UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA	)	
	)	
vs.	)	DOCKET NO. 2:22-cr-39-SPC-NPM
	)	
	)	
DANIEL JOSEPH TISONE	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S SENTENCING MEMORANDUM IN SUPPORT OF MOTION FOR DOWNWARD VARIANCE FROM THE UNITED STATES SENTENCING GUIDELINES AND RECOMMENDED SENTENCE

By and through his counsel of record, Daniel Joseph Tisone ("Daniel") respectfully submits the following sentencing memorandum for this Court's consideration prior to the imposition of sentence herein. Mr. Tisone submits this memorandum in order to provide information to assist the Court with fashioning a sentence that is "sufficient but not greater than necessary" to achieve the statutory purposes of punishment and a just sentence. Mr. Tisone also respectfully requests the Court to consider the multiple factors pursuant to 18 USC §3553(a)(1)-(7) that would warrant a variance and a sentence significantly below the guidelines range.

I. INTRODUCTION

Daniel Tisone is a 35-year-old devoted father of a newborn boy, loving fiancé, business owner, and valued member of the Naples community. When he was young, Daniel's mom struggled with extremely long work hours to provide for Daniel and his older sister and raised both children as a single mother as his father was absent. When his father did come into the picture he was both verbally and physically abusive towards Daniel, his sister and his mother.

As a consequence of his father's abuse, Daniel started to run away from home, skip school, got involved with drugs and alcohol and ran with a rough crowd towards the end of high school and beginning of college. He was involved in a physical altercation with another student, who was a drug dealer. He stole Mr. Tisone's laptop while Mr.

Tisone was a 19-year-old sophomore in college. Mr. Tisone disputed the facts of the case, went to trial, and was subsequently convicted and sentenced to 6 years in prison and 5 years parole. He served 4 years and 8 months of his prison term before being released.

Daniel was released from prison in 2012 to his mother's house in Fairfax, Virginia. From day one, he started working with his mother saving money to start his own business, "RUB A DUB," which started as a car detailing service operating from the parking lots of commercial office buildings. He worked long hours building his business while also helping his mother's business and put himself through community college in the evening. He earned a 4.0 GPA, achieving the designation, "presidential scholar."

While in school and working, Mr. Tisone volunteered at Project SAFE, a counseling center for troubled youth. After finishing two years at community college while building his business, he applied to Georgetown University in Washington DC. He was offered a full scholarship only to have it rescinded by the board of admissions after learning of his criminal conviction from when he was 19 years old.

He went to the Project SAFE counseling center where he volunteered and explained how his actions from years ago shut doors for him no matter how hard he works and regardless of what he achieves in an attempt to overcome his past. A young boy shared Mr. Tisone's story with his father, who happened to be the Dean of Students at Catholic University. He then called Project SAFE and informed the owner that he wanted to meet with Mr. Tisone.

Mr. Tisone was admitted to the university and enrolled in an honor's dual degree program for International Economics and Finance, where he took an overload of courses with special permission from the dean while continuing to build his business, RUB A DUB.

Daniel is an extremely hard worker who takes great pride in his work. He put his heart, soul and all his resources into building a successful business that, pre-Covid, was in over 100 office buildings in Washington DC.

Unlike many others who engage in similar fraud, Daniel had legitimate businesses. His businesses, operating from commercial office buildings primarily in Washington DC, were shut down during the pandemic due to office buildings being vacated by "work from home orders."

From the loss of his business and the uncertainty of the world, Daniel was desperate to obtain funds and convinced himself that it was okay, even though it clearly was unlawful.

Unlike many Covid fraud cases nationwide, Daniel did use a significant portion of the relief funds to pay employees, payroll taxes and operate a business. He used the MSLP loan proceeds, in the amount of $1.5 million, to renovate and sell homes, which netted Mr. Tisone's business significant returns in the amount of $1.9 million profit in 2021 alone.

Daniel planned and intended to repay all loans pursuant to the loan terms. For a year prior to his arrest, he was making scheduled interest payments on the MSLP loan on a monthly basis.

As stated in his letter to the Court, Mr. Tisone takes full responsibility for the fraud and deeply regrets his actions. He respects the court and took full responsibility without a trial. He deeply regrets ever taking any funds from the government and is extremely remorseful for the devastating consequences his actions had on his family and now the second business he has lost.

He stands before the Court as an individual with sincere remorse, embarrassment, and regret for making poor decisions that now overshadows decades of diligence and hard work, including building both a family and a successful business that was fortunate enough to grow and employ so many within the community.

II. ANALYSIS OF STATUTORY FACTORS AS APPLIED TO THIS CASE

A. Nature and Circumstances of the Offense, 18 U.S.C. §3553(a)(1)

Mr. Tisone was arrested on March 30, 2022, for bank fraud in relation to his application pursuant to PPP, EIDL and MSLP. He immediately accepted responsibility and never disputed the facts within the original indictment.

Mr. Tisone deeply regrets his decision to obtain funds fraudulently and is remorseful about his poor decisions.

This case is extremely unique in that Mr. Tisone's case appears to be the only legitimate company prosecuted by the federal government who received funds and used a large portion within the spirit and intent of the program, paying employees, paying both state and federal payroll taxes and making sound business decisions that generated significant profits.

The hundreds of criminal cases charged nationwide over the past year include overtly fraudulent statements on multiple PPP and/or Economic Injury Disaster Loan ("EIDL") applications including fraudulent shell companies, false employee and payroll numbers, fake tax forms, and various other false statements. In stark contrast, Mr. Tisone's companies were legitimate, operating businesses that were greatly affected by the work from home orders. Not only was Mr. Tisone's companies eligible for Covid Relief of some sort, Mr. Tisone paid a large sum of the loan proceeds on payroll and other allowable expenses pursuant to the requirements of the CARES Act. The loans remained performing on the Bank of Clarke County books.

Mr. Tisone paid his loan payments on time, paid federal and state payroll taxes and paid thousands to attorneys and accountants to ensure his books and records were accurate and that all reports, mergers, etc. were on sound footing. Even following the indictment, the banks and the SBA did not default on his loans and they remained in good standing until Mr. Tisone fully repaid the entirety of the loan amounts.

After his arrest, Mr. Tisone cooperated with the Government to assist in the selling of the 550 Starboard Dr. residence. Mr. Tisone earnestly attempted to sell the property himself but was hindered by a myriad of factors including a massive hurricane that ravished the area. Mr. Tisone expects the property to sell for a price that will lead to full repayment of the loan amount ($1,999,500) and the proceeds will repay the entirety of the MSLP Loan, EIDL Loans and the PPP loans even though Mr. Tisone qualified for forgiveness for at least one of his businesses if not more. Unlike most federal fraud cases, the loss amount will likely be $0.

The nature and circumstances of both instant offenses are unique in that the victims suffered no loss and that Mr. Tisone never intended to harm the victims or create a loss.

B. Characteristics of the Defendant, 18 U.S.C. §3553(a)(1)

Mr. Tisone does have a prior criminal history from when he was a teenager and, apart from those offenses, has led an exemplary life since those convictions over 15 years ago. He grew up in the Fairfax, Virginia area and currently resides in Naples with his fiancé and newborn son. He worked with troubled youth at a counseling center, operated a local business, and has served on advisory boards at his alma mater, Catholic University. Mr. Tisone is dedicated to his fiancé and newborn son. He adores his child and spends an immense amount of time with him. Mr. Tisone is also very passionate about giving back to his community.

When Mr. Tisone is not spending time with his family, he is at work. He has been working on multiple businesses since he was a kid. By all accounts, Mr. Tisone is an extremely driven, resilient individual who works incredibly hard to overcome his past decisions. Prior to Covid, he spent the past 6 years dedicating a massive amount of time, energy, and resources into growing successful businesses.

Mr. Tisone's entities were more than just a job. They were Mr. Tisone's only hope in the professional arena since he was a convicted felon. He started his business not on a whim, but out of necessity due to being shunned by all employers who rejected him due to his criminal history. He grew his business to be in over 100 office buildings where he caught the attention of Ford Motor Company and Amazon.com with whom he subsequently entered into a deal to provide his services to them through a software integration.

In late 2019, Ford Motor Company was in discussions to purchase Mr. Tisone's company, flying him to Detroit and Palo Alto, CA to meet with key executives. Once Covid arrived, those discussions were tabled and subsequently, Mr. Tisone lost everything he had worked so hard to build, through no fault of his own.

The multiple letters from Mr. Tisone's previous employees depict Mr. Tisone as a thoughtful, considerate and compassionate man who cares greatly for others. The letters from property owners and vendors show that Mr. Tisone has an exceptional reputation in the construction community for his hard work, integrity and technical skills.

In addition to his work, Mr. Tisone is also passionate about giving back to the community and helping others. He integrates volunteer work into both his personal and work life.

Daniel also provided a payment advance to another of his employees so she could continue paying her rent. Additionally, he also purchased educational courses for his employees so that they could increase their skills.

Whether Mr. Tisone is volunteering his time to counsel troubled youth, renovating homes, providing jobs to veterans, offering his help to a woman to prevent her from being evicted, loaning money to an employee so he can buy his first home, giving a friend a job, or paying for educational courses to an employee so they can further their career, the one theme that runs through the letters of support provided to the Court is Mr. Tisone's generosity, kindness, and service to his community. He is a man who has made mistakes and poor choices but by all accounts, is a good person who contributes greatly to his community, his company, and his family. Mr. Tisone's desire to give back did not start at the inception of this case and it will not end after his sentencing.

C. To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense. 18 U.S.C. § 3553(a)(2)(A).

Mr. Tisone understands the seriousness of his offenses. In assessing a "just" punishment, the Court should consider that these were non-violent offenses committed by a man facing the loss of his business through no fault of his own and significant barriers to gainful employment due to his past criminal history. Furthermore, all loans are able to be paid back in full resulting in no loss.

Mr. Tisone has worked diligently to pay off his debts and has taken extraordinary steps to make the loans whole, recently marketing the property at 550 Starboard Drive, so that he could pay off the existing mortgage and the entirety of the loans that he had received to minimize any financial risk to the bank or the government. He also marketed his office at 1001 10th Ave South. That property was unfortunately decimated by the recent hurricane.

Mr. Tisone has also been working to keep his family afloat. His business was once highly successful, but it is currently struggling to remain viable. There are many factors involved in the decline including the damage to the company's reputation from the criminal case, and the significant cash shortage created by the pandemic. Mr. Tisone sold all his assets and is working diligently to ensure that his employees have a job and a paycheck.

The possible loss of his business that he spent the last 8 years of his life building, the inevitable loss of his ability to obtain business funding through banks, the significant amount of money paid in forfeiture and restitution, the loss of his home and office, and the substantial harm to his reputation are all significant punishments.

D. To afford adequate deterrence to criminal conduct. 18 U.S.C. §3553(a)(2)(B).

The prosecutions brought against Mr. Tisone have devastated him personally, professionally, and financially. The charges and intense negative media coverage surrounding the case have had a severe detriment on the business and on Mr. Tisone and his fiancé. Mr. Tisone already had a hard time with employment and had to work himself to the bone in order to provide for himself since he was a previous convicted felon that no employer wanted to hire. Rather than turn to crime, Mr. Tisone did everything in his power to live his life in a productive manner and give back to his community.

A lengthy jail sentence is not necessary in this case and would not further the statutory goals of sentencing. As a result of this widely- reported case, the public now understands what can happen when the full prosecutorial force of the United States government is brought down upon an individual, and would-be violators have been deterred from engaging in similar conduct.

E. Protecting the public from further crimes. 18 U.S.C. § 3553(a)(2)(C)

Mr. Tisone does not present a risk of recidivism. His age, track record of improving himself, supportive family, and self-employment history show there is an extremely low risk that he will repeat the conduct that led to his arrest. Mr. Tisone took responsibility immediately for his actions and also took extraordinary steps to ensure full restitution was paid.

Mr. Tisone made a poor decision in obtaining loans, but the fact that he paid his employees during the covered period is significant. Unlike the majority of PPP prosecutions nationwide, the company qualified for Covid relief and employees, and payroll taxes were paid.

Since his arrest, Mr. Tisone has been working diligently with creditors to minimize their risk. He took steps to sell both his home and his office building to pay off the loans.

Furthermore, his cooperation with the Government by offering substantial assistance further supports the argument that he no longer intends on committing any future offenses. The Court can consider the low risk of recidivism when fashioning its sentence.

F. Kinds of Sentences Available, 18 U.S.C. §3553(a)(4)

The guideline imprisonment range calculated in the PSR is not commensurate to the crimes. Since Mr. Tisone is ineligible for probation, he could receive several sentences that would allow Mr. Tisone to continue to be there for his son and his fiancé.

The Court could impose a sentence of 12 months home confinement with work restrictions, along with numerous community service hours service to reach a just sentence.

Due to the devastation from Hurricane Ian, Mr. Tisone's previous experience with home renovations and construction, he would be able to give back to his community in a more productive manner than sitting in a prison.

This suggestion is not one to nullify Mr. Tisone's conduct, but to ensure that Mr. Tisone's son and fiancé do not fall prey to the same fate as did Mr. Tisone by his father's absence from his life as a young boy. Also, a period of significant incarceration would result in Mr. Tisone unable to provide for his family.

A sentence as recommended above would allow Mr. Tisone to pay further forfeiture and continue to be a contributing member of society without being a financial burden to his fiancé and newborn baby.

This type of sentence is not uncommon. On July 7, 2017, Judge Corrigan gave a sentence of time served with 5 years of supervised release to Rashaad Simar Jones, a co- defendant in a drug conspiracy case that involved the trafficking of multiple kilograms of cocaine, who faced an applicable guideline range of 70 to 87 months. *See United States v. Jones, et al*, 3:16-cr-00104. Judge Corrigan also required Mr. Jones to participate in a 365 day home detention program. This sentence was given absent a 5K motion for downward departure, which is expected in Mr. Tisone's case. This variance was granted based upon Mr. Jones' good character and the Court found that this sentence that was sufficient, but not greater than necessary, to achieve the statutory purposes of punishment and a just sentence.

G. Need to Avoid Unwarranted Sentencing Disparities

We would ask the Court to take into consideration not only the sentences that have been given in the few PPP cases that have been prosecuted, but also the Government's disparate charging decisions. In researching PPP cases and sentences across the nation, undersigned has yet to find a case that can plausibly be analogized to Mr. Tisone's case. The criminal cases charged nationwide include overtly fraudulent statements on multiple PPP loan and EIDL applications including fraudulent shell companies, false employee and payroll numbers, fake tax forms, and various other false statements. In stark contrast, Mr. Tisone's companies were legitimate companies. Mr. Tisone's companies also paid its employees a large portion of the loan amount on allowable expenses during the covered period. Yet, Mr. Tisone's sentencing guidelines are starkly disparate from the PPP cases recently sentenced:

United States v. Tarik Jaffaar, No. 1:20-cr-185-CMH, Eastern District of Virginia

- Defendant received twelve (12) months imprisonment.
- Mr. Jaffaar submitted eighteen (18) PPP loan applications to twelve financial institutions for four businesses, which were merely shell companies.
- The PPP loan applications included fake employment tax returns and payroll documents which claimed the business had a number of employees.
- Of the approximately $6.6 million sought, the financial institutions disbursed approximately $1.4 million.
- Additionally, between April 7, 2020, and April 15, 2020, the defendant and his wife submitted two EIDL loan applications for two of the shell entities to the SBA. As a result, one $10,000 EIDL advance was obtained from the SBA. The defendant and his wife were arrested in the parking garage across from Terminal 7 of John F. Kennedy International ("JFK") airport with 18 bags. The defendant had both his United States and Moroccan passports on his person. Ms. Jaworska had her United States and Polish passports on her person. In the various bags, law enforcement found $49,875.65 in cash, approximately 14 cell phones, and multiple laptops.
- The defendant did not pay any payroll with funds received

United States v. Shahank Rai, No. 1:21:cr-00009, Eastern District of Texas

- Defendant received twenty-four (24) months imprisonment.
- The defendant filed 2 PPP loan applications seeking $10 million and $3 million respectively.
- The defendant claimed to have 250 employees earning wages in each application
  when, in fact, no employees worked for his purported business.
- The defendant did not pay any payroll with funds received.

United States v. Latoya Stanley and Johnny Philus, No. 1:21-cr-20067, Southern District of Florida.

- Defendants were sentenced to eighteen (18) and thirty (30) months respectively.

- The defendants filed four (4) PPP and EIDL loan applications claiming nonexistent employees and payroll and received $1.1 million.
- The defendants resurrected defunct corporations to file applications and used fraudulent bank statements in support of the application.
- The defendants also filed EIDL loans claiming non-existent farming land.
- Investigators found notebooks full of personal identification information and over 70 credit cards in the names of third parties.
- The defendant did not pay any payroll with funds received.

United States v. Julio Lugo and Rosenide Venant, No. 8:21-mj-01295, Middle District of Florida (Tampa)

- Julio Lugo received 42 months imprisonment.
- He submitted at least seventy (70) false and fraudulent loan applications seeking PPP and EIDL funds.
- The fraudulent loan applications requested more than $5.8 million, including for
  shell companies established by Lugo, Venant, and their relatives.
- The conspirators also secured coronavirus relief funds for a defunct tax-preparation company that Lugo had previously used to perpetrate a tax fraud in or around 2015.
- The defendant paid off a luxury vehicle, spent more than $62,000 at casinos, and for other personal purposes. Additionally, the conspirators withdrew at least $320,000 in cash. Lugo publicized the misuse of the SBA funds in a Facebook video featuring a hotel room littered with $100 bills and at least $5,000 in merchandise from Louis Vuitton.
  The defendant did not pay any payroll with funds received.

United States v. Nadine Consuelo Jackson, No. 3:20-cr-00112-MJN, Southern District of Ohio

- Defendant received twenty-four (24) months imprisonment.
- Ms. Jackson applied to First Home Bank for a PPP loan of $1,315,491.12 (received $1,021,300) and also applied for an EIDL loan.
- Submitted false Wage and Tax Reports and false personal tax returns.
- Submitted a second PPP loan application for $1,236,817.
- The defendant did not pay any payroll with funds received.

The Justice Department has also used prosecutorial discretion when prosecuting legitimate companies. On January 12, 2021, the District of California entered into a civil settlement with SlideBelts, Inc., an internet retail company who lied about bankruptcy on its PPP application. *https://www.justice.gov/usao-edca/pr/eastern-district-california- obtains-nation-s-first-civil-settlement-fraud-cares-act.* The company and Brigham Taylor, the company's president and CEO, have agreed to pay the United States a combined $100,000 in damages and penalties to resolve allegations that they committed fraud. Similar to Mr. Crowther's case, there was no loss.

H. Restitution

Mr. Tisone, through forfeited assets, is able to pay in full every lender and loan back including interest. Mr. Tisone is the sole owner of his business and the company will most likely not survive in his absence, creating a loss of jobs and extreme hardship on his fiancé and newborn son. He is asking the Court to allow him to keep the business that he has built so he can support his family and maintain some semblance of a life post-conviction.

I. Good works, pursuant to U.S.S.G. §§5H1.6 and 5H1.11

The defendant requests that the Court consider a downward departure in sentencing due to his prior civic service. The defendant's commitment to serving his community prior to the criminal activity in question demonstrates a genuine desire to contribute positively to society and shows that his actions were an aberration, rather than a pattern of criminal behavior.

The defendant has a long history of volunteering for various civic organizations, including local troubled adolescent groups, his alma mater and for church groups. Mr. Tisone has spent countless hours helping others and giving back to the community. His record of civic service is a testament to his character and demonstrates his good moral character and how he is committed to making a positive impact in his community.

Furthermore, the defendant's civic service has directly benefited countless people in the community. His work with troubled youth and community organizations has helped to deter criminal activity, provide advice for young teens facing hardship, and support those seeking jobs. The defendant has been a role model and mentor to many young people in the community, inspiring them to give back and make a difference in the world.

While the defendant's criminal conduct cannot be excused or condoned, it is important to consider his prior civic service when imposing a sentence. A downward departure is appropriate in this case because it recognizes that the defendant's criminal behavior is not indicative of his character or values, but rather a lapse in judgment because of extreme desperation.

In addition, a downward departure in this case would serve the interest of justice by promoting rehabilitation and reducing the likelihood of recidivism. The defendant has expressed remorse for his actions and has shown a willingness to take responsibility for his wrongdoing. A sentence that considers his prior civic service would help to reinforce the importance of community involvement and encourage the defendant to continue to give back to society.

J. DEPENDENCE UPON CRIMINAL ACTIVITY FOR A LIVELIHOOD pursuant to U.S.S.G. §5H1.9

The defendant requests the court depart downward from the sentencing guidelines based on Mr. Tisone’s dependence on criminal activity for a livelihood, as outlined in the §5H1.9 of the U.S. Sentencing Guidelines.

Because of Mr. Tisone’s prior criminal conviction, he found it nearly impossible to secure legitimate employment. Despite efforts to reform and turn his life around, Mr. Tisone has struggled to find gainful employment due to his criminal record, which left him with limited options to provide for himself. As a result, he built a business from scratch over the span of 6 years while studying as a full time college student in an extremely difficult dual degree honors program at Catholic University.

The Covid-19 pandemic only exacerbated his situation, causing widespread economic disruption and leading to a significant loss of employment opportunities, particularly for individuals with criminal records. Mr. Tisone’s business, which he had started as a means of supporting himself and his family, was significantly impacted by the pandemic and ultimately was closed completely.

In the face of mounting financial pressures and limited options for employment, Mr. Tisone turned to covid relief funds and criminal activity as a means of providing for himself and his family. Although this doesn't justify his actions, it should be considered as a mitigating factor that should be taken into consideration when determining the appropriate sentence.

V. ADVISORY GUIDELINES CALCULATIONS

As the Court is aware, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the guidelines are solely advisory in nature. *See, e.g., Moore v. United States*, 871 F. 3d 72, 74 (1st Cir. 2017) (noting that *Booker* made the guidelines advisory). Some of the items that aren't considered in the current sentencing guidelines in this matter include:

1) Mr. Tisone's financial status continues to change because of supply chain interruptions and material shortages in the construction industry. This is a direct result of the pandemic that has had (and is continuing to have) a devastating financial impact on Mr. Tisone's business and his ability to finish projects and collect accounts receivable.

2) The loss amounts should be calculated at zero. Intended loss is defined as "pecuniary harm that the defendant purposely sought to inflict." Following the 2015 amendment, that specifically includes a ***subjective element***. USSG App. C, amend. 792 (effective Aug. 1, 2015). In this context, "[o]btaining a loan fraudulently is different from stealing property outright, because defendants who fraudulently obtain loans often intend to repay them in full." *United States v. Harris*, 597 F.3d 242, 254 (5th Cir. 2010) (citing *United States v. Henderson*, 19 F.3d 917, 928 (5th Cir. 1994)). Thus, "where the defendant intends to repay the loan or replace the property, the intended loss is zero." *Id.*; *United States v. Kraus*, 656 Fed. Appx. 736, 739 (6th Cir. 2016) ("[i]n the context of loan-related fraud, 'intended loss is the amount the defendant subjectively intended not to pay.'") (citations omitted); *United States v. Haddock*, 12 F.3d 950, 963 (10th Cir. 1993) (government failed to prove intended loss where evidence suggested the defendant intended to repay loans); *United States v. Monk*, No. 2:20-CR-22-WKW, 2020 U.S. Dist. LEXIS 121489 *22 (M.D. Ala. July 10, 2020) (no intended loss where government presented no evidence of intended loss and, moreover, the evidence established that the defendant intended to benefit the victim by using loan proceeds to delay reporting of separate loan losses, in the hopes that the delay would buy the victim time to increase its assets to cover is losses); *United States v. Hughes*, 775 F. Supp. 348, 351-52 (E.D. Cal. 1991) (refusing sentencing enhancement where falsified loan applications resulted in no loss, because

"'[g]ross receipts are not the same thing as 'loss.'").

All evidence shows that Mr. Tisone always intended to repay the loans provided. There is no evidence, much less a preponderance of the evidence, to suggest otherwise. As a result, there is no intended loss. Similarly, there is no evidence of any actual loss, which means "the reasonably foreseeable pecuniary harm that resulted from the offense." *See* U.S.S.G. § 2B1.1 n.3(A)(i). The loans received are able to be paid back in full to all parties through the forfeiture of his assets.

Although there are currently no SBA funds involved (Tisone has fully repaid all SBA issued loans back in full prior to sentencing), to the extent that the Court applies the government benefits rule, then the amount of any loss should, consistent with that rule, exclude all amounts that Tisone spent on the intended uses of the loan (including payroll, mortgage interest payments and other allowable expenses proven at trial through bank records) and include only the monies "diverted to unintended uses." *See* U.S.S.G. § 2B1.1 n.3(F)(ii). Any such loss should be further reduced by the value of Mr. Tisone's loan payments. *See United States v. Near*, 708 Fed. Appx. 590, 603-604 (11th Cir. 2017); (affirming finding of no loss, despite misuse of federal grant money, where value of defendant's services exceeded the amount of any loss suffered by the government); *see also* U.S.S.G. § 2B1.1 n.3(E)(i) ("Loss shall be reduced by the following: The money returned, and the fair market value of the property returned and the services rendered, by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected"). There is ample evidence that shows that Mr. Tisone paid well over the sum of the loan in allowable expenses during the covered period.

3) The PSR incorrectly applies a 2-level increase for "sophisticated means." For purposes of subsection (b)(10)(C), "sophisticated means" involves especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. By the Director of Covid Relief Fraud's admission, the various Covid relief programs had zero safeguards to ensure that funds were issued correctly. Sophisticated means certainly wasn't necessary to obtain funds, nor should Mr. Tisone be given a 2-level increase for sophisticated means.

4) Mr. Tisone deserves acceptance of responsibility reductions for his plea.

VI. CONCLUSION

Mr. Tisone respectfully requests that this Court sentence Mr. Tisone to a period of 12 months home confinement along with significant community service and other non-prison sanctions that this Court deems appropriate.

WHEREFORE, based upon the above and foregoing, the Defendant respectfully requests this Court to grant the instant motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via CM/ECF to: United States Attorney's Office, AUSA Trenton Reichling this 16th day of February, 2023.

Respectfully submitted,
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