**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

UNITED STATES OF AMERICA	
v.	Case No. 1:21-cr-224-AJT
JAMES VICTOR PUNELLI,	Hearing: March 7, 2022 at 3:00 p.m.
Defendant.	

**POSITION OF THE UNITED STATES
WITH RESPECT TO SENTENCING**

The United States of America, by and through its undersigned counsel, in accordance with 18 U.S.C. § 3553(a) and the United States Sentencing Commission Guidelines Manual ("Guidelines" or "U.S.S.G."), files this Position of the United States with Respect to Sentencing.

I. PROCEDURAL HISTORY

On October 19, 2021, the defendant, James Victor Punelli, entered a guilty plea to a two-count Criminal Information charging him with making false statements to the Federal Emergency Management Agency ("FEMA") in order to obtain a lucrative contract to provide FEMA with much needed personal protective equipment ("PPE") during the early stages of the COVID-19 pandemic, in violation of 18 U.S.C. § 1001(a)(2) (Count 1); and theft of government funds by fraudulently acquiring and then misusing financial assistance provided by the Small Business Administration ("SBA"), in violation of 18 U.S.C. § 641 (Count 2). *See* Presentence Report "PSR" at ¶¶ 1, 2, 16-37, ECF No. 12.

II. SUMMARY OF THE UNITED STATES' SENTENCING RECOMMENDATION

The United States has no objections to the Guidelines calculation or factual information contained in the PSR. The Probation Office accurately calculated the defendant's advisory

Guidelines range to be 10 to 16 months of imprisonment. PSR at ¶ 89. In the Plea Agreement the United States agreed that a sentence within Zone B and in accordance with the provisions of U.S.S.G. § 5B1.1(a)(2) is sufficient but not greater than necessary to achieve the sentencing objectives set forth in 18 U.S.C. § 3553(a). PSR at ¶ 3.

After careful consideration of the information contained in the PSR as well as the statutory factors enumerated in 18 U.S.C. § 3553(a), the United States recommends that the Court grant Mr. Punelli a variance from the advisory Guidelines range and impose a term of probation. The United States also requests that the Court enter the proposed Restitution Order and Consent Order of Forfeiture, both in the amount of $141,000.[1] For the reasons set forth below, a non-custodial sentence of probation would be sufficient, but not greater than necessary, to accomplish the sentencing objectives of 18 U.S.C. § 3553(a).

III. SUMMARY OF FACTUAL BACKGROUND

A. Count 1: False Statements to FEMA

Mr. Punelli owned or had an ownership interest in several businesses, including Panthera Worldwide LLC. PSR at ¶ 18. Each of these companies purported to be government contractors that provided various tactical training services to federal agencies. PSR at ¶ 77. None of these companies had a history of providing large quantities of medical equipment to the government. Nevertheless, beginning on or about March 26, 2020, Mr. Punelli, acting on behalf of Panthera Worldwide LLC, sought to secure a contract with FEMA to provide ten million surgical masks in exchange for $56,300,000. In order to convince FEMA to award the contract to Panthera Worldwide, Mr. Punelli made a series of statements in which he falsely represented that Panthera

[1] Here, the purpose of the Consent Order of Forfeiture would be to facilitate the collection of restitution, if necessary.

had ten million masks currently available and going forward could supply FEMA one million masks per week. Based on Mr. Punelli's false statements, FEMA awarded the contract to Panthera Worldwide. The contract called for payment upon delivery and inspection. PSR at ¶¶ 19-22.

Thereafter, Mr. Punelli made sincere but unsuccessful attempts to acquire surgical masks from various medical supply manufacturers and distributors. When it became clear to Mr. Punelli that he would not be able to secure ten million surgical masks in the midst of a worldwide pandemic, he requested an extension of the delivery date. In so doing, Mr. Punelli made additional false statements in which he claimed the masks to be delivered to FEMA were in the United States and awaiting transport. FEMA cancelled the contract when Mr. Punelli failed to deliver the masks as required. FEMA suffered no actual financial loss. PSR at ¶¶ 23-24.

B. Count 2: EIDL Loan Fraud

The Economic Injury Disaster Loan Program ("EIDL") was a government initiative intended to provide emergency financial resources to businesses suffering from the economic impact of, among other things, the COVID-19 pandemic. PSR at ¶¶ 27-30. On or about March 30, 2020, Mr. Punelli applied for an EIDL loan on behalf of Punelli Partners. PSR at ¶ 31. Mr. Punelli made three materially false representations in the loan application. Namely, he: (1) falsely represented that his wife was the sole owner of Punelli Partners, and in so doing concealed his interest in the business; (2) stated that Punelli Partners grossed $287,167 in the twelve months prior to January 31, 2020, when, in fact, Punelli Partners generated no revenue during that period; and (3) claimed that Punelli Partners had two employees, when, in fact, there were no employees.

Based on Mr. Punelli's false statements the SBA approved the loan and on April 14, 2020, and again on April 21, 2020, disbursed payments totaling $141,000. PSR at ¶ 34. Thereafter, Mr. Punelli used the loan proceeds for prohibited purposes, including for personal expenses and for expenses associated with a pre-existing bankruptcy proceeding. PSR at ¶ 35.

IV. STANDARDS GOVERNING SENTENCING

As the Court well knows, the sentencing Guidelines are advisory and should be taken into consideration with the 18 U.S.C. § 3553(a) factors in making a sentencing decision. *United States v. Booker*, 543 U.S. 220, 264 (2005); *see also United States v. Kimbrough*, 552 U.S. 85, 90 (2007) (stating that "the Guidelines, formerly mandatory, now serve as one factor among several courts must consider in determining an appropriate sentence"). In *Gall v. United States*, 552 U.S. 38 (2007), the Supreme Court instructed that the sentencing court should calculate the sentencing Guidelines range, permit the government and the defendant "an opportunity to argue for whatever sentence they deem appropriate," consider all of the § 3553(a) factors, and finally pronounce a sentence taking into account all of the relevant factors. *Id.* at 49. The Court further instructed that, in the event that the sentencing court decides to impose a variance, the court "must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *Id.* (noting that a "major departure should be supported by a more significant justification than a minor one").

Applying these standards, the Fourth Circuit has concluded that a sentencing court must: "(1) properly calculate the Guideline range; (2) allow the parties to argue for the sentence they deem appropriate and determine whether the § 3553(a) factors support the sentences requested by the parties; and (3) explain its reasons for selecting a sentence." *United States v. Simmons*, 269 Fed. Appx. 272, 2008 WL 681764, at *1 (4th Cir. March 11, 2008) (citing *United States v. Pauley*, 511 F.3d 468, 473 (4th Cir. 2007)). When "rendering a sentence, the district court must make and place on the record an individualized assessment based on the particular facts of the case." *United States v. Cuthrell*, No. 12-4077, 2012 WL 3643677, *1 (4th Cir. Aug. 27, 2012) (citing *United States v. Carter*, 564 F.3d 325, 328 (4th Cir. 2009)). Ultimately, the court "must state in open court the particular reasons supporting its chosen sentence." *Carter*, 564 F.3d at 328 (quoting 18 U.S.C. § 3553(c)).

Section 3553 states that a court should consider the nature and circumstances of the offense and history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1). In addition, it mandates that a court consider other factors, including the need for the sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense" and "to afford adequate deterrence to criminal conduct." 18 U.S.C. §§ 3553(a)(2)(A) & (B). The sentence should also protect the public from further crimes of the defendant. 18 U.S.C. §§ 3553(a)(2)(C).

V. THE ADVISORY GUIDELINES RANGE

The United States and the United States Probation Office ("Probation") agree as to the applicable Guidelines in this case. Specifically, the United States and Probation agree to the following:

- The applicable Guidelines provision is § 2B1.1, and the base offense level is 6. USSG. § 2B1.1(a)(2);
- Because the loss amount is more than $95,000 but less than $150,000, the offense level is increased by 8. USSG. § 2B1.1(b)(1)(E); and
- This results in an adjusted offense level of 14.

Further, pursuant to the terms of the plea agreement, the parties agree that Mr. Punelli assisted the United States in the investigation and prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources efficiently. As a result, it is the position of the United States that Mr. Punelli qualifies for a two-level decrease in the offense level pursuant to U.S.S.G. § 3E1.1(a).

The above Guidelines calculation results in a total offense level of 12. After determining the defendant's criminal history falls within category I, Probation properly calculated the advisory Guideline range to be 10 to 16 months' imprisonment. PSR at ¶ ¶ 34-57, 88-89.

VI. 18 U.S.C. § 3553(a) FACTORS

Once the Court has properly calculated the Guidelines range and ruled upon all departure motions,[2] the Court must then consider the factors identified in 18 U.S.C. § 3553(a) to fashion a reasonable sentence. *Gall v. United States*, 552 U.S. 38 (2007). Here, the 3553(a) factors discussed below support a sentence of probation.

With respect to Count 1, Mr. Punelli lied to FEMA about his ability to provide large quantities of surgical masks in order to secure an extremely lucrative contract. Mr. Punelli's deceptive conduct during the early stages of the pandemic compromised the integrity of the acquisition process in the midst of a national health emergency. However, it is clear that Mr. Punelli made sincere attempts to obtain the needed masks. Indeed, there was no financial incentive to get the contract if he knew he could not perform on the contract. As to Count 2, the financial assistance provided by the EIDL program was intended to be a lifeline to businesses and their employees suffering from the economic impact of COVID-19. The fact that Mr. Punelli lied to the SBA to obtain an EIDL loan and then misused the proceeds of the loan is certainly a

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[2] There are no departure motions before the Court.

serious offense.

Although Mr. Punelli's deceptive conduct is deserving of criminal prosecution, it does not necessarily follow that Mr. Punelli needs to be incarcerated for these offenses. In balancing Mr. Punelli's criminal conduct with his military service, low chance of recidivism, timely acceptance of responsibility, and the minimal impact his criminal conduct had on the community, the government believes a non-custodial sentence is reasonable and not greater than necessary to achieve the goals set forth in Section 3553(a).

The PSR describes a 59-year individual who served honorably in the United States military and then embarked on a career in business. When Mr. Punelli's business ventures faltered he engaged in a series of desperate and misguided efforts to stay financially solvent. When confronted by agents with his criminal conduct, Mr. Punelli readily acknowledge his crimes and accepted responsibility. The PSR taken as a whole clearly suggests that Mr. Punelli poses a low risk of recidivism. There is, however, an important general deterrent aspect to this case. It is important for the government to defend the integrity of the procurement process, particularly regarding essential supplies during a national emergency. Based on the unique facts of this case, the government believes the goal of general deterrence is satisfied with the felony conviction.

* * *

VII. CONCLUSION

For the foregoing reasons, the United States requests the Court sentence Mr. Punelli to a term of probation. Such a sentence would be sufficient, but not greater than necessary, to accomplish the sentencing objectives identified in 18 U.S.C. § 3553.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of that electronic filling (NEF) of the foregoing to the attorney of record for the defendant.

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