IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v. **Criminal No. 2:24-00053**

LYDIA SPENCER

DEFENDANT'S SENTENCING MEMORANDUM

The defendant, Lydia Spencer, by counsel, Assistant Federal Public Defender Rachel E. Zimarowski, submits this memorandum for the Court's consideration at her upcoming sentencing hearing.

I. PSR Objection

Ms. Spencer hereby withdraws her objection to the proposed condition of supervised release set forth in PSR ¶ 91. *See* PSR Add. at 22-24. Consequently, there are no remaining objections to the final PSR.

II. 18 U.S.C. § 3553(a) Factors for Consideration

With a criminal history category of II and an adjusted offense level of 9, the advisory guideline range set forth in the PSR recommends a term of imprisonment between six and twelve months with Zone B sentencing options. PSR ¶ 63. Ms. Spencer respectfully requests the Court impose a within-guidelines sentence of probation with a condition requiring her to serve the first six months of her probationary term on home confinement. She relies upon the following 18 U.S.C. § 3553(a) factors in support of a non-custodial sentence.

A. The nature and circumstances of the offense.

The pandemic was a challenging time for Ms. Spencer. Buoyed by a friend's promise of an easy loan and quick cash, Ms. Spencer allowed her information to be used to apply for a loan through the Paycheck Protection Program ("PPP"). With the clumsiest of frauds—her loan application claimed her custom clothing business reported earnings of $75,000 in tax year 2020, which even the most rudimentary of loan verification procedures would have proven false in an instant[1]—she ultimately obtained a $31,250 loan. She used most of the money to pay bills and provide for herself and her family.[2] She accepts full responsibility for her criminal conduct in this matter and deeply regrets her decision to participate in her friend's scheme.

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[1] Congress and the SBA removed controls and safeguards from the PPP loan program in order to flood the economy with money as quickly as possible. *See* Hannibal Ware, *Independent Auditor's Report on SBA's FY 2021 Financial Statements*, Report 22–05 (November 15, 2021) (concluding that the SBA "did not adequately design and implement controls to ensure PPP loans guarantees approved [were in existence and accurate.]"); *see also* Nick Schwellenbach, Neil Gordon, Sean Moulton, and Leslie Garvey, *The Great Pandemic Swindle: Feds Botched Review of Billions in Suspect PPP Loans*, Project on Government Oversight (October 6, 2022), *available at* https://www.pogo.org/investigation/2022/10/the-great-pandemic-swindle-feds-botched-review-of-billions-in-suspect-ppp-loans. As a result, private loan servicers were able to reap millions in profits—the more loans they issued, the more processing fees they received—by focusing their budgets on advertisements to drive up applications while spending next to nothing on fraud detection and prevention. *See* Select Subcommittee on the Coronavirus Crisis, *We Are Not the Fraud Police: How Fintechs Facilitated Fraud in the Paycheck Protection Program*, Staff Report (December 2022); Ken Dilanian and Laura Strickler, *Biggest Fraud in a Generation: The Looting of the COVID Relief Plan Known as PPP*, NBC News (March 28, 2022), *available at* https://www.nbcnews.com/politics/justice-department/biggest-fraud-generation-looting-covid-relief-program-known-ppp-n1279664.

[2] Notably, nearly three-quarters of PPP funds "flowed to the top fifth of household income." *See* David Autor et al., *The $800 Billion Paycheck Protection Program: Where Did the Money Go and Why Did It Go There?*, Journal of Economic Perspectives

B. The history and characteristics of Ms. Spencer.

Ms. Spencer has one prior conviction that counts for criminal history points, a drug offense from when she was just 23 years old. The Sentencing Commission has recognized the "general agree[ment]" in the scientific community that the development of the prefrontal cortex—the part of the brain that controls impulse control, emotional reactions, executive function and decision making—is not complete until at least the age of 25. *See* U.S. Sentencing Comm'n, *Youthful Offenders in the Federal System*, Fiscal Years 2010 to 2015 at 7 (May 2017). Ms. Spencer served a little over a year for this offense, and she successfully discharged early from parole. *See* PSR ¶ 27. This single, decade-old conviction elevates her criminal history category from a I to a II and renders her ineligible for the zero-point offender reduction, effectively (and disproportionately) doubling her advisory guideline range from 0 to 6 months to 6 to 12 months.[3]

C. The need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct.

To date, the undersigned is aware of nine defendants in this district who have been sentenced for similar conduct. Each of these defendants received a sentence of probation:

(Spring 2022), *available at* https://blueprintcdn.com/wp-content/uploads/2022/01/jep.36.2.55.pdf.

[3] Ms. Spencer acknowledges that she is currently incarcerated on unrelated state charges that carry severe penalties. She submits that the allegations in that case are both unproven and irrelevant to the instant offense and, as such, should not impact her federal sentence.

Case	Number	Judge	Loss	Probationary Term
BRECKENRIDGE	2:22-00084	Berger	$41,666	5 yrs, 8 mos HC
BOWLIN	2:22-00205	Copenhaver	$20,833	5 yrs, 4 mos HC
BUTLER	2:22-00161	Goodwin	$16,040	5 yrs, 6 mos HC
RANSOM	2:22-00122	Faber	$42,250	5 yrs
WILSHER	2:23-00051	Goodwin	$20,459	3 yrs
SATOW	2:23-00056	Johnston	$16,000	5 yrs
PRATT	2:23-00038	Goodwin	$20,832	2 yrs
BRADLEY	2:23-00112	Faber	$18,703	5 yrs
BOYD	2:23-00123	Copenhaver	$23,818	5 yrs

In addition, in all of these cases save one—*United States v. Malik Breckenridge*, No. 2:22-00084—the Court determined that the defendant was unable to pay post-judgment interest and waived interest on the restitution amount pursuant to 18 U.S.C. § 3612(f)(3)(C).[4] Ms. Spencer, who is currently incarcerated as well as indigent, asks for such a finding in her case.

[4] Interest kicks in automatically for "any fine or restitution of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment." 18 U.S.C. § 3612(f)(1). The sentencing court has discretion "to waive or limit the payment of interest upon a finding that the defendant is unable to pay interest." *United States v. Coleman*, 319 F. App'x 228, 231 (4th Cir. 2009) (per curiam). If the sentencing court makes such a finding, the statute provides three options: "(A) waive the requirement for interest; (B) limit the total of interest payable to a specific dollar amount; or (C) limit the length of the period during which interest accrues." 18 U.S.C. § 3612(f)(3).

D. The need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment.

A sentence of probation adequately reflects the seriousness of Ms. Spencer's conduct and provides just punishment for her offense. As the Supreme Court has recognized, a sentence of probation is "a substantial restriction of freedom." *Gall v. United States*, 552 U.S. 38, 48 (2007). Ms. Spencer will be closely monitored by the Probation Office for the entirety of her probationary term, and she is very aware that if she were to violate any term of probation, the Court could re-sentence her to a term of imprisonment within, or above, her suggested guideline range.

E. The kinds of sentences available and the sentencing guideline range.

Ms. Spencer's advisory guideline range is between six and twelve months of imprisonment with Zone B sentencing options, and the proposed sentence falls within that range. Above all, a sentence of probation will allow Ms. Spencer, upon her release from her state charges, to work and pay her restitution obligations.

III. Conclusion

For the forgoing reasons, Ms. Spencer submits that a probationary sentence with a six-month condition of home confinement is sufficient, but not greater than necessary, to achieve the statutory sentencing purposes of 18 U.S.C. § 3553(a).

IV. Time Needed for Sentencing

Ms. Spencer does not anticipate calling any witnesses to testify at the upcoming sentencing hearing and believes the hearing will last approximately thirty minutes.

Date: July 10, 2024

Respectfully submitted,

LYDIA SPENCER

By Counsel

WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER

s/ Rachel E. Zimarowski______________
Rachel E. Zimarowski, WV Bar No. 11415
Assistant Federal Public Defender
300 Virginia Street, East, Room 3400
Charleston, West Virginia 25301
Telephone: (304) 347-3350
Facsimile: (304) 347-3356