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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. AARON BOREN, Defendant.	CASE NO. 23-CR-0134-AMO **UNITED STATES' SENTENCING MEMORANDUM** Date: May 13, 2024 Time: 2:00 p.m. Court: Honorable Araceli Martínez-Olguín

INTRODUCTION

Defendant Aaron Boren stole $500,000 in pandemic funds meant to help struggling businesses. As described below, Boren, with the help of Reginald Mosley and others, submitted a fraudulent PPP loan application on behalf of his company, Aaron Boren Consulting Group ("ABCG"). Although ABCG had no outside employees and little actual business, Boren's loan application fraudulently affirmed that his company had 25 employees and monthly payroll expenses of $200,000. Reginald Mosley drafted Boren's application and provided the supporting documents, while Boren signed off on the final submission. As a result, Boren received $500,000 in fraudulent proceeds and then paid a 15% kickback to Reginald Mosley. Rather than use that money for payroll and other business expenses (as required by the CARES Act), Boren used the money to fund his daily life as well as other business ventures.

When government agents approached Boren, he quickly and truthfully confessed to his role in the scheme and offered to plead guilty. While Boren should get credit for his early acceptance of responsibility, the government submits that a custodial sentence is warranted given the seriousness of the crime and the national emergency during which it occurred. Accordingly, for the reasons set forth below, the government respectfully requests that the Court sentence Boren to 12 months and one day imprisonment, a three-year term of supervised release (with the conditions recommended by probation and set forth in the plea agreement), $500,000 in restitution, a $100 special assessment, and order forfeiture of the items set forth in the plea agreement.

BACKGROUND

I. <u>Offense Conduct</u>

A. Background on Federal Loan Programs

The CARES (Coronavirus Aid, Relief, and Economic Security) Act is a federal law enacted in March 2020 and designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. *See* Presentence Investigation Report ("PSR") ¶¶ 10-13. One source of relief provided by the CARES Act was the authorization of hundreds of billions of dollars in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the PPP.

PPP loans were administered by the Small Business Administration (SBA) through approved lenders and were designed to assist small business owners with expenses such as payroll costs, rent, and utilities so that businesses could maintain their workforce during the COVID-19 crisis. The loan amount was determined by the monthly payroll of the small business. The loan money came directly from the approved lenders to the applicant and was guaranteed by the SBA. To qualify for a PPP loan, the applicant's business must have been in operation on February 15, 2020, have employees, have average monthly payroll costs, and provide documentation to support these assertions. The PPP loan application required the borrower to certify that the funds would be used to retain workers and maintain payroll; or make payments for mortgage interest, rent, utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures as specified under the Paycheck Protection Program Rules. In addition, the PPP loan application required applicants to state any other businesses they own, and specify whether they have applied for any other PPP loans.

B. Boren's Fraudulent PPP Loan for ABCG

In February and March of 2021, Boren and Reginald Mosley had discussions about filing a fraudulent PPP loan application on behalf of ABCG. *Id.* ¶ 37. Boren and Reginald Mosley knew each other from their experience in the Sacramento-area auto sales industry. Reginald Mosley helped prepare the paperwork with information provided by Boren. *Id.* In March 2021, Boren submitted the application, which falsely affirmed that ABCG had 25 employees with a monthly payroll of $200,000. *Id.* ¶ 38. The application also included false tax returns, supposedly filed with the IRS and signed by Boren, asserting that ABCG received $2,689,151 in gross receipts in 2020 and that ABCG paid a total of $2,400,000 to all employees in 2020. *Id.* In fact, ABCG did not have any employees other than Boren, did not have a monthly payroll anywhere near the amount represented, and did not file any tax returns for 2020. *Id.*

On March 22, 2021, ABCG received $500,000 in PPP loan proceeds. *Id.* ¶ 39. In the days that followed, Boren used the money to fund various personal expenses and also transferred $75,000 to the FTI bank account controlled by Frank and Reginald Mosley. *Id.* Rather than use the money for legitimate business purposes, as required by the CARES Act, Boren used the money on personal expenses, other business ventures, and funneled some to family members via fake payroll transactions.

Id.

II. <u>Procedural Posture</u>

On May 4, 2023, the government filed an Information charging Boren, as well as Frank Mosley, Reginald Mosley, Marcus Wilborn, and Scott Conway, with one count of conspiracy bank fraud, in violation of 18 U.S.C. § 1349. ECF No. 1. Boren and his co-defendants were released pending trial. On September 12, 2023, Boren pled guilty to the charge against him. ECF No. 40. Per the plea agreement, the parties agreed that the applicable Offense Level under the Sentencing Guidelines is 16 (plus an additional two-point reduction given that Defendant is a zero-point offender), and the government agreed to recommend a sentence of 12 months and one day in custody, as well supervised release, forfeiture, restitution, and a special assessment. PSR, ¶ 3.

ARGUMENT

I. <u>Legal Standard</u>

The United States Sentencing Guidelines serve as "the starting point and initial benchmark" of any sentencing process and are to be kept in mind throughout the process. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008); *see also United States v. Kimbrough*, 522 U.S. 85, 108 (2007). The overarching goal of sentencing, as set forth by Congress, is for the Court is to "impose a sentence sufficient, but not greater than necessary." *Carty*, 520 F.3d at 991. In accomplishing that goal, the Court should consider the factors set forth under 18 U.S.C. § 3553(a), to include:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(3) the need for the sentence imposed to afford adequate deterrence to criminal conduct;

(4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

II. <u>Sentencing Guidelines Calculation</u>

As set forth in the PSR and the plea agreement, the Sentencing Guidelines calculations for Defendant's offense level is as follows:

	U.S.S.G. Section	Level/Points
Base offense level	§2B1.1(a)(1)	7
Specific offense characteristics	§2B1.1(b)(1)(G) - Intended loss amount between $250,000 and $550,000	+12
Adjusted offense level		19
Acceptance of responsibility	§3E1.1	-3
Zero Point Offender	§4C1.1	-2
Total offense level		14
Criminal History Category		I
RANGE		15-21 months

PSR ¶¶ 47-57.

The Probation Officer concluded that Defendant's criminal history score is 0, and he therefore falls into Criminal History Category I. *Id*., ¶¶ 61-62. As reflected in the PSR, the Guidelines range for imprisonment associated with adjusted offense level 14 and Criminal History Category I is 15 to 21 months. *Id*. ¶ 97. The Probation Officer recommends a sentence of 12 months and one day in custody. *Id*. at Sentencing Recommendation.

III. <u>The United States' Sentencing Recommendation</u>

Based on a consideration of the Guidelines and the factors in Section 3553(a), the United States submits that a sentence of 12 months' and one day of imprisonment, coupled with a three-year term of supervised release, a restitution order as set forth in the PSR, and a forfeiture order are sufficient, but not greater than necessary, to comply with the factors set out above.

Primarily, the government notes that Boren's charged conduct, stealing $500,000 in pandemic funds meant for struggling businesses, was serious. The PPP fraud was undertaken during a time of great national hardship. Many legitimate businesses were in need of the type of PPP loan funds that Boren obtained; the defendant took advantage of a program that was meant to make those funds flow easily to needy legitimate recipients, and not to him. As described above, funding for the PPP program was capped, so any money Boren obtained from the program did not go to other struggling businesses that needed it. Simply put, this fraud is different and more egregious than a run-of-the-mill tax fraud or other government benefit fraud given the national emergency that was occurring in the background. And when Boren obtained the money, he did not use it for payroll and other business expenses, as required by the CARES Act. Rather, he used it for personal expenses, other business ventures, and funneled portions of the money through fake payroll transactions on the Gusto platform.

Moreover, general deterrence and the message this case sends to the public are important principles to consider. As noted above, the government funds at issue in the PPP-loan fraud aspect of this case flowed freely – as they should have – during a time of national hardship. Other individuals who are in Boren's position now and in the future must know that, on top of a federal felony conviction, defrauding programs like the PPP will result in prison time and monetary penalties.

No doubt, Boren should get credit for accepting responsibility early and admitting to his crimes. For that reason, the government is recommending a sentence that is 20% below the low-end of the Guidelines. Nevertheless, the government respectfully recommends that a custodial sentence is warranted in this case given the significant loss amount ($500,000) and the fact that Boren took advantage of the pandemic to line his own pockets.

Finally, one of the § 3553(a) factors is the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. As the Court might expect, Boren was not the only person to commit PPP fraud, and many others around the country who committed similar crimes have already been sentenced. A representative sample of some of those sentences from our district and other districts in California are as follows:[1]

District	**Case Name/Number**	**Loss Amount**	**Sentence**
N.D.C.A.	*United States v. Christina Burden*, No. 21-CR-0362-YGR	$1,143,191	36 Months
E.D.C.A.	*United States v. Aaron Ashcraft*, No. 22-CR-0087-KJM	$1,200,000	41 Months
N.D.C.A.	*United States v. Miranda Devlin*, No. 21-CR-0226-MMC	$565,355	18 Months
C.D.C.A.	*United States v. Vardan*	$3,000,000	51 Months

[1] Several websites have been tracking CARES Act Fraud cases and sentences, such as https://www.arnoldporter.com/en/general/cares-act-fraud-tracker/ (last updated February 1, 2024).

	Khalatyan, No. 22-CR-0441-MCS		
N.D.C.A.	*United States v. Caesar Oskan*, No. 21-CR-0143-CRB	$268,719	18 Months
C.D.C.A.	*United States v. William Sadleir*, No. 20-CR-0299-DMG	$1,700,000	41 Months
C.D.C.A.	*United States v. Raymond Magana*, No. 21-CR-0007-SB	$2,237,831	41 Months
C.D.C.A.	*United States v. Steven Goldstein*, No. 20-CR-0597-SB	$655,000	12 Months + 1 Day
N.D.C.A.	*United States v. Ester Ozkar*, No. 21-CR-0144-CRB	$483,132	12 Months + 1 Day
C.D.C.A.	*United States v. Llerenas*, No. 21-cr-0187-JWH	$4,300,000	63 Months
C.D.C.A.	*United States v. Amiryan*, 20-cr-0520-DMG	$650,000	41 Months

Given the pandemic fraud sentences that have been ordered in this district, other districts in California, and throughout the country, the government submits that a sentence of 12 months and one day is appropriate in this case.

CONCLUSION

For the foregoing reasons, the government recommends that the Court sentence Defendant to 12 months and one day in prison, a three-year term of supervised release, $500,000 in restitution, and a $100 special assessment. The Court should also order Defendant to forfeit his interest in the items set forth in paragraph 11 of the plea agreement.

DATED: May 6, 2024

Respectfully submitted,

ISMAIL J. RAMSEY
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/s/
ABRAHAM FINE
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