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FRANK MOSLEY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. FRANK MOSLEY, Defendant.	Case No: 4:23-CR-00134-AMO **DEFENDANT FRANK MOSLEY'S SENTENCING MEMORANDUM** Date: May 6, 2024 Time: 2:00 p.m. Judge: Hon. Araceli Martínez-Olguín

Defendant Frank Mosley, by and through his counsel, respectfully submits this Sentencing Memorandum for consideration in advance of the judgment and sentencing hearing scheduled for May 6, 2024. The matter comes before the Court following entry of plea pursuant to a written plea agreement between the parties. In accordance with that agreement, Defendant waived his right to a Grand Jury presentation and plead guilty to Counts One and Two of an Information charging him with conspiracy to commit bank fraud (18 USC §§1349/1344) and aiding and advising filing of false tax returns (26 USC §7206(2)).

I. Personal History

Frank Mosley is a 59-year-old retiree from a successful career with the City of Oakland and a life-long resident of the Bay Area. Mr. Mosley comes from a large and supportive family; his parents and one sibling are now deceased, but other members of his extended family also live in Northern California.

Mr. Mosley was born in Oakland and lived there during his upbringing. He attended local schools and after graduating from high school, studied psychology and computer science at U.C. Santa Cruz. Once having graduated from college, he has since lived in Oakland, where he currently resides by himself in a modest and well-kept home.

He has an adult son who lives out of state and is the offspring of an ongoing thirty-eight-year relationship. Mr. Mosley has been a steady presence in his son's life as he grew up, and they currently maintain a good relationship.

II. Case Background History and Facts

In the 1990s, Mr. Mosley, his brother Reginald, along with a few friends, formed a company called Forward Thinking Investors, Inc. (FTI), with a plan to supplement their future well-being by making modest long-term investments in businesses and business loans. In addition to his everyday work schedule, because of his skills in compliance and document preparation and retention, the group asked him to take on the responsibility as the registered "CFO."

Over the years, the company was primarily the vehicle for small investment projects, including one long term loan to a businessperson, and generated modest profits. Mr. Mosley kept the group's business records, handled the banking, and used his home address as the corporate address. He filed tax returns and maintained the bank account, on which Frank Mosley and Reginald Mosley were both signatories. The paperwork necessary to maintain FTI's business operations required minimal effort.

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During 2020, when federal loan programs became available to support the economy during the Covid pandemic, Reginald Mosley decided to apply for business loans in FTI's name. Frank Mosley initially declined to sign the loan application or otherwise become involved in the loan process or with the person serving as the loan broker, Kenya Ellis.

FTI received a PPP loan in the amount of $1,070,975 as a result of false representations in the loan application submitted by his brother through the broker regarding FTI's eligibility under the federal loan programs, specifically information regarding the claimed employees and payroll expenses. In 2020, Reginald Mosley applied for additional loans under the EIDL program, with essentially the same inaccurate eligibility information, and FTI received an additional $112,900. Frank Mosley's home address and the bank account was used, as before, because it and a local postal box number were the established corporate addresses for FTI.

At the end of 2020, when requested to do so by his brother, he prepared the IRS Form 940/941 and created false payroll tax accounts for the claimed FTI employees, completing the required tax reporting documents. To do so, with his brother in Sacramento and Frank in Oakland, he and his brother communicated the needed detailed financial and other information for the forms in numerous emails and texts. He also dealt with the banking transactions in Oakland necessary to transfer and use the funds.

Thus, while Frank Mosely was initially unwilling to participate in the loan application process, he later agreed to provide the support necessary to complete the tax and other paperwork requirements and accepts full responsibility for his actions.

Frank Mosley's brother Reginald Mosley had separate business contacts with whom Frank Mosley had no previous relationship. The individuals controlling those other entities, including MDK Consulting (MDK), AB Consulting Group (ABCG), and CTES Industries, Inc. (CTES), also applied for loans in which Frank played no role.

Reginald later asked Frank as a personal favor to him to create IRS Form 940/941 reports for those companies, which contained false information regarding the companies and the employees they allegedly hired. He did so knowing that he was playing a significant role in furthering the fraud perpetrated by those individuals.

PPP loan program applications for those companies were filed through the loan broker Kenya Ellis at the same banks. While a portion of the loan funds for the other borrowers, representing a percentage of Ellis' commission, were deposited into the FTI bank account, the far more substantial amount actually received by Reginald Mosley and Frank Mosley is the direct product of FTI's own loans. The total amount of the PPP loan proceeds received by the MDK, ABCG and CTES business entities was approximately 1.9 million dollars. In the final analysis, while the defendant's legal responsibility is significantly greater, he personally received only a portion of FTI's loans. He has nonetheless accepted responsibility for his actions, including the full restitution requirement.

Following discussions with the Assistant United States Attorney responsible in this matter, during which the parties agreed to a resolution of the case, an Information was filed on May 3, 2023. (Dkt. 1). Frank Mosley made his initial appearance on May 18, 2023, and waived Indictment. (Dkts. 18-20).

Again, from an early stage in the process, Frank Mosley has been fully cooperative in accepting responsibility and in trying to make sure that his role in the illegal conduct was clear. On August 7, 2023, a guilty plea was entered in accordance with a plea agreement, pursuant to Rule 11(c)(1)(A)-(B) of the Federal Rules of Criminal Procedure. (Dkts. 34 & 36). He has agreed to immediately forfeit any interest in the blocked financial assets belonging to FTI, in the amount of approximately $290,000 (Wells Fargo and Fidelity Investment accounts).

III. The Written Plea Agreement

Based on the underlying factual circumstances and pursuant to the plea agreement, Mr. Mosley plead guilty to two felony counts: Counts One and Two of the

Information charging conspiracy to commit bank fraud (18 USC §§1349/1344) and aiding and advising filing of false tax returns (26 USC §7206(2)). His plea includes waivers of rights and includes an agreed guideline calculation of an offense level 22, after a three-level adjustment for acceptance of responsibility. (USSG §2B1.1, §3E1.1). The plea agreement also contemplates defendant's eligibility for an additional two-point reduction in offense level since he meets the criteria under the Zero-Point Offender guideline amendments. USSG §4C1.1. Under this guideline calculation, the offense level following all adjustments is 22 (33-41 months).

Under the agreement, the defendant forfeits any interest in the specified FTI financial accounts and agrees to make restitution in the stated loss amount of $3,082,404, which includes the FTI loans and the loans made by other defendants. The agreement contemplates a three-year term of supervised release and specifies that a special search condition of release shall be imposed.

The plea agreement contemplates that the government will recommend a sentence of 32 months imprisonment, slightly below the guidelines, with a three-year supervised release term.

The plea agreement however specifically provides that Mr. Mosley may argue for a sentencing variance downward in light of the particular circumstances and the sentencing factors at 18 U.S.C. §3553, with the government reserving the right to argue otherwise.

Defendant Frank Mosley does not wish to minimize his role in the illegal conduct in this case, where he used his ability to deal with tax reporting and the corporate bank accounts, and he accepts full responsibility for his actions, all of them. That conduct should however be considered along with his previously outstanding work history, his reputation as a member of the Oakland community, and as the foundation of his extended family.

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IV. Not Withstanding his Underlying Conduct in this Case, the Defendant's Remarkable Reputation and Excellent Life History Deserve Consideration in Imposing Sentence.

The assigned Probation Specialist has transmitted to this Court letters from family members, long-term personal friends, and members of the community, which all amply demonstrate reasons for a downward variance in sentencing in this case. While the Court will no doubt review them in full prior to the imposition of sentencing, relevant portions of the letters are provided here to highlight the appropriateness of a downward variance under Title 18 U.S.C.§3553.

> LaMonica Lee, who describes herself as Frank Mosey's life partner for over 38 years, as well as the father of their eldest son, Frank Jr. and the surrogate father to her youngest son from another relationship, has stated that he is a man of Integrity and leads their sons by example. As the protector and head of their family, he accepted responsibility and explained to them what took place. She advises that Frank has always been a law-abiding man and that this case and conduct is clearly not in his true character. As a family they are working through the issues which will impact them, the trauma with which they are confronted, and her thoughtful letter notes that they will continue to allow their faith to guide and lead them. She said in her letter that Frank has been the foundation of their family and together the family will rise above his mistakes.

> The defendant's son, Frank Jr., advises that he is fully aware of this case. He candidly admitted that while they have had many ups and downs in life, his father has always been there when he needed him. He taught his son that nothing ever comes easy so "we must work hard for anything and everything we want in our lives." His father has been a role model for him, his younger brother, and cousins. He is "the type of man that any community would be lucky to have a man that is strong, smart, intelligent and honest. Frank is the type of man that can and will keep young African American men out of the streets and out of trouble…" and Frank Jr. sees himself as proof of that hypothesis.

> The defendant's sister, Leatrice Mosley, a 25-year United States Postal Service employee, describes him as a compassionate, loyal, intelligent, and productive citizen. For

her, and many others, he has been a dependable, well-respected, and family oriented man with a wealth of knowledge he's more than willing to share. He, along with their parents, were a driving force in encouraging her to obtain a college degree and in securing and maintaining steady employment, and a career from which she is now able to retire. He made sure his son also had a college education.

His other sister, Kay Mosley, notes that Frank has always led a positive and productive life. He is, she said, a dedicated, amazing, loyal, loving, and caring older brother, father, son, family member and friend who always stressed the importance of having good morals, obtaining a good education, and working hard to achieve our goals and making positive life choices.

Dr. Darrell Bailey has known Frank as a friend for over 47 years, starting in elementary school. Noting that Frank expressed sorrow for his role in the conduct and demonstrated a true feeling of pain that it has caused so much pain and turmoil for so many. He supports the statements of others that, contrary to this act, Frank is a very good person, has been an uncle to Dr. Bailey's children, a great son to his parents, a good father, a best friend, and a dedicated member of his family. He states that this is not Frank's norm and based upon the severity of his actions, and that he cannot believe going through this process would not make him totally aware and a better person going forward. He said that Frank was part of the reason that he has achieved his professional goals because Frank, along with others, believed in him and pushed him not to quit and provided him with confidence that one would only receive from someone that cared for them.

Similarly, Reverend Thomas A. Harris, III, Senior Pastor, Pleasant Grove Baptist Church, Oakland, has advised the Court in a letter that: "As a Pastor and as a friend, I can truthfully state that Frank has a compassionate heart, and he is passionate and committed to being a positive force in our society. Frank has a deep love for God, his family, friends, and others. Frank has always expressed his desire to live a life that would be pleasing to God and make his family and friends proud. ... When I was informed of this situation with Frank Mosley, I was honored to be allowed to provide a letter to advise the court that Frank has shown me that he is a positive role model with great moral character and integrity. I

> would never claim that Frank is perfect, but I can honestly state that he is very sincere, honest, considerate, kind, and trustworthy."

> Deborah M. Jackson, PhD similarly discussed her long-term friend. "Frank has consistently demonstrated a strong work ethic. He is diligent, reliable, and dedicated to his responsibilities. Over the 3 decades that I have known Frank, he has always kept secure and meaningful employment both with the Federal government as well as for the city of Oakland, California… I am completely aware of the character of my friend who has always been a person of high morals and ethics in all aspects of his life. I recognize that Frank has acknowledge his role and seriousness of the charges against him, and I can attest that he will be committed to making amends and accepting his responsibilities."

> Marcel Reliford, also a friend for 30 years, has also submitted a prognostication for the future. "Frank has discussed the criminal act that he is involved in with me and has also let me know that he takes full responsibility for his actions. I know Frank to be a standup guy and I know that his involvement in this incident is way out of character for him. Frank will be accountable for his actions, will learn from this lapse of judgment and will continue to be the honest, helpful person I know him to be.

V. A Downward Variance and Split Sentence Will Adequately Address Deterrence and Punishment While also Accounting for the Circumstances, as Well as Supporting the Value and Need for Restitution.

Mr. Mosley was a well-respected City employee who is now retired from public service. He raised, financially supported, and nurtured a family and created friendships which have lasted decades. He retired well before his intended service was anticipated to end largely because he did not want this case to adversely reflect on the City of Oakland, the office in which he had served, or the other civil service employees he greatly respects. He has wonderful support from his family, friends, and members of the community. That support is merited because other than this conduct, he has led an exemplary life.

Mr. Mosley's guideline calculation and contemplated restitution are driven by the loss amounts, even for funds he did not personally receive. He understands his own conduct makes him responsible for very substantial ongoing payments toward restitution and that his retirement will not be an easy one.

Repayment of the ill-gotten loan proceeds is a principal focus for an appropriate sentencing under 18 U.S.C.§3553. Because Mr. Mosley is retired, his restitution efforts will now require him to work as long as he is physically able. The ability to make restitution, and yet impose a sentence with adequate and direct punishment here, will best be accomplished by a split sentence which includes a modest period of incarceration, and one that will permit his return to the workforce and enable him to promptly begin to work diligently toward making restitution. Such a sentence would be no greater than necessary for a stable, skilled, older adult who will be re-entering the workforce with the purpose of making restitution. 18 U.S.C. §3553. *Kimbrough v. United States*, 552 U.S. 85, 108-09 (2007).

A downward variance from the guideline level 20 to level 13 would result in a sentencing range of 12-18 months, and is within Zone Z of the Sentencing Table, where a split-sentence is an available guideline option. USSG §5C1.1(d)(2).

While the Defendant appreciates the thoughtful Presentence report, and the recommendation, as well as the United States Attorney's willingness to make a sentencing recommendation just below the guidelines, a split sentence would be well within the national statistics for sentences of a like nature identified in the Presentence report. The Probation Specialist has noted in her report that the statistical information found in the Judiciary Sentencing INformation (JSIN) platform shows that the average and median sentence for the over 600 relevant individuals studied was 24 months respectively. While not dispositive or intended to replace the guidelines, in the specific case before this Court, they show that a split sentence of 18 months is not far removed from like cases. More important, the defendant's life history, during which he has maintained gainful employment in public service and served as an excellent role model for family and friends, supports a finding that he intends to make amends for his illegal conduct.

Mr. Mosley has lived a stable and productive life He has strong family and community ties to the place where he was born, raised, and made his home for most of his productive working adult years. He quickly acknowledged his error and lapsed judgment and has fully accepted responsibility and taken action to remedy the harm caused. He is committed to making restitution. 18 U.S.C. §3553(a)(1).

A sentence, even at the high end of Level 13, would be 18 months, and could be ordered as a split sentence of imprisonment followed by electronic monitoring, allowing Mr. Mosley to begin promptly addressing restitution. The contemplated split sentence represents a serious reflection of the nature of the harm caused and is a just punishment. 18 U.S.C. §3553(a)(2)(A). It is also a reasonable means for affording deterrence and to protect the public. 18 U.S.C. §3553(a)(2)(B)-(C). Such an outcome would also result in a sentence that affords appropriate consideration and priority to restitution. 18 U.S.C. §3553(a)(7). A split sentence coupled with a restitution order will satisfy the need for a sentence that is sufficient, but no greater than necessary, and represents a just outcome.

VI. Conclusion

The parties' written plea agreement contemplates a term of imprisonment followed by a term of supervised release with special conditions. The government's recommendation in the plea agreement is not unreasonable but since the agreement also contemplates forfeiture of account assets and payment of full restitution, a lesser sentence is justified if it furthers the interest of punishment, deterrence, and restitution. Given the defendant's stable life history, the circumstances of the offense, and the sum of sentencing factors to be considered under Section 3553, a split sentence well meets the requirement that it be sufficient, but not greater than necessary, and represents a just sentencing outcome.

Dated: April 29, 2024.

SEGAL & ASSOCIATES, PC

By: /s/ Malcolm Segal

MALCOLM SEGAL
Counsel for Defendant
FRANK MOSLEY