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VIA ECF

March 20, 2025

The Honorable Richard D. Bennett
United States District Judge
United States District Court
for the District of Maryland
101 West Lombard Street
Baltimore, MD 21201

Re: *United States of America v. David Epstein*, Crim. No. RDB-23-0210

Dear Judge Bennett:

The Government writes this letter in advance of the sentencing of Defendant David Epstein, which is currently scheduled for March 26, 2025 at 2:30 p.m. On October 8, 2024, the Court accepted Defendant's guilty plea to Count One of the Indictment, charging him with Wire Fraud, in violation of 18 U.S.C. § 1343.

As set forth more fully below, the Government requests that the Court sentence Defendant to a term of imprisonment at the bottom of the applicable guidelines sentencing range—33 months' imprisonment—and order restitution in the total amount of $1,307,170.

I. Background

As detailed in the parties' plea agreement filed October 8, 2024 (ECF No. 23) and the PSR filed December 4, 2024 (ECF No. 28),[1] beginning in May 2020 and continuing through February 2021 in the District of Maryland, Defendant engaged in a scheme to defraud financial institutions and the United States Small Business Administration (SBA), to obtain fraudulent loans for his business PEI Staffing (PEI), a temporary staffing company, under the Paycheck Protection Program (PPP), and the Economic Injury Disaster Loan (EIDL) program.

Ultimately, Defendant fraudulently obtained $1,307,170 in PPP funds in connection with the scheme. He used these funds to make extensive renovations to his house and to install a pool there, to purchase a Mercedes-Benz vehicle, and to pay various personal debts and debts unrelated to PEI, including debts belonging to a business that Defendant was attempting to start called Stafquik.

Defendant Fraudulently Obtains A PPP Loan For PEI

PPP loans were a source of emergency financial assistance enacted by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. These forgivable loans were targeted toward the millions of American small businesses who were suffering the economic effects caused by the COVID-19 pandemic. In the PPP loan application, the small business (through its authorized

[1] Defendant has filed a sentencing submission in which he attempts to distance himself from the facts he admitted in the parties' plea agreement. ECF No. 31. This apparent lack of acceptance of responsibility is troubling, and the Court should consider it at sentencing.

representative) was required to state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. The business, in turn, was required to use the PPP funds only for certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities.

On April 30, 2020, Defendant submitted a fraudulent PPP loan application to Celtic Bank, through Bluevine, in the name of his business PEI, seeking approximately $1,307,170 in PPP funds. The submission of the application effected an interstate wire from Maryland to West Virginia, the location of Blue Vine's servers.

The PPP loan application contained multiple material misrepresentations, including that PEI had 382 employees and an average monthly payroll of $522,868. In fact, IRS Forms 941 for PEI Staffing show that in the first quarter of 2020, the business had 134 employees and in the second quarter that it had just 79 employees. Further, Forms 941 for PEI Staffing from 2019 show a steady decline in the number of PEI Staffing's employees in 2019, as follows: First Quarter – 493 employees; Second Quarter – 454 employees; Third Quarter; 154 employees; Fourth Quarter – 128 employees. And in an EIDL application Defendant submitted for PEI on April 2, 2020—one month before he submitted the PPP loan application—Defendant claimed that PEI had 220 employees.

In support of the PPP loan application, Defendant submitted a fictitious February 2020 bank statement for a SunTrust bank account ending in x2836 that purported to be a bank statement of PEI. In truth, this account was not in the name of PEI but instead was in the name of Stafquik. Defendant had earlier altered the bank statement for the purpose of submitting it in connection with PPP applications for PEI. Defendant had earlier placed a phone call to Bluevine in which he discussed the status of the PPP application and the need for him to upload a February 2020 bank statement for PEI.

Further, Defendant electronically signed the PPP application and agreed to the following restriction on the use of PPP funds in the application:

> The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

Defendant placed his initials next to this box on the application, signifying that he understood this provision.

In the application, Defendant also falsely answered "NO" to the following question: "Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A." In fact, when submitting the applications, Defendant was a common manager of both PEI Staffing and Stafquik: He was the Chief Executive Officer of PEI Staffing and the President of Stafquik.

On May 4, 2020, based on the false representations and fraudulent submissions made on behalf of Defendant as the owner of PEI, the PPP loan was funded, and approximately $1,307,170 was distributed through an ACH transfer sent to a bank account in the name of Stafquik (SunTrust account ending in x2386) controlled by Defendant.

After his receipt of the PPP funds, Defendant on May 4, 2020, established two personal accounts at SunTrust and on May 8, 2020, establish two personal accounts at Capital One Bank, for which he was the sole signatory. Defendant routinely transferred the PPP funds to these newly established accounts and among the accounts for the apparent purpose of concealing their source as PPP funds.

Defendant's Use Of The PPP Loan Funds

Defendant spent the fraudulently obtained PPP funds in multiple ways that were impermissible under the PPP. One day after receiving the PPP funds, on May 5, 2020, Defendant made an ACH transfer in the amount of $110,356.48 from the SunTrust account ending in x2386 to Mercedes-Benz Financial in connection with a payment for a 2019 Mercedes-Benz GT43C4 automobile previously purchased by Defendant.

On May 7, 2020, Defendant obtained an official check in the amount of $20,000 from the SunTrust account ending in x2386, which Defendant provided to Lender 1, an entity which had in or about December 2019 provided a loan in the amount of $50,000 to Stafquik. On the memo line of the check, Defendant wrote "Rent payments May 2020/June 2020" in an attempt to obscure the purpose of the check. In fact, the payment was not for rent but instead for loan repayment to Lender 1.

Beginning on May 20, 2020, and continuing through in or about August 2020, Defendant transferred approximately $138,522.22 in PPP funds to a contractor in connection with extensive renovations to Defendant's home and installation of a pool there.

Defendant also used the PPP funds to pay $100,000 in connection a settlement agreement pertaining to a 2013 litigation involving unpaid insurance premiums and to pay off a $344,341.05 debt related to funds Defendant misappropriated from a business partner (Lender 2) and used for personal expenses. None of these were permissible uses of the PPP funds.

Defendant likewise used the PPP funds to pay various personal expenses (including a trip to a luxury golf resort) and provided PPP funds to various family members and associates for purposes unrelated to employment with PEI (including his family's nanny), making withdrawals for himself, and paying off various personal debts.

Defendant also attempted to repeatedly add individuals whom he owed money to PEI's payroll to make it appear as though they were employees when they were not. He also attempted to hide the size of the PPP loan he received, concealing it from his family members, other employees of PEI, and various business partners whom he owed money.

Defendant Seeks To Obtain Additional EIDL Funds

On November 18, 2020, Defendant electronically submitted a fraudulent application for an EIDL to the SBA, seeking approximately $150,000 in funds. The application falsely represented that Stafquik had three employees and gross revenues of $428,571 as of January 31, 2020. The loan closed; however, the loan funds were never ultimately disbursed to Defendant as the bank account that they were deposited into was closed due to suspected fraud.

Defendant has to date made no payments to Celtic Bank in connection with the fraudulently obtained PPP loan funds, and the entire loan balance is outstanding.

II. Guidelines Computation

The PSR correctly calculates Defendant's total offense level as 20—after reductions for acceptance of responsibility under U.S.S.G. § 3E1.1 and in light of Defendant's status as a Zero Point Offender under U.S.S.G. § 4C1.1. PSR at 7-8.

Defendant is a Criminal History Category I. PSR at 17. Thus, the applicable guideline imprisonment range as to Count One is 33-41 months' imprisonment. *Id.*

III. Sentencing Factors Under 18 U.S.C. § 3553(a)

The sentencing factors under 18 U.S.C. § 3553(a) support a sentence of 33 months' imprisonment.

Such a sentence is necessary to reflect the seriousness of the offense and protect the public from further crimes of Defendant, as well as to afford adequate deterrence, promote respect for the law, and provide just punishment. It also takes into account Defendant's history and characteristics.

Regarding the nature and circumstances of the offense, there is no question that Defendant's offense is serious. Simply put, Defendant took advantage of an international crisis to obtain funds that he was not otherwise entitled to. PPP funds were limited, and crimes like the ones Defendant committed meant many legitimate, deserving business owners were either unable to get, or were delayed in getting, money they desperately needed to survive the shutdowns caused by COVID-19. While business owners struggled, defendant bought a Mercedes, renovated his home, installed a pool there, and used PPP funds to pay off debts that had nothing to do with his business, including to pay back funds he had earlier misappropriated from Lender 2. Indeed, Defendant likewise used the PPP funds to pay various personal expenses (including a trip to a luxury golf resort) and provided PPP funds to family members and associates for purposes unrelated to employment, making withdrawals for himself, and paying off various personal debts. Defendant saw an opportunity for "free money" from the Government, and he took it. A substantial custodial sentence reflects the seriousness of this conduct.

Defendant lied repeatedly in connection with the scheme. He lied about the number of employees his business had. He submitted a fictitious bank statement in support of the PPP loan application. He tried to conceal how he was using the fraudulently-obtained PPP funds by purporting to add individuals who were not employees of his business to the company's payroll and writing "Rent payments" on a $20,000 check that to a Lender that was not in fact for rent. He tried to conceal how he was using the PPP funds by laundering them through bank accounts he established just four days after he received the PPP funds. And he lied about the size of the PPP loan he had received by hiding it from family members, business partners, and others whom he owed money.

What's more, Defendant's offense was not the result of a momentary lapse of judgment by an otherwise law-abiding citizen. It was not a split-second decision made under financial duress. To the contrary, when the opportunity arose, Defendant wrongfully took advantage of a relief program meant to aid victims of an unprecedented public health and economic crisis by obtaining a $1.3 million PPP loan that he was not otherwise entitled to receive through fraud. And he used the funds for frivolities: for his Mercedes, for home renovations, for a pool, and for other purposes impermissible under the PPP. Simply put, these pandemic loan programs were intended to be a lifeline, not a payday.

So too does the Government's recommended sentence reflect the seriousness of Defendant's misconduct, provide just punishment, and promote respect for the law. The PPP was designed to be a safety net to keep the nation's small business in operation during the most significant global pandemic in 100 years. Unfortunately, due to the conduct of people like Defendant, a staggering amount of pandemic relief funds did not reach the businesses and employees that needed those funds most. The SBA Office of Inspector General estimates that as much as 17% of the disbursements from pandemic-relief programs like the PPP went to fraudulent applicants like Defendant.[2] Indeed, the PPP had a finite pool of money; during the first round of the PPP, the program was depleted in just 13 days.[3] Given the high levels of fraud in connection with PPP funds, there is a particularly substantial need to promote respect for the law and provide just punishment for the offense.

The need to avoid unwarranted sentencing disparities is also important in this case. While no two defendants are precisely similarly situated, and the facts and circumstances of every case are different,[4] it still nevertheless may be instructive for the Court to consider sentences judges (including the Court) have in the past imposed in connection with cases involving pandemic fraud such as this one.

Simply put, pandemic loan fraud cases involving criminal conduct similar to the offense conduct at issue here have routinely yielded significant sentences in this District, as set forth below:

- *United States v. Sary*, Crim. No. RDB-23-344 (seven year sentence imposed on defendant with no criminal history who was responsible for over $17 million dollars in fraud). Sary's sentencing guideline range was 108 to 135 months' imprisonment. He had no criminal history.
- *United States v. Walker*, Crim. No. RDB-22-290 (24 months' imprisonment and 6 months' home confinement imposed on defendant who was responsible $262,252 in fraud). Walker's sentencing guidelines range was 30-37 months' imprisonment.
- *United States v. Hopkins*, Crim. No. RDB-23-316 (24 month sentence imposed on defendant with no criminal history who was responsible for $1,018,224 in fraud). Hopkins' sentencing guidelines range was 41-51 months' imprisonment. He had no criminal history.
- *United States v. Qureshi*, Crim. No. JKB-22-0330 (year and a day sentence imposed on defendant with no criminal history who was responsible for $250,723 in fraud). Qureshi's sentencing guidelines range was 12-18 months' imprisonment. He had no criminal history.
- *United States v. Gillespie*, Crim. No. RDB-23-0321 (48 month sentenced imposed on defendant with no criminal history who was responsible for $138,000 in fraud and significant bribery scheme resulting in losses of over $1,250,000). Gillespie's sentencing guidelines range was 57-71 months' imprisonment. He had no criminal history.

The Government's recommended sentence of 33 months' imprisonment here appropriately reflects the differences among Defendant and these individuals while avoiding unwarranted disparities.

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[2] *See* Small Business Administration, COVID-19 Pandemic EIDL and PPP Loan Fraud Landscape Report, *available at* https://www.sba.gov/document/report-23-09-covid-19-pandemic-eidl-ppp-loan-fraud-landscape ("We estimate that SBA disbursed over $200 billion in potentially fraudulent COVID-19 EIDLs, EIDL Targeted Advances, Supplemental Targeted Advances, and PPP loans. This means at least 17 percent of all COVID-19 EIDL and PPP funds were disbursed to potentially fraudulent actors.").

[3] *See* PBS Newshour, It took 13 days for the Paycheck Protection Program to run out of money. What comes next?, *available at* https://www.pbs.org/newshour/politics/it-took-13-days-for-the-paycheck-protection-program-to-run-out-of-money-what-comes-next

[4] *See, e.g.*, *United States v. Friend*, 2 F.4th 369, 382–83 (4th Cir. 2021) ("Courts have repeatedly made clear that comparisons of sentences may be treacherous because each sentencing proceeding is inescapably individualized.").

Finally, regarding Defendant's history and characteristics, it is true that the instant offense is Defendant's first conviction and that Defendant's family has had various health challenges over the years. While these points merit consideration by the Court in determining the appropriate sentence, they do not support a variant sentence. In fact, compared to many other defendants, Defendant has benefitted from numerous positive factors in his life, including a privileged upbringing, a college degree, a family that loves him, and the ability to work and earn pay legitimately. Further, Defendant's offense appears to have been motivated by greed, ambition, and opportunity, rather than anything specific to the circumstances present at the time he committed the offenses. Simply put, there simply are no extenuating or mitigating factors in this case that warrant a downward variance from the Guidelines.

IV. The Government's Sentencing Recommendation

In light of all of the factors set forth above, the Government recommends that the Court sentence Defendant to a term of imprisonment of 33 months' imprisonment to be followed by three years' supervised release. The Government also asks that the Court enter a money judgment in the amount of at least $1,307,170 and order restitution in the total amount of $1,307,170 to Celtic Bank at the following address:

Celtic Bank
Attn: Court Ordered Restitution
268 South State Street
Suite 300
Salt Lake City, UT 84111

Respectfully submitted,

Kelly O. Hayes
United States Attorney

/s/
By: Paul A. Riley
Assistant United States Attorney

cc: Rich Bardos, Esq. (by ECF)
Nicole Wonneman, U.S. Probation Officer (by electronic mail)