IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 23-cr-00074-NYW

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DEJANE REANIECE LATTANY,

Defendant.

GOVERNMENT'S SENTENCING STATEMENT AND
RESPONSE TO DEFENDANT'S SENTENCING MEMORANDUM (ECF NO. 19)

At the August 15, 2023 sentencing hearing, the government will respectfully request that the Court sentence defendant Dejane Reaniece Lattany to 51 months' imprisonment, followed by 3 years' supervised release. The government will further request that the Court enter a restitution order for $3,526,369.51, which represents the full amount of loss sustained by the victims of the defendant's scheme.

The United States Probation Officer recommends a sentence of 48 months' imprisonment, followed by 3 years' supervised release. (ECF No. 22-1 at 2.) The defendant requests a term of imprisonment of 45 months' imprisonment. (ECF No. 19 at 3.)

I. <u>Guideline Calculation</u>

Following the defendant's guilty plea to one count of wire fraud in violation of 18 U.S.C. § 1343, the United States Probation Office submitted to the Court a presentence investigation report calculating the defendant's offense level at 24 and criminal history category at II, which results in a guidelines range of 57–71 months' imprisonment. (ECF No. 22 ("PSR") ¶¶ 54, 59, 93, ECF No. 22-1 at 2.)

The defendant's criminal history category was I at the time of her Change of Plea Hearing on April 26, 2023. Thereafter, on May 22, 2023, the defendant pled guilty to felony Medicaid fraud – alter/false/conceal record in Denver County District Court (Case No. 2022CR6134). On the same date, she was sentenced to 2 years' imprisonment in Colorado Department of Corrections, to run concurrently to any sentence imposed in this case, followed by 2 years' parole. (PSR ¶ 56.) As a result of that state sentence, the defendant's criminal history category increased to II. (*Id.* ¶ 59.)

The government agrees that the Probation Office's calculation of the defendant's criminal history is an accurate statement of the defendant's criminal history. *See* USSG §§ 4A1.1(a), 4A1.2, cmt.1. Nonetheless, the government believes a sentence of 51 months—the bottom of the guideline range in effect at the time of the defendant's Change of Plea Hearing—is a sentence that is sufficient, but not greater than necessary, to accomplish the goals of sentencing.[1]

II. <u>The Government's Requested Sentence Will Effectuate the Goals of 18 U.S.C. § 3553(a)</u>

During sentencing, the Court must calculate the sentencing range recommended by the United States Sentencing Guidelines ("USSG") and consider the sentencing factors set forth in 18 U.S.C. § 3553(a). *See United States v. Barnes*, 890 F.3d 910,

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[1] To the extent that the Court agrees with the Probation Office's calculation of the criminal history category, the government respectfully requests that the Court construe the government's sentencing statement as a motion for a downward variance.

915 (10th Cir. 2018). A sentence of 51 months' imprisonment appropriately balances the § 3553(a) factors, particularly the nature and circumstances of the offense and the history and characteristics of the defendant, as well as the need for the sentence to reflect the seriousness of the crime, deter future criminal conduct, and avoid unwarranted sentencing disparities.

A. Nature and Circumstances of the Offense

This case involves an individual who filed fraudulent Economic Injury Disaster Loan ("EIDL") and Paycheck Protection Program ("PPP") applications to obtain more than three million dollars of funds that were intended to serve as a lifeline for struggling businesses during an unprecedented global pandemic. These funds were neither free nor unlimited: through the Coronavirus Aid, Relief, and Economic Security Act, Congress authorized limited pools of funds that ran out, after which time businesses could no longer take advantage of the programs.

Significantly, the defendant's actions were not a momentary lapse of judgment or a one-time mistake. Over the course of 19 months—between June 2020 and January 2022—the defendant submitted at least fifteen fraudulent EIDL applications (and subsequent modification requests) and at least twelve fraudulent PPP applications to the SBA and lenders on behalf of eight businesses that she purportedly owned and operated: Aggies Angels Care Providers, A&L Care Systems, IGU Management, Mind Set Consulting, NB Marketing, Open Arms Secure Watch LLC, Rocky Ridge Consulting, and a sole proprietorship in her own name. In these applications, she made false representations and certifications regarding, *inter alia*, her businesses' number of employees and average monthly payrolls, the businesses' gross revenues and cost of goods sold, her ownership of other businesses, and her intent to use loan proceeds only for business-related purposes in accordance with the PPP and EIDL program guidelines. The defendant further submitted fabricated documents to support her false statements regarding her businesses, including fabricated tax documents, wage statements, and financial documents.

As a result of her scheme, the defendant obtained five EIDLs totaling $430,000, three Economic Injury Disaster Grants ("EIDGs") totaling $20,000, and ten PPP loans totaling $2,887,976.94. She then sought—and obtained—loan forgiveness for many of these PPP loans by falsely certifying that she used the loan proceeds in accordance with PPP requirements, thus ensuring that the cost of her fraudulent PPP loans would be borne by the American taxpayer. And she did not stop there. She intended to obtain additional fraudulent EIDLs, EIDGs, and PPP loans totaling approximately four million dollars. As set forth in the Plea Agreement, the total amount of the EIDL, EIDG, and PPP applications, funded and unfunded, attributed to the defendant is $7,339,008.94. (ECF No. 13 at 14 n.4.)

After receiving seven-figures worth of (illicitly obtained) pandemic-relief funds, the defendant used the bulk of these funds for non-business purposes. She transferred significant sums to her own bank accounts, transferred funds to her relatives, purchased a 2009 Hummer H2 SUT Luxury vehicle, made payments on a 2008 Hummer Utility Passenger vehicle, purchased real estate in Commerce City, Colorado, and paid off credit card bills. (PSR ¶¶ 27–37.) Her frivolous spending surely would have continued without the government's swift pursuit of civil seizure orders, the proceeds of which represent the large bulk of what has been and can be quickly recovered as a result of this fraud.

The nature and circumstances of the defendant's offense warrants a sentence of 51 months' imprisonment.

B. History and Characteristics of the Defendant

The defendant is 33 years' old. While this defendant appears to have had a difficult childhood, the PSR and numerous letters submitted on her behalf suggest that she has the benefit of supportive family members. She has also had numerous educational opportunities and has previously operated her own businesses, suggesting that she had other opportunities to make legitimate income. As the Seventh Circuit has recognized, "[c]riminals who have the education and training that enables people to make a decent living without resorting to crime are more rather than less culpable than their desperately poor and deprived brethren in crime." *United States v. Stefonek*, 179 F.3d 1030, 1038 (7th Cir. 1999).

However, this is not the defendant's only run-in with the law. In May 2023, the defendant pled guilty in Denver County District Court to Medicaid fraud and waste under Colorado Revised Statute § 24-31-808(1)(g), (4). She was sentenced to two years' imprisonment to be served concurrent to any term of imprisonment imposed in the instant case, followed by 2 years' parole, and was further ordered to pay restitution in the amount of $372,150.47. The fact that this is the defendant's second conviction demonstrates the need to impose a sentence of imprisonment that provides specific deterrence.

C. General Deterrence and Public Protection

The need for a significant sentence to protect the public and provide general deterrence is particularly pronounced within the context of white-collar crime. *See United States v. Sample*, 901 F.3d 1196, 1200 (10th Cir. 2018) (recognizing that "[d]efendants in white-collar crimes often calculate the financial gain and risk of loss, and white-collar crime therefore can be affected and reduced with serious punishment" (quoting *United States v. Kuhlman*, 711 F.3d 1321, 1329 (11th Cir. 2013))); *United States v. Musgrave*, 761 F.3d 602, 609 (6th Cir. 2014) ("Because economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence." (quoting *United States v. Peppel*, 707 F.3d 627, 637 (6th Cir. 2013))).

Accordingly, the government believes that a sentence of 51 months' imprisonment is needed to provide general deterrence and promote respect for the rule of law.

D. A Sentence of 51 Months' Imprisonment Is Needed to Avoid Unwarranted Sentencing Disparities

The government's requested sentence also avoids unwarranted sentencing disparities between white-collar sentences and sentences for other crimes, as well as unwanted sentencing disparities with other defendants who have been sentenced in this district for COVID-19-related fraud. *See United States v. Davis*, 537 F.3d 611, 617 (6th

Cir. 2008) ("One of the central reasons for creating the sentencing guidelines was to ensure stiffer penalties for white-collar crimes and to eliminate disparities between white-collar sentences and sentences for other crimes.").

In this district, sentences near or in the applicable guideline range routinely have been found appropriate for persons convicted of similar crimes. *See United States v. Harrington*, 22-cr-00324-NYW (51-month sentence based on 57–71-month guideline range); *United States v. Foreman*, 21-cr-00165-RM (66-month sentence based on 63–78-month guideline range); *United States v. Lain*, 21-CR-00175-WJM (32-month sentence based on 41–51-month guideline range where defendant had repaid millions in restitution prior to sentencing); *United States v. Stonebarger*, 21-CR-00392-RM (41-month sentence based on 37–46-month guideline range); *United States v. Zaghab*, 21-CR-00188-RBJ (30-month sentence based on 33–41-month guideline range).

Considering the individualized circumstances of other cases in this district that also have involved pandemic relief fraud, the government believes a sentence of 51 months' imprisonment is appropriate and serves the objectives of sentencing.

III. <u>Restitution</u>

The Plea Agreement provides that the defendant has an obligation to pay restitution on the amount of her fraudulent EIDL and PPP loans (including the PPP loans that ultimately received loan forgiveness), plus interest accruing through the date of sentencing. (ECF No. 13 at 15.) The United States requests that the Court order restitution in the amount of $3,526,369.51—the amount necessary to make the victims of the defendant's fraud scheme whole.

Of this amount, the government contends that $3,122,967.51 is owed to the SBA, which includes: (1) the $430,000 of EIDLs that were approved and funded by the SBA on behalf of Aggies Angels Care Providers, AACP, Mind Set Consulting, IGU Management, and NB Marketing; (2) the $20,000 of EIDGs that the defendant received on behalf of Aggies Angels Care Providers, AACP, and Mind Set Consulting; (3) $2,484,574.88 of PPP loans that received loan forgiveness or were repurchased by the SBA; (4) $99,095.87 of PPP processing fees that the SBA paid to third-party lenders for underwriting and servicing these PPP loans; and (5) $89,296.76 of interest accrued through the date of sentencing.[2]

Additionally, $376,110 and $27,292 are owed to Itria Ventures LLC and Customers Bank, respectively, as three PPP loans underwritten by these lenders have not been repurchased or forgiven by the SBA. Specifically, Itria Ventures LLC still maintains two PPP loans that the defendant obtained on behalf of Aggies Angels Care Providers: (1) PPP loan number 3460758509 in the amount of $327,732.50, and (2) PPP loan number 2686238504 in the amount of $48,377.50. Likewise, Customers Bank still maintains PPP loan number 8253748408 in the amount of $27,292, which the defendant obtained on behalf of Aggies Angels Care Providers.

[2] As of the time of this filing, the SBA has not provided the government with certified documents regarding the interest that has accrued for the EIDL (loan number 6894628103) that the defendant obtained on behalf of IGU Management in the amount of $111,500. Accordingly, the government will not seek interest for that EIDL.

The Certified Statements of Account for the defendant's loans are attached hereto as Exhibit 1. A chart reflecting a breakdown of the government's restitution calculations is attached hereto as Exhibit 2.

IV. Conclusion

For the reasons set forth above, the government respectfully requests that the Court impose a sentence of 51 months' imprisonment, followed by a three-year term of supervised release, restitution in the amount of $3,526,369.51, and a final entry of the order of forfeiture.

Dated this 8th day of August, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of August, 2023, I electronically filed the foregoing **GOVERNMENT'S SENTENCING STATEMENT AND RESPONSE TO DEFENDANT'S SENTENCING MEMORANDUM** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record in this case.

s/ Nicole C. Cassidy
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United States Attorney's Office