**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF VIRGINIA**
**ABINGDON DIVISION**

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| **UNITED STATES OF AMERICA** | ) | |
| | ) | **No.: 1:24-CR-00017-01** |
| **v.** | ) | **JUDGE BALLOU** |
| | ) | |
| **JOSEF LUDWIG BROWN** | ) | |

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# UNITED STATES' SENTENCING MEMORANDUM

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The United States of America, by and through undersigned counsel, files this sentencing memorandum for the Court's consideration in the above-referenced matter scheduled for sentencing on April 24, 2025. The United States submits that a sentence at the high end of the advisory guidelines range of 37 to 46 months is the appropriate sentence, for the reasons set forth herein.

## Statement of the Case

### Summary of the Facts and Loss Amount

The parties entered into a written plea agreement, which included an agreed stipulation of facts concerning Brown's commission of the offenses for which he faces sentencing on April 24, 2025. (ECF Docs. 399, Plea Agreement; 400, Agreed Stipulation of Facts; 611, Final Presentence Report "PSR".) The parties agreed that the facts contained within the agreed statement of facts were submitted for purposes of his guilty plea and did not necessarily constitute all of the facts in the case. (ECF Doc. 400, Agreed Stipulation of Facts.) The parties further agreed that other facts may be relevant at sentencing and that both parties retained the right to present additional facts to the Court to ensure a fair and appropriate sentence in the case. (*Id.*) The offense facts are also set forth in Brown's PSR and are incorporated herein by reference. (ECF Doc. 611, Revised Final PSR, *Sealed Document*, at ¶¶ 6-42, 101.)

In brief summary, Brown and co-defendant Crystal Shaw were the two lead defendants in a 17-defendant scheme to file fraudulent claims for Pandemic Unemployment Assistance ("PUA") benefits during the COVID-19 pandemic. (*Id.* at ¶¶ 8, 10-12.) These fraudulent claims resulted in a total loss attributable to the Brown/Shaw scheme of $297,157. (*Id.* at ¶ 78.) In the agreed stipulation of facts, Brown admitted that he filed or caused to be filed his own fraudulent claim for unemployment benefits and further admitted that he solicited other co-conspirators to participate in this fraudulent scheme by providing their person identifying information ("PII") to Shaw to file additional fraudulent claims for unemployment benefits. (*Id.* at ¶¶ 10-11.) Brown specifically admitted in the agreed statement of facts, which is supported in the discovery materials reviewed by the probation office in compiling the PSR, that he either solicited or provided PII to Shaw for the following individuals: M.F., T.J., co-defendant Justin Warren Meadows, R.R., N.T., J.S., I.S., and co-defendant Jason Dale Worley. (*Id.* at ¶¶ 11, 86.)

Brown further admitted that he and Shaw shared the proceeds from the fraudulent benefits paid for each of the ineligible claims of recertifications. (*Id.* at ¶ 12.) Jail communications between the pair also verified this arrangement, as did Shaw's interview with law enforcement prior to her arrest. (*Id.* at ¶¶ 12, 59, 89, 97.) He further admitted that he certified or conspired to have recertified on his own person behalf his eligibility for benefits on at least 19 occasions during which he was incarcerated. (*Id.* at ¶ 13.) Brown also admitted that he is responsible for a loss amount between $40,000 and $150,000, which represents PUA benefits he and others were ineligible to receive. (*Id.* at ¶ 16.)

Brown's communications with Shaw while incarcerated support the agreed statement of facts and summary of the offense conduct contained within the PSR. (*Id.* at ¶¶ 12, 17, 59, 89, 97.) Specifically, their communications captured Brown and Shaw passing along PII of some of the referenced individuals who were ineligible for the fraudulent PUA claims Brown and Shaw schemed to file in order to receive benefits for which they were ineligible. (*Id.* at ¶ 12.) The pair also agreed to share the proceeds from these fraudulent claims. (*Id.* at ¶¶ 12, 89, 97.)

Brown's own fraudulent claims totaled $28,696. (*Id.* at ¶ 100-101.) This includes his initial claim as well as all subsequent recertifications of eligibility, including recertifications made while Brown was incarcerated. (*Id.* at ¶¶ 13, 14, 80-84, 98, 100-101.) The United States intends to introduce at Brown's sentencing hearing communications from the Virginia Employment Commission ("VEC") which indicate Brown's ineligibility for benefits due to his incarceration status. Further, the investigation has not revealed any evidence of eligible employment attributable to Brown for any dates he was not incarcerated. Brown's VEC file is also devoid of any evidence of eligible employment. Law enforcement testimony at the sentencing hearing will further explain the investigative efforts undertaken to attempt to confirm any employment by Brown. This includes investigating claims that Brown ran a furniture repair or refinishing shop while not incarcerated. It is noteworthy that the investigation revealed that many of the claimants whose fraudulent claims Brown admitted he conspired to file listed Brown's alleged furniture refinishing shop, "New To You," along with Brown's home address on their fraudulent claims for benefits.

The co-defendants and unindicted co-conspirators whose fraudulent claims Brown admitted he assisted in filing, along with their fraudulent benefits amounts, included the following:

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| Co-defendant Justin Meadows | $13,202 |
| Co-defendant Jason Worley | $9,698 |
| M.F. | $474 |
| T.J. | PII provided to Shaw, no benefits paid |
| R.R. | $2,638 |
| N.T. | PII provided to Shaw, no benefits paid |
| J.S. | $5,896 |
| I.S. | PII provided to Shaw, no benefits paid |
| T.S. | $8,940 |

(*Id.* at ¶¶ 85-86.) The investigation also revealed that Brown solicited and/or provided PII to Shaw for co-defendant Terrance Vilacha, whose fraudulent claims totaled $14,894. (*Id.* at ¶ 86.)

It is important to note that Brown's eligibility for PUA benefits was not solely driven by his incarceration status. Rather, each program for benefits assistance had specific criteria for eligibility, as set forth in the indictment and restated in the PSR. (*Id.* at ¶¶ 22-31.) Key to each program's eligibility was an individual's recertification of their eligibility during each week benefits were available. That certification required that the individual certify they were unemployed due to the pandemic, that they were able and available for work during the week of the certification, and that they were actively seeking employment. (*Id.* at ¶¶15, 22, 25, 26.) Brown was not unemployed due to the pandemic, nor did he have any qualifying reportable employment during periods he was not incarcerated. He was ineligible for the entire $28,696 in benefits paid due to his fraudulent claims and recertifications.

And finally, Shaw's own fraudulent claims totaled $34,650. (*Id.* at ¶ 77.) Brown should also be held accountable for Shaw's total claims as a result of their mutual agreement to conspire to engage in this fraudulent scheme, as this is relevant conduct, pursuant to U.S.S.G. § 1B1.3. Shaw and Brown acted in concert to conduct this scheme, engaged in actions in furtherance of the conspiracy, including conspiring to file fraudulent claims, and that Shaw filed her own fraudulent claim is part of the same course of conduct or common scheme or plan associated with this conspiracy. In addition, Shaw's own fraudulent claim was part of the "jointly undertaken criminal activity" between her and Brown, as it is part of the same "criminal plan, scheme, endeavor, or enterprise undertaken by [Shaw] in concert with" Brown. U.S.S.G. § 1B1.3, Application Note 3(A). In this context, Brown should be held accountable for the amount of Shaw's fraudulent claims, as she should for his fraudulent claim amounts, because it was:

(i) within the scope of the jointly undertaken criminal activity;
(ii) in furtherance of that criminal activity; and
(iii) reasonably foreseeable in connection with that criminal activity.

*Id.; see also* U.S.S.G. § 1B1.3, Application Note 4(C)(ii).

These amounts fraudulently paid to the co-defendants and unindicted co-conspirators outlined above, Brown, and Shaw total $119,660, which represents the total amount of fraudulent claims for which Brown should be held responsible due to both his personal responsibility and acts committed in furtherance of the conspiracy. (*Id.* at ¶¶ 101.) This is within the parties' stipulated loss amount range in the agreed statement of facts. (ECF Doc. 400, Agreed Statement of Facts at ¶ 7.)

**<u>The Presentence Report</u>**

Brown stands convicted of Count 1 of the Indictment, conspiracy to defraud the United States by filing fraudulent claims for pandemic unemployment benefits. The maximum term of imprisonment is five years; the Court may also impose a term of supervised release of up to three years. (ECF Doc. 611, PSR at ¶¶ 404, 407.)

Brown's total offense level is 14 and his criminal history category is VI. (*Id.* at ¶¶ 350-360, 362-379.) Accordingly, Brown's imprisonment guideline range is 37 to 46 months. (*Id.* at ¶ 405.) The United States concurs that the PSR properly calculates Brown's guidelines and that this is the applicable advisory range.

For reasons set forth herein, the United States recommends a sentence at the high end of the advisory guidelines range.

**<u>The United States' Sentencing Recommendation</u>**

As Section 3553(a) provides, "the court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of the subsection." 18 U.S.C. § 3553(a). Those purposes include the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment, and to afford adequate deterrence to criminal conduct. 18 U.S.C. § 3553(a)(2).

Here, the starting point for the Court's application of § 3553(a) is the advisory guidelines imprisonment range of 37 to 46 months. As set forth above concerning the offense conduct, the United States submits the PSR properly calculated Brown's loss amount for the offense he conspired to commit and urges the Court to overrule the defense objections to the PSR's guidelines and loss amount calculations and adopt the correctly calculated guidelines in the PSR.

Consideration of the sentencing factors set forth in §§ 3553(a) and (f) demonstrate that a sentence of at the high end of the advisory guidelines range is appropriate. The Court is instructed to first look at the nature and circumstances of the offense and the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1). Brown led a significant scheme to defraud the United States. He admitted that he and co-defendant Shaw led a conspiracy of 17 defendants to defraud the United States of over $297,000 in fraudulently paid unemployment benefits. Brown not only filed or caused to be filed his own fraudulent claim and numerous recertifications, he also aided others in filing fraudulent claims totaling the payment of over $119,000 in fraudulent benefits. Brown engaged in these actions while incarcerated, demonstrating that even incarceration does not deter his criminal conduct. As a leader of this organization and the fraudulent scheme they engaged in, his punishment should be at the high end of the applicable guidelines, compared to other less culpable co-defendants.

As to Brown's history, the PSR documents his extensive criminal history, including repeated convictions for engaging in crimes involving fraud (even as a juvenile) and repeated violations of supervised probation. (ECF Doc. 611, Revised Final PSR at ¶¶ 362-

376.) It is notable that his first conviction occurred as a juvenile at age 17 for a fraud offense—forgery and uttering a forged check. (*Id.* at ¶ 362.) Brown's criminal history includes 12 other fraud-related convictions, as well as serious felony convictions for drug possession, abduction, breaking and entering, felonious possession of a firearm, obstruction of justice, and other convictions. (*Id.* at ¶¶ 362-376.) Brown has incurred at least eight separate convictions for violating probation (on different dates and in connection with different terms of supervision). (*Id.* at ¶¶ 366, 371, 372.) This history demonstrates that prior periods of incarceration and supervised probation did not deter his continued criminal conduct and that he is non-compliant with Court-ordered terms of supervision. It is further of note that Brown was incarcerated when he engaged in this fraud scheme. In short, the defendant's current and prior conduct was very serious and necessarily demonstrates that a significant period of incarceration is appropriate, given his propensity to engage in fraud-related crimes and high likelihood of recidivism.

As to affording adequate deterrence, the Court must look at deterring not only the defendant from willful violation of the law, but must also impose a sentence which serves as a general deterrent. The extent of Brown's own criminal history – including his history of repeated fraud convictions dating back to 1998 – also demonstrates the seriousness of this offense, impact on the community, and his high risk of recidivism.

In addition, Brown's offense is serious. According to the United States Department of Labor, Virginia paid approximately $1.1 billion in fraudulent unemployment claims between April 1, 2020, and March 31, 2021.[1] By leading this conspiracy to defraud the United States, Brown contributed to the rampant and costly fraud that occurred during the COVID pandemic. This fraudulent scheme negatively impacted society and the community as a whole. Brown's actions breached the government's trust in efforts to get money into the hands of those in need, as these programs were administered in good faith reliance on claimant's information during the pandemic. Such fraudulent actions could hamper future programs and prevent those truly in need from access to much-needed emergency assistance.

As described above, Brown's history also demonstrates that prior periods of incarceration and supervised probation did not deter his continued criminal conduct and that he repeatedly failed to comply with court-imposed conditions of release. Due to the serious offense conduct, the defendant's prior criminal history, and high risk of recidivism, the sentence imposed in this case must serve as a specific and general deterrent. Lastly, as a leader of this conspiracy, Brown's conduct should also be more severely punished than other minor co-defendants in this case as both a specific and general deterrent. Other less culpable defendants who only played a minor role in this conspiracy received reduced sentences for their minor roles in the conspiracy and relatively low loss amounts. As a leader of this conspiracy, Brown is held responsible for among the highest loss amounts attributable to defendants in this conspiracy—$119, 660—and co-led this conspiracy *from*

1 *Unemployment Insurance Payment Accuracy Datasets*, U.S. Department of Labor, https://www.dol.gov/agencies/eta/unemployment-insurance-payment-accuracy/data (last visited April 17, 2025).

*jail* with co-defendant Shaw. These are aggravating factors that the Court should consider and weigh in favor of a sentence at the high end of the guidelines.

Accordingly, based on the above, and having undertaken an individualized assessment of the § 3553(a) factors as they relate to Brown, the United States submits that the Court should impose a sentence of imprisonment at the high end of the advisory guidelines range. The United States submits that this sentence is necessary to achieve the goals of sentencing articulated in 18 U.S.C. § 3553(a), as outlined herein.

## **The Sentencing Hearing**

The United States anticipates calling the following witnesses at Brown's sentencing hearing:

1. FBI S.A. Lindsey Rosson
2. Department of Labor S.A. Jeff Carter

The United States anticipates utilizing the following exhibits at Brown's sentencing hearing:

1. ECF Doc. 399, Plea Agreement
2. ECF Doc. 400, Agreed Stipulation of Facts
3. ECF Doc. 611, Revised Final PSR
4. Brown's VEC file, including initial claim, recertifications, and correspondence
5. Brown and Shaw's jail communications

Respectfully submitted,

Zachary T. Lee
Acting United States Attorney

By: **s/M. Suzanne Kerney-Quillen**
M. SUZANNE KERNEY-QUILLEN
Special Assistant U.S. Attorney
VSB No. 66633
180 W. Main Street, Suite B19
Abingdon, VA 24210
(276) 628-4161

## CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2025, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s/**M. Suzanne Kerney-Quillen**
M. SUZANNE KERNEY-QUILLEN
Special Assistant U.S. Attorney