, Dwan Ashong, David Belgrave, Ricky Dixon, Jesika Blakely, Denesseria Slaton and Teldrin Foster.

PNC Bank of $1,193,500.

Celtic Bank $781,638.61 jointly and severally with Ricky Dixon and Teldrin Foster.

State Farm Bank $527,127.

Digital Federal Credit Union, $227,365.

Bank of America $140,000.

Navy Federal Credit Union, $104,000.

Regions Bank $85,000.

Del Norte $57,000.

BB&T $40,000.

USAA $30,800.

Restitution shall be paid in full immediately.

You must pay the above-noted financial penalties in accordance with the schedule of payment sheet of the judgment. Payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties except those payments made through the Federal Bureau of Prisons Inmate Financial Responsibility Program are to be made payable to the Clerk, US District Court, 2211 US Courthouse, 75 Ted Turner Drive, Southwest, Atlanta 30303.

Any balance that remains unpaid at the commencement of the term of supervision shall commence within 60 days after release from imprisonment on the following terms:

Payable at a rate of no less than 250 monthly to the US District Court Clerk. You must notify the Court of any changes in economic circumstances that might affect the ability to pay this financial penalty.

The Court determines that you do not have the ability to pay interest and it is ordered that the interest requirement is waived for restitution.

Forfeiture. Forfeiture of your right, title and interest in certain property as specifically set forth here is ordered consistent with the plea agreement and as set forth in the consent preliminary forfeiture order filed August 4th, 2021.

That's already in that order. Does anyone believe I need to read this into the record?

MS. CHAIKEN: No, your Honor.

MR. ALPER: No, sir. Thank you.

THE COURT: All right.

Supervised release. Upon release from imprisonment you'll be on supervised release for a term of five years on Counts 1 and 3 -- and 3 years on Count 18 to be served concurrently for a total term of 5 years.

You must comply with the mandatory conditions of release.

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of a controlled substance.

The drug testing condition is suspended based on the Court's determination that you pose a low risk of future substance abuse.

You must cooperate in the collection of DNA as directed by the probation officer.

You must make restitution in accordance with 18 USC, Sections 2248, 2259, 2264, 2327, 3663, 3663(a) and 3664.

As part of your supervised release you must comply with the standard conditions of supervision. These conditions are imposed because they establish basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the Court and bring about improvements in your conduct and condition. The standard conditions of supervision will be included in the judgment.

You must comply with the following special conditions during the term of supervised release:

You must make full and complete disclosure of your finances and submit to an audit of your financial documents at the request of your probation officer.

You must provide the probation officer with full and complete access to any requested financial information and authorize release of any financial information. The probation office may share the financial information with the United States Attorney's Office.

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

You must submit your person, property, house, residence, vehicle, papers, computers, other electronic communications or data storage devices or media or office to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you violated a condition of your supervision and that areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and within a reasonable manner.

You must permit confiscation and/or disposal of any material considered to be contraband or any other items which may be deemed to have evidentiary value of violations of supervision.

The Court does not have the authority to select the detention facility but can recommend a specific detention facility and the Bureau of Prisons will ultimately decide.

Mr. Alper, are there any particular requests on that front?

MR. ALPER: Could your Honor request a designation in the State of Florida, please.

THE COURT: Yes.

MR. ALPER: Thank you.

THE COURT: I hereby respectfully recommend to the Bureau of Prisons that Mr. Thomas be housed in the State of Florida.

This sentence is made in view of the sentencing goals

delineated in 18 USC, Section 3553(a) and the parties' arguments as to those factors, including the nature and circumstances of the offense and the history and characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense, to afford adequate deterrence and to protect the public, the kinds of sentences available, the kinds of sentence in the sentencing range established for the applicable category of offense committed as set forth in the sentencing guideline, any pertinent policy statement, the need to avoid sentencing disparity and the need to provide restitution to victims.

The sentence meets the criteria of punishment, deterrence and incapacitation and is sufficient but not greater than necessary to comply with the directives of Section 3553(a).

Based on these considerations I find that this is a just and appropriate sentence particularly in light of the following factors:

First, as far as the nature and circumstances of the offense and to reflect the seriousness of the offense I believe that this indeed was an incredibly -- these are incredibly serious offenses as outlined in the government's memorandum. Many American businesses were struggling at the onset of the coronavirus. And Congress passed the PPP loans as a way to provide relief for those struggling businesses. And instead the defendant took advantage of those loans and convinced others to join in his scheme and stole from the taxpayers' funds and

deprived other legitimate business owners of the opportunity to obtain the financing that they needed to purchase, among other things, luxury vehicles and jewelry. This involved 14 such loans. And it was a calculated and methodical offense. It was a sophisticated offense, even involving the use of a legitimate payroll company to launder the proceeds.

I'm also cognizant of the defendant's history and the auto loans, fraudulent auto loans in the amount of $2.4 Million as well here.

I will say, though, when I look at this defendant and his history and characteristics, I am sympathetic in some regards. I have read in the PSR -- the PSR notes that he reported diagnoses of depression and anxiety while housed at the Robert A. Deyton Detention Facility and was prescribed Lexapro and Artane. And the defense further clarified in response to that that in addition to those medical issues Mr. Thomas has been suffering night terrors, cold sweats and has had trouble sleeping and, again, is taking medication for those health issues.

I'll tell you, I agreed with a lot of what Ms. Chaiken said, but having been to the Robert A. Deyton facility, I'm not sure many people would want even 48 months there in exchange for $11.2 Million. So I am very cognizant of what his confinement thus far, how that's affected him.

I'm also, you know, very troubled for the situation this puts his four (sic) boys in. Caleb -- and these ages might be a little bit off, but Caleb 14, Brett 12 and Dominick age 1. I assume they've maybe gotten a little bit older since this was written. But to give him a 235-month sentence, almost 20 years, and basically make it so those three boys don't have a father for almost 20 years I was not convinced I should do here when I look at his history -- his characteristics and those three boys.

As far as disparities in sentence are concerned, I do not think this sentence of 180 months creates an unwarranted sentencing disparity. There are other defendants in this case that received much lesser sentences but none of them are similarly situated to the defendant. They are either individual business owners or recruiters who recruited business owners to participate in this scheme. None of them played as significant of a role as the defendant did here. They participated in 1 loan versus the 14 loans at issue here.

Ultimately I was asked by the defense to vary downward. The defense would have had me -- the defense didn't state a specific amount today I don't think. I think in the sentencing memorandum the defense asked for 48 months. I was not prepared to vary downward that extensive amount. But I did opt to vary downward 4 offense levels to a range that included 180 months.

The record should reflect that my sentence here would have been the same irrespective of my ruling on the disputed guideline issue that I resolved in favor of the government. In other words, I would have sentenced the defendant to the same term of incarceration even if I had not ruled in the favor of the government on those grounds.

Before I advise the defendant on his appeal rights, does the government or defense have any further objections to the findings of the Court, the guideline calculations or sentence or manner in which it's been pronounced?

MS. CHAIKEN: Your Honor, no objections. The one thing is that since the preliminary order of forfeiture was filed, there was one additional asset seized. It was the funds that were remaining in the Rapid Pay Card account. I do have a supplemental consent preliminary order of forfeiture and I would ask the Court to file that and pronounce the forfeiture as to that asset as well.

THE COURT: Sure. Thank you.

Any objection by the defense?

MR. ALPER: No, sir. Thank you.

THE COURT: I've signed the supplemental consent preliminary order of forfeiture to include that additional amount.

MS. CHAIKEN: Thank you.

THE COURT: Nothing on behalf of the defense?

MR. ALPER: That's correct, Judge. Thank you.

THE COURT: Mr. Thomas, you can appeal your conviction if you believe that your guilty plea was somehow unlawful or involuntary or if there was some other fundamental defect in the proceedings that was not waived by your guilty plea.

You also have the statutory right to appeal your sentence under certain circumstances, particularly if you think the sentence is contrary to law. However, a defendant may waive those rights as part of a plea agreement and you've entered into a plea agreement which, with very limited exceptions, waives most of your rights to appeal the sentence itself. Such waivers are generally enforceable, but if you believe the waiver is unenforceable, you can present that theory to the appellate court.

With few exceptions, any notice of appeal should be filed within 14 days of judgment being entered in your case. If you're unable to pay for the cost of your appeal, you may apply for leave to appeal in forma pauperis, or without payment of fees. If you so request, the Clerk of Court will prepare and file a notice of appeal on your behalf. On appeal you may also apply for court-appointed counsel.

If you have any further questions about your right to appeal, I'm sure Mr. Alper would be happy to advise you further on this matter.

Mr. Thomas, do you have any questions about anything I've said at today's sentencing hearing, sir?

THE DEFENDANT: No, sir. No, your Honor.

THE COURT: All right.

Counsel, anything else that we need to discuss this afternoon?

MS. CHAIKEN: Not for the government, your Honor. Thank you.

MR. ALPER: No, sir. Thank you.

THE COURT: All right. Thanks to all of you for the materials and for the arguments today.

Ms. Oduka, thank you.

Ms. Coudriet, thank you.

To the court security officer and the deputy marshals, I appreciate their assistance this morning as well.

Mr. Thomas, I know it may seem ungenuine for me after giving you 15 years in federal prison to wish you the best of luck, so I won't be flippant and say best of luck to you. I will say, though, that I struggled very much with your case and with this sentence.

The crime was egregious. And the amount of money involved is astronomical. So I felt that the sentence needed to be a stern one. But as noted, I considered all of those factors, but I did think about what your confinement has done to you and how hard it can be to be confined, especially to be away from your boys. And I'm sorry for you, that you're not with them. But I'm even more sorry for the three of them that you're not with them, especially your youngest who will lose out on having a father at least with him physically.

But I genuinely hope that you can do everything you can do to still be a part of all of their lives. I think it's certainly easy not to be and probably a lot harder to be a part of

their lives, but I certainly do hope that you can find a way to still be an important part of their lives, sir.

I believe Mr. Alper has done an excellent job of convincing me that the full 235 the government had requested was not necessary here. So I hope that that will at least give you a little more time with your sons by varying downward four levels, not as much as he would have liked me to or you would have liked me to but certainly some more time with your sons.

Again, I don't mean it to be flippant but I do wish you luck. And I wish you success with staying a part of your sons' lives in some way.

All right. That concludes this proceeding. Thank you, everyone.

(PROCEEDINGS REPORTED WERE CONCLUDED AT 12:20 P.M.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 10th of November, 2022.

Penny Pritty Coudriet

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER