UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 22-20290-CR-BLOOM/OTAZO-REYES

UNITED STATES OF AMERICA,

vs.

ERIC DEAN SHEPPARD,

Defendant.
_______________________________/

DEFENDANT SHEPPARD'S SENTENCING MEMORANDUM WITH OBJECTIONS TO THE PRE-SENTENCE REPORT, SUBMITTED IN CAMERA TO GOVERNMENT COUNSEL AND THE U.S. PROBATION DEPARTMENT

Defendant Eric Sheppard ("Sheppard") by and through his undersigned counsel respectfully submits the following Memorandum regarding his objections to the Presentence Investigation Report ("PSR") for the Court's consideration.

Sheppard raises objections to four significant errors in the PSR. First, Sheppard argues that the factual account of the alleged offenses contains inaccuracies that severely prejudice his case and are crucial to his sentence. Second, he disputes the U.S. Probation Officer's calculation of the loss amount, which erroneously includes acquitted and irrelevant uncharged conduct, fails to accurately apply the government benefits rule for loan proceeds that went to permissible recipients and uses under the Paycheck Protection Program ("PPP") and COVID-19 Economic Injury Disaster Loan ("EIDL") program, and miscalculates the actual and intended loss amounts of Sheppard's offenses. Lastly, Sheppard objects to the U.S. Probation Officer's application of the sophisticated means and obstruction of justice enhancements, as the government cannot and will not meet its burden of showing these enhancements should apply. Furthermore, Sheppard respectfully seeks a downward variance, citing to previous courts' handling of PPP loan sentencings and Sheppard's personal history and characteristics.

I. **The PSR's Assertions**

Sheppard contests the accuracy of the United States Probation Officer's PSR recitation of the facts adduced at trial, with which this Court, having presided over the trial, is much more familiar. It is "essential that the presentence report be completely accurate in every material respect." *United States v. Aguilar-Ibarra*, 740 F.3d 587 (11th Cir. 2014). Here, the PSR is riddled through with factual inaccuracies, reflecting more the government's spin on the case than the facts before this Court at trial.

Because this Court would be ill served by a point-by-point refutation of the PSR's inaccuracies, Sheppard here highlights a few errors as examples.

For instance, Paragraph 11 asserts that "HM Management and all of the other companies identified here were structured as partnerships." That is factually incorrect. All the companies that were subject to the loans in question were limited liability companies, which is a different corporate form than a partnership.

Paragraph 12 asserts that "HM-UP Development Alafaya Trails, LLC (Alafaya Trails) was a Florida limited liability company that owned the Orlando shopping center, the Shoppes at Alafaya." PSR ¶ 12. True, it was a limited liability *company*, contrary to the preceding paragraph's assertion that "all" companies were partnerships. But it is not true that Alafaya Trails "owned" the Shoppes at Alafaya. Alafaya Trails owned only two parcels at the Orlando Shopping center during the relevant period.

Paragraph 15 of the PSR asserts that "[t]ax year 2018 was the last year that HM Management reported having three employees to the Internal Revenue Service (IRS) and to the

Florida Department of Revenue." PSR ¶ 15. The evidence submitted at trial provides clear evidence of employee W-2s submitted to the IRS for 2019, contradicting this claim. *See* Def. Ex. Y-1.

Additionally, the PSR overlooks and omits critical details regarding the HM Four loan in paragraphs 29 to 35. It fails to acknowledge that the jury likely dismissed these arguments during trial, ultimately acquitting the defendant on Counts 1, 2, 3, 10, and 11. Despite this, the PSR asserts these points as facts without referencing to the testimony that led the jury to their decision. Even more concerning, the PSR then relies on these paragraphs to justify an increase in the loss calculation. PSR ¶ 67. Similarly, the PSR mentions EIDL loan applications throughout to justify the loss figure found in paragraph 67 but fails to mention that the government charged just one of those loans and, as just mentioned, the jury acquitted Sheppard of that charge. The PSR's inaccuracies and omissions of the record extend beyond these few examples identified here, but the outcome and resulting prejudice to Sheppard as a result is the same. Sheppard respectfully requests that the PSR be revised to accurately portray the trial record.

II. Loss Calculation Under § 2B1.1

Sheppard requests that the Court adjust the loss calculation delineated in paragraph 67 of the PSR as it is grossly inflated. The U.S. Probation Officer's calculation under § 2B1.1 is flawed for several reasons. First, loss should exclude those loan applications for which Sheppard was acquitted or not charged. Second, under the government benefits rule, a decrease in the loss calculation is warranted because workers employed by Sheppard were eligible for PPP or EIDL loans and ultimately did receive such money from Sheppard. U.S.S.G. § 2B1.1, cmt. n.3(F)(ii). In fact, the amount that Sheppard paid towards workers and business expenses amid the pandemic *vastly* outsizes the amount the U.S. Probation Officer calculates as actual or intended loss here.

Finally, Sheppard has already paid back, or is in the process of paying back, every single loan that he received from the government (excepting one loan that received forgiveness from the government).

The U.S. Probation Officer calculates a proposed intended loss of $2,816,333. PSR ¶ 57. The breakdown of those charges are below and the loans grayed out are those that Sheppard contends at a minimum should *not* be factored into his loss calculations:

Date	Program	Entity	Amount	Status	Funded
4/15/2020	PPP	HM-UP Development Alafaya Trails LLC dba HM Management and Development	$146,587	Not charged	Yes
7/24/2020	EIDL	HM Management and Development LLC	$160,000[1]	Not charged	Yes
7/24/2020	EIDL	HM UP Development Alafaya Trails LLC	$160,000[2]	Not charged	Yes
7/24/2020	EIDL	Sheppard Flagler Holdings LLC	$160,000	Not charged	No
7/24/2020	EIDL	HM UP Development Alafaya Trails TRU LLC	$160,000	Not charged	No
9/5/2020	EIDL	HM Six LLC (Trade Name Sheppard Flagler Holdings)	$150,000	Not charged	No
10/22/2020	EIDL	HM Four LLC	$150,000	Acquitted.	Yes
1/19/2021	PPP	HM-UP Development Alafaya Trails LLC dba	$203,125	Acquitted in part, convicted in part	No

[1] Only $150,000 was funded.

[2] Only $150,000 was funded.

		HM Management and Development			
1/19/2021	PPP	HM Management and Development LLC	$179,633	Not charged	No
3/11/2021	PPP	HM UP Development Alafaya Trails LLC	$148,397	Convicted	Yes
3/12/2021	PPP (First Draw)	HM Management and Development LLC	$148,591	Convicted	Yes
4/27/2021	EIDL (modification)	HM Management and Development LLC	$350,000	Not charged	No
4/27/2021	EIDL (modification)	HM-UP Development Alafaya Trails LLC	$350,000	Not charged	No
5/4/2021	EIDL (modification)	HM Four LLC	$350,000	Not charged	No

A. Acquitted and Uncharged Conduct Should Not Factor into the Loss Calculation

The Sentencing Guidelines set forth the "relevant conduct" that determines the guideline range for a defendant's sentence. U.S.S.G. § 1B1.3; *see United States v. Hoffman-Vaile*, 568 F.3d 1335, 1344 (11th Cir. 2009). "Relevant conduct" includes the "offense conduct," which under the current Guidelines includes "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant…that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense." U.S.S.G. § 1B1.3(1). Eleventh Circuit case law has interpreted this provision also to include "not merely the charged conduct, but rather all 'relevant conduct,' in calculating a defendant's offense level." *United States v. Hamaker*, 455 F.3d 1316, 1336 (11th Cir. 2006) (quoting *United States v. Hasson*, 333 F.3d 1264, 1297 n.19 (11th Cir. 2003).

In this case, Sheppard respectfully requests that he receive the benefit of a forthcoming amendment to the Sentencing Guidelines that expressly provides that acquitted conduct is not relevant conduct for purposes of determining the guideline range. Sheppard also contends that his uncharged conduct—underlying 10 of the 14 loans that the U.S. Probation Officer includes in the offense conduct—should not count as relevant conduct for purposes of determining the guideline range. Together, Sheppard's acquitted and uncharged conduct represents those actions on which the government either (1) *declined* to attempt to obtain a conviction, or (2) in fact *attempted and failed* to obtain a conviction before a jury of Sheppard's peers. It is a betrayal of fundamental concepts of fairness and due process now to seek to punish Sheppard for these acts.

1. Acquitted Conduct

The Court should exclude Sheppard's acquitted conduct from its consideration of the offense conduct under the Guidelines. An amended version of the Guidelines, approved on April 30, 2024, which go into effect November of this year, expressly provides that "acquitted conduct is not relevant conduct for purposes of determining the guideline range."[3] Proposed Amendments to the Sentencing Guidelines (Dec. 26, 2023), at 40. Sheppard should get the benefit of this

[3] The amendment would revise § 1B1.3 to add new subsection (c), which provides that "relevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction." Proposed Changes to U.S.S.G., § 2B1.1 (Nov. 1, 2024).

As background, the Sentencing Commission issues proposed amendments on December 26, 2023 that sought to change how the Guidelines recommend using acquitted conduct in sentencing. Proposed Amendments to the Sentencing Guidelines (Dec. 26, 2023), at 39. The Proposal included three options. The first option, the most restrictive and which was ultimately adopted, would "add a new subsection (c) providing that acquitted conduct is not relevant conduct for purposes of determining the guideline range." *Id.* at 40. The second would "add a new application note providing that a downward departure may be warranted if the use of acquitted conduct has a disproportionate impact in determining the guideline range relative to the offense of conviction." *Id.* The third would allow for acquitted conduct to be considered provided the government established that conduct by clear and convincing evidence. *Id.*

forthcoming amendment for two reasons. First, at least one other district court has applied this forthcoming amendment in finding the defendant's acquitted conduct was not relevant conduct for purposes of determining the guideline range—and courts in the past have applied other forthcoming amendments to the Guidelines in other cases. And second, considering that in just six months similar defendants with similar records who have been found guilty of similar conduct as Sheppard will have the express benefit under the Guidelines of their acquitted conduct not counting as relevant conduct, this Court should apply the forthcoming amendment in furtherance of "the need to avoid unwarranted sentence disparities" among similar defendants under 18 U.S.C. § 3553(a)(6).[4]

At least one district court has already considered and applied the Sentencing Commission's forthcoming amendments to the Guidelines in finding that a convicted defendant serving life in prison (who was convicted in 1998) was entitled to early compassionate release in part because an acquitted charge (here, murder conspiracy) would no longer have been considered as part of the presentence report's guidelines calculation. *United States of America v. Anthony Spradler,* No. 1:98-CR-38-JMS-MJD-1, 2024 WL 1702873, at *10 (S.D. Ind. Apr. 18, 2024).

And other district courts have applied forthcoming amendments to the Guidelines when that amendment would provide for more lenience in establishing the guideline range. *See, e.g.*, *United States v. Williams*, No. CR22-0097JLR, 2024 WL 1998415, at *1 (W.D. Wash. May 6, 2024) (noting that "in anticipation of the forthcoming Amendment 821 to the U.S. Sentencing Guidelines, which took effect approximately four months after [the defendant's] sentencing," the court gave the defendant "the benefit of the upcoming 'true zero' criminal history offense level

[4] Sheppard also expressly preserves the argument (including but not limited to his right to due process and his Sixth Amendment right to a jury trial) that it is unconstitutional to use acquitted or uncharged conduct to increase the punishment for an offense.

reduction"); *United States v. Mendez*, 684 F. App'x 803, 806 (11th Cir. 2017) (noting the sentencing court applied a forthcoming amendment to the Guidelines and sentenced the defendant "within the forthcoming amended guidelines range he asked be applied"); *United States v. Carmona-Garcia*, No. 2:16-CR-318 RB, 2016 WL 10538768, at *5 (D.N.M. Apr. 26, 2016) (granting the defendant's objections to the PSR and request for a downward variance, and giving the defendant the benefit of a forthcoming amendment that reduced "enhancements for crimes committed prior to deportation"); *cf. United States v. Ramon-Perez*, 679 F. App'x 732, 734 (10th Cir. 2017) (explaining that "the parties agreed [in a plea agreement] that [the defendant] should receive the benefit of the forthcoming amendment" to the Guidelines that would lower the defendant's guideline range, and noting that "[t]he district court accepted the agreement, sentencing Mr. Ramon-Perez as if the amendment had already taken effect").[5]

Moreover, one of the factors the Court must take into consideration when imposing its sentence is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). All defendants sentenced on or after November 1, 2024, when this amendment goes into effect under the Guidelines, will have the benefit of the Guidelines' provision that their acquitted conduct should not count as relevant conduct for purposes of determining a guideline range. Thus, all defendants—including those who have similar backgrounds and records, and who have been found guilty of similar conduct, as Sheppard—will be sentenced accordingly, not six months from now.

[5] Furthermore, if Sheppard were to appeal his sentence after this amendment goes into effect , the Eleventh Circuit may apply this amendment retroactively to Sheppard's sentence. An amendment that become effective after the date of sentencing may be applied retroactively on appeal if it is clarifying instead of substantive. *See United States v. Jerchower*, 631 F.3d 1181, 1184 (11th Cir. 2011). The forthcoming amendment providing that acquitted conduct is not relevant conduct is a clarifying rather than substantive amendment because it clarifies the definition of relevant conduct that can be considered at sentencing.

Section 3553(a)(6)'s directive to avoid unwarranted sentence disparities compels an application of this amendment here.

There has been an outpouring of support for the Sentencing Commission's decision to amend the Guidelines to exclude acquitted conduct from relevant conduct for purposes of determining a guideline range—including from the United States Senate Committee on the Judiciary. *See* Feb. 22, 2024 Letter from United States Senate Committee on the Judiciary ("When the government fails to discharge its burden of proof—whether reflected in a jury verdict or meritorious motion for acquittal—subsequent use of such acquitted conduct offends the principles underlying the Fifth and Sixth Amendments to the Constitution."). Indeed, Justices Sonia Sotomayor and Brett Kavanaugh (with whom Justices Neil Gorsuch and Amy Coney Barrett joined) both issued statements respecting a denial of a petition for certiorari that concerned as its core issue whether a court may take acquitted conduct into account during sentencing, which noted that the issue "raises important questions." *McClinton v. United States*, 143 S. Ct. 2400, 2401, 2403 (2023). Both Justices also noted that the issue was then-pending before the Sentencing Commission and denied certiorari in deference to and in anticipation of the Commission's ultimate conclusion on the issue. *Id.* In promulgating the present amendment, the Sentencing Commission has spoken. And per Sentencing Commission Chair Carlton Reeves: "Not guilty means not guilty. By enshrining this basic fact within the federal sentencing guidelines, the Commission is taking an important step to protect the credibility of our courts and criminal justice system." U.S.S.C., *Press Release: Commission Votes Unanimously to Pass Package of Reforms Including Limit on Use of Acquitted Conduct in Sentencing Guidelines* (Apr. 17, 2024). Thus, the Court should consider the Sentencing Guidelines's overwhelming trajectory (and soon to be operative guidelines) of excluding acquitted conduct and consider only relevant charged and convicted conduct.

With regard to the acquitted conduct at issue here, it is imperative to highlight that Sheppard was unequivocally acquitted of all charges associated with the October 22, 2020 EIDL loan application on behalf of HM Four (Counts 1, 2, 3, 10, and 11). This not only exonerates Sheppard of any wrongdoing but also necessitates a significant adjustment in his total calculated loss, resulting in a reduction of $150,000.00.

Sheppard's January 19, 2021 PPP Loan application on behalf of Alafaya Trails also should not be included in the total loss because the government failed to prove that the submission *itself* was false or fraudulent, only that certain supporting materials were. At trial, Sheppard was acquitted of: allegations of submitting a false and fraudulent application for the loan (Count 4) and presenting a false and fraudulent IRS Form 1065 in support of the application (Count 6), alongside the associated identity theft charge (Count 12). The only charge on which Sheppard was convicted was filing a false IRS Form 941, a supporting document to the loan application. Accounting for this change decreases his total calculated loss by $203,125. Being acquitted of these counts not only vindicates Sheppard of those charges but it also necessitates a recalibration of the loss calculation.

2. *Uncharged Conduct*

The Court should exclude any conduct related to the uncharged EIDL applications and requested EIDL modifications from the loss calculation because such conduct does not meet the definition of "relevant conduct" that can factor into the loss calculation. In determining whether uncharged conduct constitutes "relevant conduct" for the purposes of calculating a sentence, courts "must consider whether there are distinctive similarities between the offense of conviction and the remote conduct that signal that they are part of a single course of conduct rather than isolated, unrelated events that happen only to be similar in kind." *United States v. Maxwell*, 34 F.3d 1006, 1011 (11th Cir. 1994). The government has proffered *no* evidence showing that any conduct relevant to Sheppard's EIDL applications rises to the level of relevancy to be considered as part of Sheppard's loss calculation.

The July 24, 2020 EIDL applications on behalf of HM Management and Development, Alafaya Trails, Sheppard Flagler Holdings, and Alfaya Trails TRU (including the attendant EIDL modifications for these applications) and the September 5, 2020 EIDL application on behalf of HM Six were not charged in the superseding indictment. And the PSR does nothing to establish how any of these EIDL applications or modifications were part of the same plan or scheme as the offenses on which Sheppard was convicted such that they represent a "single course of conduct" given that *all the convicted offenses in this case related to PPP loan applications*. *See* PSR ¶¶ 51, 54, 57.

As delineated in the PSR, the PPP and EIDL programs were separate and served different purposes. PPP was authorized by Congress to "help small businesses pay their employees' wages and avoid massive layoffs," while the EIDL program was aimed at addressing more general "economic injury" and providing the applicant with "working capital." PSR ¶¶ 6, 9. The application process was also separate, and each program required applicants to submit different information to receive loan relief. For example, PPP required the submission of documents indicating the "average monthly payroll of business." PSR ¶ 6. On the other hand, EIDL required submission of "information about [the business's] economic injury" as evidenced by "its gross revenues[] and costs of goods sold." PSR ¶ 9. Given the differences between the two programs, it would be error to consider Sheppard's uncharged conduct as to the EIDL program as part of the same plan or scheme as the PPP loan applications that were central to his offenses of conviction.

Indeed, the Court should exclude *all* uncharged conduct from its consideration of the offense conduct under the Guidelines. Particularly where, as here, much of the uncharged conduct was charged in the government's original indictment, but then *removed* from the superseding indictment, the government should not be rewarded at the punishment phase for including conduct it did not even deign to include in the guilt phase of trial. By omitting conduct from an indictment, the government waived its ability to ask this Court to punish defendant for that conduct.

Sheppard also urges the Court to consider the compelling reasons discussed above, *supra* Part II.A.1, that led the Sentencing Commission to ultimately reject including acquitted conduct in the loss calculation. The same rationale applies here: it strains credulity that acquitted conduct should be excluded on the basis that the evidence presented did not establish guilt, but that uncharged conduct—which is never even presented to a fact-finder for a determination, beyond a reasonable doubt, of guilt—should not be excluded for similar reasons.

Moreover, increasing Sheppard's sentence based on conduct the government chose to drop from the indictment would condone government conduct that could be seen as underhanded and unfair to the defendant. On the Probation Office's view, prosecutors could simply undercharge a defendant in an indictment, prosecute a defendant on only certain counts, and then inflate the defendant's total loss calculation based on evidence of "relevant uncharged conduct" at sentencing. And here, the government's approach does appear so calculated: they made strategic moves before trial, removing specific charges from the initial indictment before the grand jury. The government removed Counts 1, 2, 3, and 4 from the original indictment. But now, the U.S. Probation Officer has factored those previously removed counts into Sheppard's loss calculation. The U.S. Probation

Officer also seeks to include in the loss calculation charges that were never brought by the government in either the initial indictment or the superseding indictment. The government cannot have it both ways. This approach puts Sheppard in an unfair position: he focused on addressing the charges presented against him at trial, only to face the prospect of a significantly increased sentence due to the U.S. Probation Officer's loss calculation. Such tactics are unjust and should be rejected out of hand by this Court.

Accounting for the error of including the uncharged and irrelevant conduct as to the EIDL applications and modifications in the loss calculation, Sheppard's intended loss should be reduced by $1,840,000 ($640,000 for the July 24, 2020 applications, $150,000 for the September 5, 2020 application, and $1,050,000 for the three requested modifications). And accounting for the error of including the two uncharged PPP loans in the loss calculation ($326,220), Sheppard's loss amount should be decreased by a total of $2,166,220. Thus, after factoring in the reductions warranted for both the acquitted conduct ($353,125) and uncharged conduct ($2,166,220), Sheppard's adjusted loss calculation, at worst, should be $296,988.

B. The Court Should Apply the Government Benefits Rule To Account For Funds Distributed To Eligible Workers

Under the Commentary to the Sentencing Guidelines, in cases "involving government benefits (e.g., grants, loans, entitlement program payments), loss shall be considered to be not less than the value of the benefits obtained by unintended recipients or diverted to unintended uses, as the case may be." U.S.S.G. § 2B1.1, cmt. n.3(F)(ii). The PSR calculates an intended loss figure of $1,766,333, "as reflected on the loan summary government Exhibit 72, plus $350,000 for each of the EIDL modifications requested on behalf of HM Management, Alafaya Trails and HM Four, for a total intended loss amount of $2,816,333." PSR ¶ 57. But the PSR's intended loss figure of $2,816,333 fails to apply the government benefits rule. This calculation of loss ignores that PPP and EIDL loans are "government benefits" within the meaning of the Guidelines, that Sheppard (whose business entities qualified for loans under these programs),[6] and that, ultimately, $4,001,962.56 were used for permissible purposes under the PPP and EIDL Program, namely, paying workers and paying off business expenses, and thus, should not count toward the intended loss figure here.

PPP and EIDL loans are "government benefits" within the meaning of U.S.S.G. § 2B1.1, cmt. n.3(F)(ii) based on the provision's plain language, which specifies that "loans" are a type of qualifying government benefit. PPP and EIDL loans are also "government benefits" within the meaning of U.S.S.G. § 2B1.1, cmt. n.3(F)(ii), as they are analogous to other benefits that courts have held qualify as "government benefits." *See, e.g.*, *United States v. Maxwell*, 579 F.3d 1282, 1306 (11th Cir. 2009) (finding programs aimed at aiding small businesses and small businesses owned by socially and economically disadvantaged individuals were "Government Benefits Programs under § 2B1.1"); *United States v. Hebron*, 684 F.3d 554, 560 (5th Cir. 2012) (applying the government benefits rule in a case involving disaster relief benefits from the Federal Emergency Management Agency); *United States v. Leahy*, 464 F.3d 773, 790 (7th Cir. 2006) (interpreting U.S.S.G. § 2F1.1 before it was consolidated with § 2B1.1) (finding that contracts awarded under "an affirmative action program aimed at giving exclusive opportunities to certain women and minority businesses" were government benefits).

[6] Indeed, based on documents provided by Sheppard to counsel, it appears that the $146,587 PPP loan Sheppard applied for on April 15, 2020 on behalf of HM-UP Development Alafaya Trails LLC (d/b/a HM Management and Development) was forgiven by the government, which only further evidences his entitlement to loan proceeds under these programs. *See* Exhibit A – PayPal Paycheck Protection Program Loan Team, email to Eric Sheppard (May 27, 2021) (providing the $146,457.00 qualified for full forgiveness); *see also* Interim Final Rule on Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act, 86 Fed. Reg. 8283 (Feb. 2021) (providing overview of the loan forgiveness process and criteria).

One permissible use of loan proceeds under the PPP and the EIDL program was paying workers.[7] PSR ¶¶ 6, 9. And Sheppard did just that by paying $4,001,962.56 to his workers (who were eligible for PPP and EIDL proceeds) at the peak of the pandemic, between May 2020 and December 2021—far in excess of the amount he received as government benefits under the PPP and COVID-19 EIDL programs.

Under the government benefits rule, the loss calculation includes only that amount "obtained by *unintended recipients* or diverted to *unintended uses*." U.S.S.G. § 2B1.1, cmt. n.3(F)(ii) (emphasis added). In other words, loss may be reduced where "a defendant was intended by the government to receive some amount of benefits[.]" *United States v. Tupone*, 442 F.3d 145, 154 (3d Cir. 2006) (cleaned up). Intended and permissible uses under the PPP and COVID-19 EIDL program include payroll costs, but also include other expenses such as insurance, rent, and utilities. *See supra* note 7. In calculating loss, the court "need only make a reasonable estimate" based on "available information." U.S.S.G. § 2B1.1, cmt. n.3(C). Such "available information" here includes Defense Exhibit Z-3—which trial counsel used as a jury demonstrative during the testimony of defense expert witness Scott Bouchner—and which shows that $3,848,288.56 went to permissible expenses under the PPP and the EIDL Program, including to payment of workers, insurance, utilities, and other business-critical expenses:

[7] *See* Interim Final Rule 85 Fed. Reg. 20811 (April 15, 2020); 13 C.F.R. § 123.303; SBA "About COVID-19 EIDL," https://www.sba.gov/funding-programs/loans/covid-19-relief-options/covid-19-economic-injury-disaster-loan/about-covid-19-eidl#id-loan-details, last accessed May 8, 2024.

Use of Funds – Business Expenses from Bank Accounts 5/1/2020 – 12/31/2021 (HM Management and Development, LLC, HM-UP Development Alafaya Trails, LLC, and HM Four, LLC)	
Use of Funds	**Amount**
Interest and Other Payments for Basis Loan	$ (2,120,163.55)
Payroll (Individuals)	(676,946.90)
Insurance (Health)	(96,211.66)
Utilities	(50,173.62)
Insurance (Other)	(69,528.33)
Contractor (Companies)	(175,116.18)
Miscellaneous	(122,005.89)
Commissions	(115,492.95)
Legal Fees	(100,860.00)
Construction Equipment Rental	(94,926.53)
Settlement Close Out Payments	(52,500.00)
Professional/Consulting Fees	(48,525.00)
Auto Expenses	(28,449.13)
Cash Withdrawals for Burlington Build-Out	(26,100.00)
Taxes	(23,656.81)
Materials	(20,970.81)
Repair & Maintenance	(18,161.20)
Landscaping	(8,500.00)
Grand Total	**$ (3,848,288.56)**

As noted by Defense Exhibit Z-3, $676,946.90 of the $3,848,288.56 total went to payroll. And as evidenced by Defense Exhibit Z-8, an additional $153,674.00 (not included in the above $676,946.90 payroll figure) also was ultimately paid out to workers:

Use of Funds – Payroll 5/1/2020 – 12/31/2021 (HM Management and Development, LLC, HM-UP Development Alafaya Trails, LLC, and HM Four, LLC)	
Use of Funds	**Amount**
Payroll	$ 676,946.90
Insurance (Health)	96,211.66
Payroll to Individual Workers Incurred by Project Manager	153,674.00
Grand Total	**$ 926,832.56**

Thus, while the U.S. Probation Officer calculates loss of $2,816,333 here, that figure completely ignores that $830,620.90 (*i.e.*, $676,946.90 in "Payroll" plus $153,674.00 in "Payroll to Individual Workers Incurred by Project Manager") was paid as payroll to workers, alongside $3,171,341.66 in other non-payroll business expenses, for a total of $4,001,962.56 in permissible uses of loan proceeds. Because $4,001,962.56—a figure that vastly outsizes the U.S. Probation Officer's $2,816,333 loss figure—went to paying workers and business expenses, both permissible uses under the PPP and EIDL Programs, Sheppard respectfully argues that the appropriate loss figure here should be *zero*.

C. No Intended or Actual Loss Resulted from Sheppard's Conduct

The government did not suffer any intended loss or actual loss from Sheppard's offenses of conviction because Sheppard always intended to pay back the loans that he received from the government (and has *in fact* paid back all of the funded loans of which he was convicted). The Sentencing Guidelines define loss for the purposes of the loss calculation in the PSR as the "greater of actual loss or intended loss." § 2B1.1(3)(A). "Intended loss" refers to "the pecuniary harm that the defendant purposely sought to inflict." *Id.* cmt. n.3(A)(ii). "Actual loss" refers to "the reasonably foreseeable pecuniary harm that resulted from the offense." *Id.* cmt. n.3(A)(i).

Sheppard did not intend any loss in this case. Although the Eleventh Circuit has not weighed in on the issue, at least two other Circuits have found that calculating "intended loss" under § 2B1.1 requires considering the defendant's actual (subjective) intent, and not his constructive intent. *See United States v. Henderson*, 19 F.3d 917, 928 (5th Cir. 1994) (vacating a sentence where the district court calculated intended loss using the face value of the fraudulently obtained loans, without taking into account the defendant's contention that he intended no loss because he intended to repay the loans); *United States v. Harris*, 597 F.3d 242, 254 (5th Cir. 2010) (clarifying that a court "[can]not use the fact that a defendant's crime ultimately resulted in a loss of property to find that he constructively intended to inflict any loss"); *United States v. Hartstein*, 500 F.3d 790, 798 (8th Cir. 2007) ("Because we have repeatedly characterized intended loss with reference to a defendant's actual, subjective intent, that intent should drive our analysis."). So, too, should this court consider Sheppard's actual, subjective intent here. Sheppard always intended to pay back any loans that were disbursed by the government. As demonstrated in the table below, Sheppard has already paid back the loans for his offenses of conviction, and he is in the process of paying back the three other loans that were disbursed to him (except for the April 15, 2020 loan that was forgiven), including acquitted and uncharged loans.

Date	Program	Entity	Amount Funded	Status
4/15/2020	PPP	HM-UP Development Alafaya Trails LLC dba HM Management and Development	$146,587	Forgiven[8]
7/24/2020	EIDL	HM Management and Development LLC	$150,000	Currently being paid off
7/24/2020	EIDL	HM UP Development Alafaya Trails LLC	$150,000	Currently being paid off

[8] *See* Exhibit A – PayPal Paycheck Protection Program Loan Team, email to Eric Sheppard (May 27, 2021) (providing the $146,457.00 qualified for full forgiveness).

10/22/2020	EIDL	HM Four LLC	$150,000	Currently being paid off
3/11/2021	PPP	HM UP Development Alafaya Trails LLC	$148,397	Paid in full[9]
3/12/2021	PPP	HM Management and Development LLC	$148,591	Paid in full[10]

The fact that Sheppard is paying off not just the loans that he was convicted of, but also the loans that were not included superseding indictment and, most notably, that Sheppard was acquitted of, is evidence that Sheppard always intended to pay back all loans he received from the government. Sheppard's subjective intent was not to inflict any pecuniary harm to on any financial institution. Therefore, Sheppard's intended loss amount must be *zero*.

In addition, no financial institution suffered any actual loss from Sheppard's offenses of conviction. According to documents provided by Sheppard, Sheppard has completely paid off both the March 11, 2021 second draw PPP loan behalf of Alafaya Trails and the March 12, 2021 second draw PPP loan on behalf of HM Management and Development, the only two loans for which he was convicted of any charges and that were actually disbursed to Sheppard. Because Sheppard paid back the two loans that he was convicted of, Sheppard did not cause any pecuniary loss to the government. Therefore, Sheppard's actual loss amount should be also *zero*.

Given that there was no intended loss or actual loss resulting from Sheppard's conduct, Sheppard respectfully argues that the appropriate loss figure here should be *zero*.

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[9] *See* Exhibit B – Email from Stephanie Paulk (Loan Servicing Specialist, Newity Market) to Eric Sheppard (4/5/2024) (confirming Sheppard paid off loan on behalf of HM-UP Development Alfaya Trails LLC)

[10] *See* Exhibit C – Letter from Team Scratch to Eric Sheppard (Apr. 8, 2024) (confirming Sheppard made his last payment on April 4, 2024 for the $148,591 loan on behalf of HM Management and Development LLC).

III. <u>The Sophisticated Means Enhancement Is Incorrectly Included</u>

Sheppard objects to the inclusion of the sophisticated means enhancement in his offense level calculation on two grounds. First, the PSR fails to provide Sheppard with sufficient notice as to what facts on which this enhancement is based. Second, that lack of notice notwithstanding, none of Sheppard's conduct warrants this enhancement.

First, the absence of any factual basis alleged in the PSR suggests that the government cannot and will not meet its burden here. *U.S. v. Lawrence*, 47 F.3d 1559, 1566 (11th Cir. 1995). The PSR merely states that the sophisticated means enhancement was applied because "the offense otherwise involved sophisticated means." ¶ 68. Such a conclusory statement fails to put the defense on notice as to what facts the government intends to argue support the application of this enhancement.

Second, there is no factual basis supporting the application of this enhancement to Sheppard. The sophisticated means enhancement found in § 2B1.1(b)(10)(C) should be applied only when a fraudulent scheme "involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means." U.S.S.G. § 2B1.1(b)(10)(C). The commentary to the guidelines defines "sophisticated means" as "especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense." U.S.S.G. § 2B.1 cmt. n.9(B). Such complexities and intricacies must be "above and beyond" the complexities and intricacies that are already "inherent in fraud." *United States v. Adepoju*, 756 F.3d 250, 259 (4th Cir. 2014).

For example, in *Adepoju*, the Fourth Circuit found that the district court committed clear error in applying the sophisticated means enhancement to a defendant who was convicted of bank fraud for using a stolen identity and forged checks to open a bank account and attempting to withdraw money from that account. *Id.* at 252-53. The court reasoned that "the facts concerning the crime of conviction do not affirmatively indicate that he did anything especially intricate or complex to obtain [the stolen identity] or attempt to defraud a bank," and that "government's burden demands more than the mere presence of the tools of fraud and the attempt to use the same." *Id.* at 258.

Just like the conduct in *Adepoju*, Sheppard's alleged conduct does not rise to the "especially complex" or "intricate" conduct beyond that "inherent in fraud." Rather, his alleged conduct consisted of making misrepresentations while filling out PPP loan applications. Such misrepresentations are insufficient to warrant the sophisticated means enhancement since all wire fraud inherently involves misrepresentations. *See id.* at 257 (finding that the district court committed clear error when it applied the sophisticated means enhancement to offense conduct that was no "more than the forgeries, misrepresentation, and concealment inherent in bank fraud").

Moreover, unlike other PPP loan fraud cases, each of Sheppard's entities existed prior to the fraud and for a legitimate purpose. *Cf. Sah v. United States*, 2023 WL 9785691 (N.D. Tex. 2023) (defendant created shell entities and opened bank accounts in the name of these companies to carry out PPP loan fraud scheme). That Sheppard used multiple companies in conjunction with his loan applications does not suggest sophisticated means. After all, it is undisputed that all of Sheppard's companies were in existence prior to the submission of the loan applications. Sheppard offered legitimate reasons at trial for applying through those companies. 12/19/23 A.M. Tr. 18:4-18. In addition, the bank accounts where the loans were disbursed were registered under the name of Sheppard's legitimate companies and were controlled solely by Sheppard, underscoring that he had no intent to avoid detection in applying for the loans as he did. And, as the defense's expert Scott Bouchner testified, the same three company accounts where the loan funds were disbursed were the same three accounts that Sheppard used to cover his business expenses, including payments to his workers. 1/10/24 P.M. Tr. 36:5-10, 38:21-39:21. This is simple banking that does not require sophisticated means.

In sum, Sheppard's allegedly fraudulent conduct was devoid of any complexities or intricacies beyond what is inherent in any wire fraud offense. Therefore, the sophisticated means enhancement should not be applied to Sheppard's offense level calculation.

IV. The Obstruction of Justice Enhancement Is Incorrectly Included

Section 3C1.1 of the Guidelines provides for a two-level increase to the defendant's base offense level if "(1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing" of his offense of conviction, and "(2) the obstructive conduct related to…the defendant's offense of conviction and any relevant conduct." Obstructive conduct includes "committing, suborning, or attempting to suborn perjury." U.S.S.G. § 3C1.1, cmt. n.4(B). The burden is on the government to establish "by a preponderance of the evidence the facts necessary to support" the enhancement. *United States v. Turner*, 626 F.3d 566, 572 (11th Cir. 2010) (quoting *United States v. Kinard*, 472 F.3d 1294, 1298 (11th Cir. 2006)). U.S.S.G. § 3C1.1, cmt. n.4(B).

For testimony to warrant the enhancement under § 3C1.1, it must be false, concern a "material matter," and result from the defendant's "willful intent to provide false testimony" as opposed to from "confusion, mistake, or faulty memory." *United States v. Singh*, 291 F.3d 756, 763 (11th Cir. 2002) (quoting *United States v. Dunnigan*, 507 U.S. 87, 94 (1993)). The Commentary to the Guidelines also emphasize that "[i]n applying this provision in respect to alleged false testimony or statements by the defendant, the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice." U.S.S.G. § 3C1.1, cmt. n.2.

A. Paragraph 58

The U.S. Probation Officer states that, during trial, Sheppard "made intentionally false statements during his testimony that he did not decide who at his companies were paid as W-2 employees and who was paid as an independent contractor. He also denied knowing who were employees versus independent contractors." PSR ¶ 58. According to the U.S. Probation Officer, this testimony is intentionally false because in Sheppard's February 2019 deposition he acknowledged that Jeffrey Graff and CJUF workers were independent contractors, while HM Management paid "payroll taxes for employees" and had "no payroll for independent contractors." PSR ¶ 58. The U.S. Probation Officer also cites Mr. Graff's trial testimony that Sheppard decided whether three individuals at HM Management were employees or independent contractors and that Mr. Graff believed Sheppard "knew the difference" between an "employee" versus an "independent contractor." PSR ¶ 58.

The U.S. Probation Officer refers to Sheppard's January 8 and 9, 2024 testimony, which reflects a long line of questioning that (1) established Sheppard was mostly uninvolved with and uninformed about hiring decisions that involved classifying workers as employees or independent contractors, and (2) mainly elicited confusion from Sheppard—not over whether he understood the difference between employees and independent contractors, but rather over how that distinction is reflected in the individual worker's paycheck and the resulting tax implications for the company.

For example, Sheppard testified that Jeanette Gonzalez, his bookkeeper and office manager (or if not Ms. Gonzalez, someone in charge of hiring for the specific project), not him, decided whether workers were hired as employees or independent contractors, and that he was "not involved with that decision making process":

> Q. Jeanette Gonzalez has worked for you since before 2016. Correct?
> A. For my companies yes.
> . . . .

> Q. She works for the company, which is the entity that you control. And so you're her boss, correct?
> A. Correct. I'm the managing member of the entity.
> Q. Fair to say Ms. Gonzalez doesn't decide what contractors you hire for projects, right?
> A. Correct.
> Q. She doesn't make decisions about what leases you negotiate with tenants, right?
> A. That's correct. She does not.
> Q. She doesn't decide who the laborers are, the -- either you or the contractors decide who those labors are going to be on various projects, right?
> A. That's correct when it comes to construction or whatever city the parties and the workers that do the day to day working, the common area working, she doesn't get in that decision making process.
> Q. She doesn't decide for HM Management who is going to be a W-2 employee or a 1099 contractor, right?
> A. That's not true. She does.
> Q. She does decide?
> A. For HM Management.
> Q. Yes for HM Management?
> A. Yeah she's on that -- she or whatever is hiring the person is the one that determines how they identify the employee.
> Q. So at HM Management, which is your company, that you manage?
> A. Uh-huh.
> Q. Where you're the boss, Jeanette Gonzalez does not decide who is a W-2 employee or a 1099 contractor, correct?
> A. That's not true.
> Q. That's not true. She decides?
> A. She or somebody. I'm not involved with that decision making process. I can't say or whether she or she talks to the accountants or she talks to the project executive. I don't know who she speaks to or who they speak to. I'm not involved with that process myself so I can't tell how it actually the -- the process works.
> Q. Somebody whom you cannot identify decides for your company who is a W-2 or a 1099 contractor; is that right?
> A. Somebody who HM Management is has a contractor to do the work. Whoever is overseeing the work is the one who determines whether someone -- if as an independent contractor that's hiring a third-party company -- the -- if you're hiring a career air-conditioning as part of a budget, if it's an individual person and what they do, that would be whoever -- whoever hires them, they do a package and they hire them. That's how it normally works from my understanding.

1/8/24 A.M. Tr. 106:19-21, 110:10-112:6; *see also* 1/8/24 P.M. Tr. 52:4-8 (testifying similar as to Elba Baluarte, and stating "I don't know how she was designated you know years and years and years ago…. I typically just pay the account, the payroll account whether it's ADP or to the company. That's how it usual works I don't know how she's classified."); 1/8/24 P.M. Tr. 53:11-

18 (testifying that he "never thought about" Jeff Graff's status, but stating that Mr. Graff's testimony refreshed his recollection as to a conversation where Graff expressed he wanted to be converted from an employee to a contractor).

Sheppard further testified that he generally "wasn't involved" in the process of deciding whether Ms. Gonzalez herself—or others—were brought on as employees or as independent contractors:

> Q. I'm speaking about let's say 2017, 2018, 2019, 2020, 2021, did Ms. Jeanette Gonzalez decide if she was going to be a W-2 or a 1099 for herself?
> A. I don't know what she decided she was going to be. Again, when someone -- I don't deal with this so I'm going to try the answer the question to the best of my abilities but like when she started for HM Management whatever day she started, whoever filled out the paperwork, they decided whatever she was going to be. I wasn't involved with that process. However he started with the company. Someone -- whether it was -- it was probably either Steve fallow sew or Denise or Addy. Those are the only three people that could have made those decisions when she started.
> . . . .
> Q. So somebody made the decision, you don't know who?
> A. Whoever deals with administration and payroll, that's who made the decision, I assume that's how it works. I mean, I don't know how they make these decisions. But that's what they -- whoever was doing it at the time.

1/8/24 A.M. Tr. 113:8-20, 115:16-18.

Sheppard confirmed that while he wrote the checks to pay workers, he did not notice or appreciate the distinction between a check that would be sent to an employee versus an independent contractor, and was not involved in and, thus, could not articulate the process by which an employer "withheld" the appropriate portion of an employee's wages:

> Q. And all those laborers [working on the Burlington Coat Factory project] were 1099ed contractors, correct?
> A. I don't know what they were. They're workers. That's up to Jeff. I just went off payroll reports, the payroll report. I don't know what they were. I never said what they were when I wrote a check. It says payroll. It says payroll, payroll, payroll. So payroll check. That's what I wrote. I mean, I didn't write, I got a payroll report. I just didn't write a check. I had a report, I looked at it and I write checks to the individuals.
> . . . .
> Q. You do know what withholdings are, right?

A. Yes. I know what withholding are.
Q. And you know that withholding is money that is taken out of wage employees' paychecks, right?
A. Okay.
Q. Yes?
A. No. I know what withholdings are. It's when you pay an employee, there's -- when someone goes and does it, and where there's withhold -- that's what I know. I mean, I used to get a pay check back in the day.
Q. Right and the withholdings are -- it's and money that the employer keeps for Medicare, taxes for Social Security taxes for income taxes, right?
A. (No verbal response.)
Q. Yes. Those with withholdings?
A. I know what withholdings are. I'm not sure how the distribution. I don't process that. So I don't really exactly how -- I know the terms. But I don't process it myself personally so I don't specifically know how that works I know what they mean because --
Q. And you also know that for wage employees, the employer has his or her own tax responsibilities to contribute Social Security and Medicare taxes as well when they have a wage employee that that's part of the withholdings mic up if you will?
A. I mean I know you pay someone a gross wage and how it's -- whether the worker sends it to them or the employer I know there's a gross wage and then certain things are taken out the, whatever they are. I mean I know I've heard the terminology again pro process it. But I understand what you're saying what it means.
Q. But there's an employer portion to that, right that the employer also has toll contribute Social Security and Medicare taxes I mean that's what you have to pay, right when you have wage employees from whom you withhold part of their wages?
A. If it's -- -- I I can't really comment. I know there's something you have to withhold. I don't know what that is. But there's a gross pay and someone calculates what you withhold. That's -- if that's what you're asking me. I know there's withholdings. Yes. I --
Q. And you know that with withholdings there is an employer contribution to the IRS as well. Medicare and Social Security taxes?
A. I don't understand the employee contribution. I don't deal with that, but I mean, if you're holding somebody's -- if someone give -- if you pay a person, they get X. And you're supposed to hold it and forward a portion of it to them, whatever you're holding back from the person. You don't give them the full check of the gross. If you pay gross check and a net, and then the other part of the net, you're supposed to send or something like that. But I never do the process, so I don't really understand how that would actually work, but I understand the concept.

1/8/24 P.M. Tr. 29:10-18, 29:25-32:2; *see also* 1/9/24 A.M. Tr. 3:16-4:21 (when presented with W-2s for Jeanette Gonzalez, Elba Baluarte, and Vanessa Gonzalez, Sheppard could not confirm the process by which the company withheld taxes, stating "I don't know technically how that goes" and "Jeanette in that particular year, handles that stuff. So I can't tell you exactly how it's supposed to work.").

Sheppard's confusion throughout the government's line of questioning related to "withholding" and the employer's "contribution" is clear; it is also clear that, beyond writing the checks, Sheppard was not involved in the payroll process at all:

> Q. Right. Well, you've been an employer Mr. Sheppard, right?
> A. I have.
> Q. And as an employer, you withhold part of the employee's wages and you also -- which comes out of your business' pocket -- pay the employer contribution for that I mean you heard the testimony that must have refreshed your recollection
> as to those kinds of payments, correct?
> A. I heard the testimony. A lot. Again, my involvement with any type of payroll is there's a gross amount. It goes into a payroll account. And then whoever is dealing with that, they cut people's checks on Friday, here's a payroll check on Friday. I only know is for me personally it's a gross amount on a monthly basis or a weekly basis it's a gross amount. Somebody takes it and they do whatever they are going to do I haven't had a paycheck in 12 years.
> Q. I'm trying to understand from you -- I'm just trying to get an answer to my question, Mr. Sheppard, which is that there is an employer portion that goes to the IRS for Social Security and Medicare taxes for your employees.
> A. I said I know there's an employment tax that goes to the government. In some shape or form. I can't tell how that's delineated because I just don't know. You're asking me specific questions about how that gets delineated. I know there's an employment tax for an employee, an employee tax. Whatever it is, that goes -- the employment tax goes to the government. That's what I know.
> Q. Is that, yes, you know this the employer has a contribution as well?
> A. When you say contribution, I don't -- that's a.
> . . . .
> Q. So if you don't understand the term contribution, let me try to rephrase my question Mr. Sheppard which is: You withhold a certain portion of the employee's pay. That's there withholdings for Medicare Social Security, income tax, and then in addition, the employer has to pay out of the employer's account or the employer's pocket money to the IRS for an additional amount for Social Security and Medicare? You're aware of that, yes?
> A. I'm aware what you just described to me. Am I aware how that goes? Again, it's a little confusing to me that you give someone -- a check and you take money out of the check as you explained you just forwarding. I don't know about contribute. You're just forwarding what you sound like you're saying you hold back and one person -- the employer forwards it and the employee forwards their portion. That's what I think you're saying. That's what I'm getting out of it at least.

> Q. So when you were writing checks during COVID to the laborers in Orlando it was just a flat check, I mean a flat amount. You your company HM-Up or HM Management was not keeping any portion of the amount that was owed to that laborer that's my question?
> A. I have no idea. I got a report. A wrote a check to an individual based upon -- because we usual use a computer. It was it's always done by computers because of COVID. There was -- either I wrote it or Jeff Vasilas wrote it and whatever the payroll report says I just wrote a check.
> . . . .
> Q. The payroll report that you saw on the computer that had payments to laborers, it did not have withholdings for laborers who were not your employees, correct?
> A. I have no idea what the payroll report says. I -- four years ago, the what the payroll report says. It was not --
> Q. That was not the only time you ever saw a report, a payroll report in 2020. You've seen those reports, right?
> A. I've seen the reports but I don't -- this is different than our normal business. Our normal business is very organized it's all like computers and everything's in spreadsheets and this is just like a you know a x-ray I don't say created report by Mr. Vasilas who just hired all these people and I just -- I remember the people's names what they did I looked at pictures to see if she though did the work and she sent me the pictures some of the times the checks were prepared before I even walked into the room. So it doesn't -- I don't know like how it was actually -- I can visualize but I don't know how it was actually processed by him. I have no idea.
> Q. You don't recall seeing any withholdings on those report that is told you how much to pay those laborers because you were writing the checks?
> A. Well, I don't recall just sitting here I don't recall exactly how were -- they were just checked they were a dollar amount. So I don't know what was held. What was not held. I don't know anything. I just hereby's a person, hearsay the name here's the what they did if a check was made out already or if it was. I signed it. But that's how it worked during the COVID world.

1/8/24 P.M. Tr. 32:3-33:6, 33:15-34:15, 34:22-35:24.

And despite the U.S. Probation Officer's contention, Sheppard's trial testimony actually reflects *consistency* with his February 2019 deposition testimony that HM Management paid "payroll taxes for employees." PSR ¶ 58.

> Q. HM Management, you paid wages to people for a time, right?
> A. For a time?
> Q. Yeah. Up through 2018, yes?
> A. Nope. Through 2019.

1/8/24 P.M. Tr. 35:25-36:3.

It should not be surprising that Sheppard, who was in charge of running multiple companies, was not involved in every minute detail of payroll, accounting, and human resources at those companies. But the important point in reviewing the abovementioned testimony is that the government has not proven that Sheppard demonstrated a willful intent to give false testimony here.

B. Paragraph 59

The U.S. Probation Officer states that Sheppard also "gave false testimony" when he "denied knowing what [the IRS Form 941s submitted to PayPal in 2021 in support of the Alafaya Trails PPP loan] were used for, denied having seen them before, denied that he submitted them to PayPal, and denied that his handwriting was on the forms." PSR ¶ 59.

The U.S. Probation Officer refers to Sheppard's January 9, 2024 testimony, in which Sheppard stated that Jeff Vasilas handled the submission to PayPal and was only involved to the extent Mr. Vasilas had questions:

> Q. All right. Now, on February 11 there were -- with respect -- going back to the PayPal loan application from January 2021 for HM-UP Development Alafaya Trails, you know that on February 11, 2021 there were these forms 941 provided to PayPal, right?
> A. I don't know what was provided to PayPal, and -- on February 11th, 2021, I don't know what was actually provided to them.
> Q. And your attorneys put in this exhibit on your behalf from February 11, 2021 -- I'm sorry. One moment, please. All right. If we can go to the ELMO, please. This is a part of your P1 defense exhibit February 11th 2021, that's your email address, correct?
> A. Correct.
> Q. And you told PayPal: I received the 941s, from 2020 from our accounting department and submitted them to the portal, right that's what you wrote?
> A. Well, I didn't write that, but that's what I see here, correct.
> Q. Someone else wrote that for you?
> A. Again, I didn't handle this specific -- these second round loans as I testified earlier multiple times. I didn't handle this. Jeff handled it. I was involved when he asked me questions. And that's my involvement with it.
> Q. And on this document, PayPal is telling you what they want: Please provide forms 941 and the business tax return which in your case would be a 1065, right?
> A. The tax return is a 1065. Yes.
> Q. And the forms 941, which is taxable Medicare wages and payroll, right?
> A. That's what it says, yes.

> Q. And then the false 941s, that we've seen were submitted on that day to PayPal, correct?
> A. I don't know when they were submitted because I didn't submit them so I don't know when they were submitted but I did see those -- what you're talking about, those 940s or 41s, whichever they are.

1/9/24 P.M. Tr. 17:21-19:7.

Sheppard further opined that the handwriting on the form did not look like his own and pointed out that his name was misspelled in the signature, which Sheppard noted he would not do:

> Q. Okay. Can we go down to the last one. It's quarter one. Some of these were submitted -- some of these were submitted with handwriting, not typed, correct?
> A. I mean, that's what I've been shown.
> Q. And -- go to the quarter one, the last one. Okay. Starting with quarter one here. Just show you this so a couple of them, several of them were submitted with handwriting. They were hand filled in, they were not typed. Do you see that?
> A. I do see that, yes.
> Q. And this is your handwriting, Mr. Sheppard, correct?
> A. Does not look like my handwriting.
> Q. Got to the next page. That is your handwriting Mr. Sheppard, yes?
> A. Doesn't look like -- I mean, my name's not even spelled correctly, but that's a little strange.
> Q. Is that your handwriting?
> A. Doesn't look like my handwriting. I mean from what I'm looking at right this second.
> Q. It does not look like your handwriting?
> . . . .
> Q. All of it?
> A. All of it.
> Q. Yes?
> A. No. You can take part 5, which is the signature and my name is not spelled like that. So it's wrong spelling. Again my handwriting is -- you know it's not that far off, but it's not this.
> Q. Mr. Sheppard, is it your handwriting on this page, including your signature Mr. Sheppard?
> A. It's not.
> . . . .
> THE WITNESS: It's not my handwriting. What I'm looking at, this document doesn't look like my handwriting.

1/9/24 P.M. Tr. 19:12-20:6, 20:10-19, 20:23-24.

According to the U.S. Probation Officer, this testimony is intentionally false because Mr. Graff confirmed during trial that "the writing and signature on the IRS Form 941s belong to

Sheppard." PSR ¶ 59. But considering the above-quoted testimony—and particularly considering Sheppard's contention that *his own name was misspelled* on the papers the government insists Sheppard drafted, an error that no reasonable person could believe Sheppard would make—there is simply not enough to establish Sheppard had a willful intent to give false testimony in this instance. And the only opposing evidence cited by the U.S. Probation here (*i.e.*, Mr. Graff's testimony that he recognized the handwriting on the record as Sheppard's, *see* 12/6/23 P.M. Tr. 57:9-13), is certainly not enough to meet this high standard.

C. Paragraph 60

The U.S. Probation Officer states that Sheppard also "falsely stated that in April 2020, he spoke to his accountants, Neal Cupersmith and Alex Zaslow about the PPP and government loans, and that they provided him advice about the PPP. He falsely stated that the accountants gave him advice as to which company should apply (HM Management) and that he should provide employee data for 2019, instead of 2020, on the loan application. Furthermore, he stated that, despite discussing the PPP, at no time did the accountants advise him that his companies did not qualify for PPP loans." PSR ¶ 60.

The U.S. Probation Officer refers to Sheppard's January 9, 2024 testimony, in which Sheppard recalled a conversation in which he sought and received advice from Mr. Cupersmith and Mr. Zaslow about his various companies and the PPP:

> Q. Right. Right. So the next day you set up a conference call or a call and then you have a call -- you have a call with Mr. Cupersmith and Mr. Zaslow, correct?
> A. I don't remember I remember having a call yes.
> Q. All right. So I just want it to be clear for this jury. During that call, you asked them for advice regarding PPP loan applications?
> A. I believe that was our conversation. More about the structure of the company and the PPP loan and whatever was out in the market because it was brand new. I asked them about it. Yes.
> Q. What did you ask them about it?
> A. I can't tell exactly the details of what I asked. That was a long time ago. But I definitely asked them what you're supposed to do.

Q. And you asked them whether you qualified for any PPP loans -- I mean, they're preparing your tax returns every year, correct?
A. Correct.
Q. So you asked them whether you qualified for any PPP loans?
A. Yes. I was asking -- again, I cannot tell you exactly the specific conversation, but it was regarding the PPP loans with the PayPal stuff.
Q. And they gave you advice that you could apply for PPP loans and that you qualify for PPP loans and that you should do it?
MR. ETRA: Objection. A compound question.
THE COURT: Overruled. I'll allow that.
THE WITNESS: Again, simple, I called the accountants, along with other people. I asked what am I allowed to do with my company, my company for that PPP loan that's all I asked.
Q. For the one that was in process or PayPal?
A. HM Management and Development. HM Management and Development is a company that was -- I was talking about. The applicant was HM-Up. And that conversation about HM-Up it should be HM Management and that's when I reached out to PayPal. I said: Hey, I spoke to the accountant it's not supposed to be HM-Up. It's supposed to be HM Management and I didn't say that to PayPal but I wrote them an email twice and they never contacted me back. Because I wanted to change my application because even though people did work for HM-Up and for CJUF and other companies it was HM Management that is supposed to apply for the PPP loan.
Q. So you told the accountants that you had applied on behalf of HM-Up for this PPP loan application and their advice back to you was: No. You should have applied on behalf of HM
Management. Is that what they told you?
A. Again, I don't know the exact conversation from four years ago, but it was -- the only thing I remember talking about was HM Management is the company that should apply for the -- the PPP loan. That's my recollection. And --
Q. Because your other companies had no employees, right?
A. No. That's not -- that's -- that's not what they -- I don't recall the conversation exactly, but that's not what the conversation was about.
Q. So they told you that you needed to apply on behalf of HM Management and they didn't explain to you why?
A. Again, you're asking me -- they told me HM Management. That's why I filed a modified application to PayPal at the time. And they explained that I always thought it was for the -- to pay people 2020 was to pay people. So that's why I asked them and they said: No, it's 2020 who you can pay for your construction stuff for your construction job, that's fine. But we're -- HM Management workers will go at HM-Up because again we were under construction so HM Management workers would go for HM-Up who is doing the construction. That was the simple conversation in the middle of a[sic].
Q. And your accountants would know which of your companies had actual employees. Right?
A. Can I don't know what they would know or not know they should know how my business operates because we speak about my business and how it operates.
Q. So did you tell them that you were applying on behalf of 80 employees.

> A. I told them that am I supposed to apply for workers in 2020. And I was told no it was 2019. And that's why they said you had to adjust it from -- forget the 80 in 2020. You had to adjust it to eleven in 2000 -- eleven or 5, I don't remember the exact number -- for 2019 because the workers that did work then, that's -- and that's what I modified and resubmitted, eleven people because I always thought the 2000 -- I thought program was to keep people working, and that's what I did and, that's what I paid. But they said: No. You have to use the data from 2019. Okay. And you can't use your workers in 2020 that you're paying. You have to use past workers. That's why I -- excuse me. That's why I modified the application and we submitted it so PayPal prior to May first on April 27th.
> Q. And they never referred to these people as workers not employees, correct. They referred to them as workers not employees?
> A. Who is they.
> Q. The accountants?
> A. I don't know how they referred to them, ma'am. I'm sorry. I don't know how they referred to them.

1/9/24 A.M. Tr. 17:6-20:23.

According to the U.S. Probation Officer, this testimony is intentionally false because the "testimony of Neal Cupersmith and Alex Zaslow show that the accountants and Sheppard did not talk about the PPP, and that the accountants did not give the defendant advice about his PPP loan applications (or any other government loan)." PSR ¶ 60. Mr. Cupersmith and Mr. Zaslow testified at trial that they did not discuss the PPP with Sheppard. *See* 12/12/23 P.M. Tr. 9:22-24; 1/10/24 P.M. Tr. 137:24-138:20. But to the extent that Sheppard's trial testimony regarding his April 2020 phone call with "the accountants" contains hedging language—("I believe that was our conversation." "I can't tell exactly the details of what I asked. That was a long time ago." "I cannot tell you exactly the specific conversation")—that reflects uncertainty and faulty memory, not a willful intent to give false testimony.

Moreover, Mr. Zaslow *confirmed* that Sheppard *had* affirmatively raised the issue of applying for government loans to (at least) Mr. Zaslow via email in late March 2020, which was succeeded by a phone call between the two in April:

> MR. ETRA: …. Okay. So we're in the last page and hopefully some language has been highlighted this is an email from Mr. Sheppard to you on March 30th, correct.

THE WITNESS: Correct.
Q. And he's saying to you applied for some 05:14:24:09 of the government programs. Do you see that.
THE WITNESS: Yep.
Q. So isn't it correct that Mr. Sheppard notified the Cupersmith firm that he had applied for government programs?
A. Yes.
Q. Okay. And you said you provided advice to other clients, correct?
A. Correct.
Q. But you did not provide any advice to Mr. Sheppard about the government programs is that your testimony?
A. Correct.
. . . .
Q. Could we put up by the way do you have any notes of -- the conversation that you talk about that happens in April u do you have any notes of those?
A. No notes.
Q. So you're going completely from memory?
A. Yeah it was a phone call.
Q. And before you looked at these emails did you even remember that he had raised the issue of government programs with you?
A. Yes.
Q. So you remember few years later that in a March 30th Mr. Sheppard raised the issue of government programs, right?
A. Correct.

1/10/24 P.M. Tr. 139:21-140:11, 143:4-15.

That Mr. Zaslow's testimony is consistent with at least some of Sheppard's testimony (*i.e.*, that Sheppard raised the PPP issue and had a phone call to discuss tax issues around this time) further evidences Sheppard's lack of willful intent to obstruct justice here.

D. Paragraph 61

Finally, the U.S. Probation Officer states that Sheppard "falsely denied that he had any knowledge or participation in the loan applications that were submitted in 2021, or the supporting documents consisting of false and forged tax returns and false Forms 940, 941s" and that Sheppard falsely explained "that his contractor, Jeff Vasilas, submitted the loan application information with supporting false documents on his behalf in 2021 without his knowledge." PSR ¶ 61.

The U.S. Probation Officer again refers to Sheppard's January 9, 2024 testimony, in which Sheppard stated that Mr. Vasilas was in charge of the submission to PayPal. *See* 1/9/24 P.M. Tr. 17:21-19:7 ("I didn't handle this. Jeff handled it. I was involved when he asked me questions. And that's my involvement with it.").

According to the U.S. Probation Officer, this testimony is intentionally false because the "evidence showed that: a) all of the loan proceeds were deposited into Sheppard's company bank accounts for which he was the sole signer; these were accounts that he controlled and he decided how to use the money; b) all of the IP addresses captured for these loan applications indicated the loan applications were submitted from Sheppard's house; c) all of the email communication with the lenders was between the lender and Sheppard's email address; d) Sheppard acknowledged that Jeff Vasilas had to travel to Orlando, Florida during this time to pay workers and to work on Burlington "punch list" (contractor work that remained to be done); e) there were false (and forged) documents submitted to the SBA and to Nationwide after Jeff Vasilas died in 2021."

However, none of the evidence cited by the U.S. Probation Officer shows that Sheppard's testimony that Mr. Vasilas handled the 2021 PayPal submission is false. Indeed, it is entirely possible for the loan proceeds to have been deposited into Sheppard's company bank accounts; the loan applications to have been submitted from Sheppard's home IP address; for email communication to be routed through Sheppard's email address; and considering the timing of Mr. Vasilas' travels out of Florida and death to be true *and* for it to be true that Mr. Vasilas handled the 2021 Pay Pal submission.

And that is what the evidence at trial showed. For example, Sheppard testified that in 2021 Vasilas had the authority to "come and go" from Sheppard's home when he pleased, even when Sheppard was not there, and had easy access to Sheppard's home and was "there quite often" to work (sometimes even staying overnight). 12/19/23 P.M. Tr. 119:7-120:1; 1/8/24 A.M. Tr. 28:22-29:6; 1/9/24 P.M. Tr. 38:16-39:1. And the Court received into evidence a February 19, 2021 document (Defense Exhibit X32, a proposal to fix a broken gate at Sheppard's home) that evidenced Mr. Vasilas DocuSign-ing and submitting the proposal from Sheppard's home IP address. 1/8/24 A.M. Tr. 32:18-33:25. Glenn Sheppard also testified that Mr. Vasilas used Sheppard's computer and sometimes used Sheppard's office when Sheppard was not present. 1/10/24 P.M. Tr. 5:2-19, 6:4-7. Thus, that the U.S. Probation Officer alleges "all of the IP addresses captured for these loan applications indicated the loan applications were submitted from Sheppard's house" and "all of the email communication with the lenders was between the lender and Sheppard's email address" does not render Sheppard's testimony that he did not submit the applications false.

V. <u>Request for a Downward Variance Based on Equivalent PPP Sentencings</u>

Sheppard's Presentence Report calculates a guideline imprisonment range of 57 to 71 months. The Court should exercise its discretion to grant Sheppard a downward variance such that his overall term of imprisonment is in line with other PPP loan fraud sentencings.

For example, Andre Lorquet was sentenced to 71 months related to his abuse of PPP, EIDL, and other government relief program loans. *United States v. Lorquet*, 1:22-cr-20326-KMM (S.D. Fla.) Dkt. No. 1 ¶ 13, According to the Department of Justice:

> Lorquet received approximately $4.4 million in COVID-relief funds from the fraudulent scheme. Lorquet used the fraudulently obtained proceeds to purchase, among other things, two Tesla S models, a Lamborghini Urus, a Porsche Panamera GTS, a diamond Audemars Piguet watch, a rose gold and diamond pendant with his company's logo, a half-kilogram gold chain with 70 carats of diamonds, and a 1-kilogram gold chain.

U.S. Attorney's Office (S.D. Fla.) Press Release, March 8, 2024.[11] By contrast, Sheppard's companies received one quarter of what Lorquet received, only approximately $900,000 in government relief money, and Sheppard spent the money on legitimate business expenses, including paying workers.

Sentencings in other districts confirm that the Presentence Report's suggested guideline range of 57-71 months exceeds the realm of reasonableness for Sheppard's conduct. *See United States v. Finley*, 23-CR-181 (JMA) (E.D.N.Y.) (a term of imprisonment of 24 months resulting from a total loss calculation of $3.2 million from 29 PPP and EIDL loans); *United States v. Aqeel* et al., 4:20-cr-00583 (ASH) (S.D. Tx.) (terms of imprisonment of 18-44 months for roles in a scheme to defraud the SBA for over $20 million); *United States v. Mendes*, (D. Mass.) (term of imprisonment of 27 months for $1.7 million fraud).

Moreover, it would fundamentally be unfair to ascribe the same level of guilt when, as here, Sheppard presented unrebutted testimony (via his forensic accountant expert, Mr. Bouchner), that (1) the money that came into Sheppard's bank accounts far exceeded the amount of government loans (*see* 1/10/24 P.M. Tr. 36:3-10), and (2) the amount of business expenses that were paid out of Sheppard's bank accounts exceeded the government loans by a ratio of 5-to-1 (*see id.* 37:12-21). Put simply, Mr. Bouchner presented evidence that the EIDL and PPP funds went to business expenses. Instead, and in contrast to the typical PPP fraud scheme, Sheppard used the funds from his business accounts to for mortgage payments (*id.* 39:4-14), payroll to individuals (*id.* 39:18-40:1), contractor companies (*id.* 40:18-41:1), and to help with his ongoing developments (*id.*, 41:2-13). Comparing Sheppard's case to cases where others have been

[11] https://www.justice.gov/usao-sdfl/pr/south-florida-man-sentenced-prison-covid-19-relief-fraud-after-buying-jewelry-and.

sentenced to lesser terms of imprisonment even after they used PPP loan proceeds for gambling, Ferraris[12] or Bentleys[13], luxury vacations,[14] luxury goods,[15] or even just to transfer the funds to family members[16] strongly supports a downward variance in Sheppard's case.

Also in contrast to the typical PPP fraud scheme and also supporting a downward variance, Sheppard has repaid or is continuing to repay the loans that he received from the government (except for the one loan that was forgiven), even the loans for which he was *acquitted* of all charges and the loans that were *not included in the superseding indictment*. To date, Sheppard has repaid the full balance for the two loans for which he was convicted of all charges, the March 11, 2021 second draw PPP loan on behalf of Alafaya Trails and the March 12, 2021 second draw PPP loan on behalf of HM Management and Development. Sheppard continues to make payments toward the July 24, 2020 EIDL loans on behalf of HM Management and Development and Alafaya Trails and the October 22, 2020 EIDL loan on behalf of HM Four, for which he was acquitted of all charges.

The Presentence Report's guideline recommendation is fundamentally out of step with prevailing sentencings across the country. It proposes to inflict the same punishment on a defendant who "dissipates the profits or proceeds of his [criminal] activity on wine, women, and song," *United States v. Ginsburg*, 773 F.2d 798, 802 (7th Cir. 1985), as one, like Sheppard, who

[12] https://www.justice.gov/opa/pr/two-florida-men-plead-guilty-35-million-covid-19-relief-fraud-scheme.

[13] https://www.justice.gov/usao-cdca/pr/irvine-man-sentenced-4-12-years-federal-prison-fraudulently-obtaining-5-million-covid.

[14] https://www.justice.gov/usao-mdla/pr/attorney-general-announces-results-paycheck-protection-plan-criminal-fraud-enforcement.

[15] https://www.justice.gov/opa/pr/twenty-two-charged-connection-more-11-million-paycheck-protection-program-fraud-scheme.

[16] https://www.justice.gov/opa/pr/woman-convicted-7m-covid-19-relief-fraud.

used the loan proceeds, in effect, their intended purposes. And defendants who have defrauded banks of far more than Sheppard's alleged fraud and who have not repaid a cent of the loans that they fraudulently received have been sentenced to terms both at the lower end and even outside the guideline range of what is requested here. A downward variance is warranted in these circumstances.

VI. Request for a Downward Variance Based on Sheppard's History and Characteristics

Under 18 U.S.C. § 3553(a)(1), a court must consider "the history and characteristics of the defendant" at sentencing. Here, where Sheppard has transcended a traumatic upbringing, built a successful business, devoted himself to community and charitable causes, and raised two children who love and admire and desperately need him in their lives, there can be no doubt that his history and characteristics support a downward variance.

REDACTED

REDACTED

REDACTED

REDACTED

Sheppard's letters of support paint a picture that allows this Court to see Sheppard as his loved ones and fellow community members see him. All echo the same sentiment: that Sheppard is deserving of leniency and the opportunity to "continue to be of great service to his family and community." REDACTED

Respectfully submitted,

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201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131
Tel. (305) 371-6421

By: /s *Howard Srebnick*
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Florida Bar No. 0092305

One Biscayne Tower, 21st Floor
2 S. Biscayne Boulevard
Miami, FL 33131
Tel. (305) 373-9400

EXHIBIT A

From: **PayPal Paycheck Protection Program Loan Team** <no-reply@paypal-businessfinancing.com>
Date: Thu, May 27, 2021 at 6:44 PM
Subject: Your PPP Loan Forgiveness Request
To: <eric.sheppardREDACTED

HM-UP DEVELOPMENT ALAFAYA TRAILS LLC
SBA Loan Number: 8233047308
Lender Loan Number: A00440373
PPP Original Loan Amount: $ 146,457.00

Dear Eric Sheppard,

Congratulations! The SBA reviewed your Paycheck Protection Program (PPP) Loan Forgiveness Application and determined that you qualify for full loan forgiveness.

As a result, your PPP loan has been marked as paid in full and your loan balance has been reduced to $0. No further action is required on your part.

We hope that the PPP loan helped your business through these challenging times.

If you have questions or need assistance, please call us at 1-866-740-0393, Monday through Friday, 8 a.m. to 6 p.m. ET.

Sincerely,

PayPal Paycheck Protection Program Loan Forgiveness Team

EXHIBIT B

SP

Stephanie Paulk <Spaulk@newitymarket.com>

Fri 4/5, 2:10 PM

eric.sheppard10@gmail.com

Payoff Confirmation.pdf
58 KB

Hi Eric,

Thank you for your patience. Please see the attached payoff confirmation for your loan you have any questions, please feel free to reach out. Thank you for your business and ti wonderful weekend!

Kindly,

NEWITY

Stephanie Paulk

Loan Servicing Specialist

www.newitymarket.com
spaulk@newitymarket.com

Your source for small business capital.

Classified as Confidential

HM-UP DEVELOPMENT ALAFAYA TRAI
1250 N ALAFAYA TRL
ORLANDO FL 32828

Contact Number: 10097043
Loan Number: 3276648609
Name:

Transaction Date	Tran Code	Transaction Amount	Description	Principal	Interest	Fees	Late Charges	Others	Principal Balance
04/02/2024			Starting Balance						0.00
04/05/2024	206	155.85	P+I Interest Payment		-155.85000				0.00
04/05/2024	204	3,247.45	P+I Principal Payment	-3,247.45					0.00
04/05/2024	204	3,403.30	P+I Principal Payment	-3,403.30					0.00
04/05/2024	220	80,859.70	Principal Reduction	-80,859.70					0.00
			Totals	**-87,510.45**	**-155.85000**	**0.00**	**0.00**	**0.00**	

EXHIBIT C

cross river

scratch.

Loan number: 230710573811

April 8th, 2024

Hello Hm Management And Development Llc,

You did it! Your last payment of $4,982.21 on April 4th, 2024 for your Cross River Paycheck Protection Program Loan was, well, your last!

Paying off a loan is a journey. We hope we've made it a little more manageable along the way.

You can continue to sign in at **https://scratch.fi** to look back on the history of your loan, or find any documents you need.

We're still here, so don't hesitate to reach out if you have any questions.

Now, time to celebrate!

If you run into any troubles, you can view our help center or contact us at (844) 727-2684.

Sincerely,
Team Scratch

Don't recognize this loan? Have any questions? Contact us:

Hours: Monday - Thursday, 9AM to 8PM and Friday, 9AM to 5PM ET.

Email: support@scratch.fi

Call: (844) 727-2684

Snail mail:
Scratch Services, LLC
PO Box 411285
San Francisco, CA 94141-1285

You can also visit our help center at **https://help.scratch.fi** to learn more about Scratch.

scratch.

cross river

https://scratch.fi

Hm Management And Development Llc
12000 Biscayne Blvd, 508
North Miami, FL 33181

Cross River Paycheck Protection Program Loan

Loan number 230710573811

Total amount due June 26, 2022:

$0.00

Current installment (May 27 - June 26)

Installment overview	
Principal	$0.00
Interest	$126.20
Current installment payment	**$0.00**
Fees	$0.00
Past due amount	$0.00
Total due June 26, 2022	**$0.00**

Account Information	
Statement date	5/31/2022
Loan status	Current
Remaining principal	$148,591.00
Interest rate (5/27/2022-6/26/2022)	1.00%
Maturity date	3/26/2026
Principal paid YTD	$0.00
Interest paid YTD	$0.00

Activity since last statement (May 1 - May 31)

Date	Transaction	Charge	Payment

You had no activity with us last installment.

Past payments breakdown	
Principal	$0.00
Interest	$0.00
Fees	$0.00
Total	**$0.00**

Additional information

Schedule a payment online athttps://scratch.fi.

Questions? Visit https://help.scratch.fi or call (844) 727-2684. **Hours:** M-Th 9am - 8pm and F 9am - 5pm ET.

Notice for mail payments: If you're mailing a payment, please print the form below and include it in the envelope. Be sure to write your Loan number in the memo of the check and make it out to Scratch Services, LLC.

Loan number	230710573811
Payment due date	June 26, 2022
Total due	$0.00

Send via USPS to:
Scratch Services, LLC
PO Box 888654
Los Angeles, CA 90088-8654

For FedEx, UPS and all others:
Lockbox Services - #0138654
Scratch Services, LLC
3440 Flair Dr.
El Monte, CA 91731