ANDREW R. HADEN
Acting United States Attorney
E. CHRISTOPHER BEELER
Assistant U.S. Attorney
California Bar No.: 330496
New York Bar No.: 5422068
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101
Tel: (619) 546-7748
Email: christopher.beeler@usdoj.gov

JULIA M. RUGG
Special Assistant United States Attorney
Virginia Bar No.: 94972
United States Department of Justice
Tax Division, Criminal Enforcement Section
150 M Street NE
Washington, D.C. 20002
Tel: (202) 305-2679
Email: julia.m.rugg@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. LERONCE SUEL, Defendant.	Case No.: 23-CR-0965-RBM **THE GOVERNMENT'S SENTENCING MEMORANDUM** Hon. Ruth Bermudez Montenegro

INTRODUCTION

On September 17, 2024, and after an eight-day trial, a jury convicted Leronce Suel of nine felony and two misdemeanor crimes related to his COVID-19 relief fraud and tax evasion. This Court should sentence him to 108 months custody, order mandatory restitution to the Small Business Administration (SBA) in the amount of $1,773,245, order mandatory restitution to the Internal Revenue Service in the amount of $1,292,796 plus interest, and enter a forfeiture judgment of $1,466,918 of the property known as "$2,421,345 in U.S. currency seized from defendant's residence on June 23, 2022."

STATEMENT OF FACTS

The court is familiar with the facts of this case.[1] After nearly a decade of not paying his federal income taxes, Defendant exploited the COVID-19 pandemic to personally enrich himself. He and his business partner conspired to falsify PPP and RRF program applications to illegally obtain $1,773,245 in COVID-19 relief funds on behalf of the Restaurant Group and misappropriated those funds in various ways, including stashing over $2 million of cash in his bedroom closet. After federal law enforcement executed a series of search warrants on June 23, 2022, and seized $2,421,345 of cash found in Defendant's bedroom closet, Mr. Suel doubled down on his fraud. Instead of accepting responsibility for his COVID-19 fraud, Mr. Suel conspired with his business partner to cover up their fraud by giving false information to his lawyers and accountants to minimize his tax liability.

ARGUMENT

I. Guidelines Calculation

The United States agrees with the PSR's grouping of Defendant's counts of conviction as one group under USSG § 3D1.2(b). The counts of conviction involve the same victim (i.e., the United States) and "two or more acts or transactions" (i.e., creating the false 2020 profit and loss statement for Rockstar Dough, LLC, filing false 2020 business returns for Rockstar Dough, LLC) that were "connected by a common criminal objective or constituting part of a common scheme or plan," which in this case was fraudulently depriving an agency of the United States of money.

A. Base Offense Level

The court should start its calculation of the Base Offense Level for wire fraud conspiracy using U.S. Sentencing Guideline (USSG) Section 2B1.1(a)(1)[2] because the

[1] The United States uses terms defined in its June 24, 2024 Motions in Limine. ECF 91.

[2] All USSG references are cited to amendments effective November 1, 2024.

USSG references wire fraud conspiracy to this section and the charge carries a maximum 20 year or more term of imprisonment. The Base Offense Level is **7**.

B. <u>Specific Offense Characteristics</u>

The court should add the following points to Defendant's Base Offense Level.

1. *<u>Loss</u>*

The loss caused by Defendant's wire fraud conspiracy is the total amount he fraudulently obtained from and has not paid back to the SBA: $1,773,245. *See* Tr. Ex. 383. This amount is the "actual loss" defined in the Guidelines. This loss results in a **16-point increase**. USSG § 2B1.1(b)(1)(I).

The Ninth Circuit forbids any crediting or reduction in the loss for the over $2.4 million law enforcement seized from Defendant's home on June 23, 2022, because the United States had already discovered Defendant's COVID-19 fraud scheme as evident with the fact the government obtained search warrants. *United States v. Bright,* 353 F.3d 1114, 1118-19 (9th Cir. 2004). In *Bright*, like here, law enforcement seized cash from the defendant's home and elsewhere. *Id.* at 1117. The *Bright* defendant asked the district court to deduct the seized money from the court's loss calculation when calculating the base offense level. *Id.* The district court refused, and the Ninth Circuit affirmed. It explained, "the district court may calculate loss 'as the value of the money unlawfully taken'." *Id.* at 1119. This is sensible because, as the Ninth Circuit explained, "[t]hat the government 'recovered' the funds through seizure and forfeiture does not mean that the victim never lost them" and "reducing [the defendant's] loss calculation by the amount seized would distort the magnitude of his crime." *Id.* at 1119. Recognizing this reality, the Ninth Circuit held "surely amounts recovered from the defendant through the involuntary forfeiture of fraud proceeds cannot be credited against loss." *Id.*; *see also United States v. Cacho-Bonilla*, 404 F.3d 84, 92 (1st Cir. 2005) ("[I]t is the rule in this circuit, as well as others, that even a return of fraudulently taken property to the victim does not warrant a reduction in the loss calculation where the return occurs after the crime has been discovered."). The Guidelines reflect this rule and permit crediting only for money returned *before* the government discovers the crime. USSG § 2B1.1 cmt. n.3(D)(i) (crediting losses with "the money returned . . . to the victim before the offense was detected.").

2. *Sophisticated Means*

The court should include an additional **2-point increase** for sophisticated means. USSG § 2B1.1(b)(10)(C). The Guidelines permit a two-level increase if "the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means." *Id.* The application note explains that "'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of the offense. . . . Conduct such as hiding assets or transactions, or both . . . indicates sophisticated means." *Id.* cmt. n.9

The Ninth Circuit has recognized "the enhancement properly applies to conduct less sophisticated than the list articulated in the application note." *United States v. Jennings*, 711 F.3d 1144, 1147 (9th Cir. 2013). In *Jennings*, the defendants "syphoned money" from their business into another bank account they gave a legitimate appearing name to, and then the defendants used the money for personal purposes without reporting the money as income. *Id.* at 1145-47. The Ninth Circuit held this conduct justified application of the sophisticated means enhancement. *Id.* at 1147.

Defendant orchestrated two overlapping schemes involving numerous steps and coverups. Individual steps in his schemes demonstrate the requisite sophistication envisioned by the guidelines, but particularly when taken as a whole, Defendant's entire course of conduct justifies a sophisticated means enhancement.

Defendant and his business partner falsified a 2020 profit and loss statement for Rockstar Dough by underreporting nearly $1.7 million in sales. *See* Tr. Ex. 151. They in turn sent this false profit and loss statement to accountant Eric Pierre, causing him to unknowingly generate and file a false 2020 business tax return for Rockstar Dough. Defendant and his co-conspirator then used the false tax return, and false profit and loss statement to make Rockstar Dough eligible for Second Draw PPP and RRF money. *See* Tr. Exs. 101, 102, 104, 128. For example, Defendant himself used the false gross receipts number from the false 2020 profit and loss statement on Rockstar Dough's Second Draw PPP application, despite evidence at trial demonstrating Defendant was well aware that Rockstar Dough's gross receipts greatly exceeded what he reported. These acts of creating and using false official financial statements and fraudulent tax returns alone warrant the enhancement. *United States v. O'neil*, 2024 1374967, at *3 (D. Id. Apr. 1, 2024) (applying a sophisticated means enhancement where Defendant falsified profit and loss statements); *United States v. Horob*, 735 F.3d 866, 972 (9th Cir. 2013) (per curiam) (affirming application of the "sophisticated means" enhancement, in part, because the defendant falsified documents and left a "complicated and fabricated" paper trail that made it hard to uncover his fraud); *United States v. Edelmann*, 458 F.3d 791, 816 (8th Cir. 2006) (affirming sophisticated means enhancement where defendant conducted fraud with false tax returns and fictitious profit and loss statements); *United States v. Montgomery*, 592 F. App'x 411, 418-19 (6th Cir. 2014) (same).

The sophistication also involved Defendant's attempts to conceal his crime. First, Defendant and his co-conspirator attempted to conceal their fraud and misappropriation of COVID-19 relief funds by syphoning the money from their business bank accounts. Defendant then hid this money in his bedroom closet and used some of it to purchase real estate in Arkansas. These steps of withdrawing money, depositing money, transferring money, and purchasing real estate demonstrate a sophisticated mechanism to hide the source of funds used to ultimately purchase Mr. Suel's Arkansas home.

Second, Defendant attempted to conceal his fraud by filing years of tax returns in March 2023, after learning about the government's investigation in June 2022. Some of these returns falsely stated that he had lawfully used the COVID-19 relief funds. For example, Defendant reviewed and signed business tax returns for Chicken Feed LLC for tax years 2020 and 2021 that included deductions for paying rent when, in fact, he had not paid the landlord. These returns also tried to perpetuate the fiction that the COVID-19 relief funds were not obtained and withdrawn in cash for Defendant's personal use, but rather the unmarked shoeboxes of cash in his closet were "cash on hand" for the businesses.

3. *Emergency Disaster Enhancement*

The court should apply a **2-point increase** because Defendant's COVID-19 relief scheme occurred in connection with an emergency subject to a Stafford Act declaration. USSG § 2B1.1(b)(12). Courts around the country sensibly apply this enhancement in COVID-19 fraud cases.

a. The Enhancement Applies to a Broad Range of Conduct

USSG § 2B1.1(b)(12) provides for a 2-level enhancement "if the offense involved conduct described in 18 U.S.C. § 1040." Section 1040 makes it a crime to "knowingly make any materially false statement . . . in any matter involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. § 5191). On March 13, 2020, the President determined that COVID-19 warranted an emergency declaration under Section 501(b) of the Stafford Act.[3] For the 2B1.1(b)(12) enhancement to apply, the interpretive question boils down to whether the COVID-19 relief funds Defendant obtained by fraud were "authorized, transported, transmitted, transferred, disbursed, or paid in connection with" the March 13, 2020 COVID-19 Stafford Act declaration. 18 U.S.C. § 1040(a). The statute's text confirms that they were.

Section 1040(a) is logically read to apply broadly to benefits paid in connection with a disaster or emergency that is the subject of a Stafford Act declaration. On that reading, the declaration triggers the statute's applicability, and there is no need for a direct legal connection between the declaration and the relevant benefit. Thus, it is legally irrelevant that PPP loans and RRF grants were authorized by acts of Congress rather than the Stafford Act declaration itself. "If Congress intended a narrower interpretation, it could have easily

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[3] The White House, *Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act* (March 13, 2020), available at https://trumpwhitehouse.archives.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/.

used narrower language," *Mont v. United States*, 587 U.S. 514, 522 (2019), such as by writing Section 1040(a) to reach only benefits paid "as a result of" or "pursuant to" a Stafford Act declaration. *Cf.* 42 U.S.C. § 5160(a) ("Any person who intentionally causes a condition for which Federal assistance is provided under this chapter or under any other Federal law *as a result of a declaration* of a major disaster or emergency under this chapter shall be liable to the United States . . . ." (emphasis added)).

This distinction is one with important meaning. It shows that Congress left a strong textual clue that it meant Section 1040(a) to have an expansive scope, not a narrow one. Congress used the phrase "in connection with," which typically bears a "broad interpretation." *Mont*, 587 U.S. at 521 (quoting *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006)). The Ninth Circuit has recognized this rule, explaining that "in connection with" language is "broad" in nature. *People of State of Cal. v. F.C.C.*, 905 F.2d 1217, 1239-40 (9th Cir. 1990).

b. <u>PPP and RRF Funds Were Disbursed In Connection With the COVID-19 Emergency Declaration</u>

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Act (CARES Act) became law and created the PPP. *See* Pub. Law No. 116-136, §1102. On April 15, 2020, the SBA promulgated an "Interim final rule" to implement the PPP's first draw loan and forgiveness program. *See* 85 Fed. Reg. 20,811 (Apr. 15, 2020). The plain language of SBA's "Interim final rule" makes it self-evident that the SBA dispensed and forgave PPP money *in connection with an emergency declaration* under the Stafford Act. First, the "Interim final rule" expressly provided that "[t]he Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted *under the Coronavirus Disease 2019 (COVID-19) Emergency Declaration (COVID-19 Emergency Declaration) issued by President Trump on March 13, 2020*." *Id.* (emphasis added)

Second, the "Interim final rule" contained a "Background Information" section that confirmed SBA proceeded in a manner connected to the President's Stafford Act declaration.

> On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia . . .

Id. Finally, to comply with certain Executive Orders justifying its use of the interim final rule rather than using the traditional notice and comment period for federal rule making, SBA explained that it needed "to move expeditiously to mitigate the current economic conditions *arising from the COVID-19 emergency*" and that the interim final rule was "necessary to implement Sections 1102 and 1106 of the CARES Act *in order to provide economic relief to small businesses nationwide adversely impacted under the COVID-19 Emergency Declaration*." *Id.* at 20,817 (emphasis added). These recitals confirm that SBA disbursed and paid PPP funds in connection with the President's March 13, 2020 Stafford Act emergency declaration.[4]

The connection between the March 13, 2020 Stafford Act declaration and the PPP's second draw was no different. Enacted as Section 311 of the Consolidated Appropriations Act of 2020, *see* Public Law 116-260, PPP second draw provided an additional round of paycheck loans to small businesses. On January 14, 2021, SBA promulgated PPP's second draw interim final rule, stating that the "Act authorizes the U.S. Small Business Administration to guarantee additional loans under the temporary Paycheck Protection Program, which was originally established under the Coronavirus Aid, Relief, and Economic Security Act to provide economic relief to small businesses nationwide adversely *impacted under the Coronavirus Disease 2019 (COVID-19) Emergency*

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[4] The other relevant COVID-19 relief program—the Restaurant Revitalization Fund—was also disbursed in connection with the President's March 13, 2020 emergency declaration. For example, the SBA's Restaurant Revitalization Fund Program Guide explained that eligible restaurants must have been in existence on March 13, 2020, the same day as the President's declaration, and was meant "to provide support to eligible entities that suffered revenue losses related to the COVID-19 pandemic." Tr. Ex. 112.

Declaration (COVID-19 Emergency Declaration) issued by President Trump on March 13, 2020." 86 Fed. Reg. 3712 (emphasis added). Like SBA's interim final rule for first draw PPP, the SBA's second draw PPP interim final rule explained that the interim nature of the rule was "necessary to implement the [Act] in order to provide economic relief to small businesses nationwide adversely *impacted under the COVID-19 Emergency Declaration*." *Id.* at 3722 (emphasis added).

Courts around the nation wisely apply the Section 2B1.1(b)(12) enhancement in COVID-19 fraud cases that have proceeded to sentencing. *See e.g.*, *United States v. Miller*, No. 21-CR-411 2024 WL 2178974, at *4 (E.D.N.Y. May 14, 2024) (finding that "[t]wo more levels are added under U.S.S.G. § 2B1.1(b)(12)" in a fraud case arising out of a CARES Act authorized unemployment insurance benefit). The court in *Miller* got it right.

Even though PPP loans and RRF grants were authorized by separate acts of Congress rather than directly authorized by the President's Stafford Act declaration, the 2B1.1(b)(12) enhancement still applies. These COVID-19 relief program funds were indisputably administered and "paid in connection with" the March 13, 2020 Stafford Act declaration, which is clear from the express language in the federal regulations implementing the relevant programs. *See supra*. Accordingly, the court should apply the 2B1.1(b)(12) 2-point increase.

c. <u>The Court Should Conduct an Alternate Analysis under *Munoz-Camarena*</u>

A single district court concluded that the enhancement does not apply to PPP money but on appeal, the Fourth Circuit declined to assess the merits of the analysis. *United States v. Redfern*, No. 22-41962023 WL2823064, at *4 (4th Cir. 2023) ("Although we have no reason to doubt the district court's analysis, we also have no need to pass on it here."). That district court's analysis cannot be correct in light of SBA's PPP rulemaking that expressly incorporated the March 13, 2020 Stafford Act declaration. Nevertheless, if this Court applies the 2B1.1(b)(12) enhancement as it should, it should conduct an alternate analysis and conclude that the custodial sentence would be the same even without applying 2B1.1(b)(12).

The court "must correctly calculate the recommended Guidelines sentence and use that recommendation as the starting point and the initial benchmark. *United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 (9th Cir. 2011) (quoting *Kimbrough v. United States*, 552 U.S. 85, 108 (2007)). An improperly calculated Guideline range is a "significant procedural error." *Gall v. United States*, 552 U.S. 38, 39 (2007). The recommended Guidelines range "must be kept in mind throughout the process." *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). "A district court must first start with the recommended Guidelines range, adjust upward or downward from that point, and justify the extent of the departure from the Guidelines sentence." *Munoz-Camarena*, 631 F.3d at 1030. "If it makes a mistake, harmless error review applies." *Id.*

To ensure harmless error applies on appeal, this Could should perform an alternate analysis should the Guidelines be disputed. The Ninth Circuit explains that "harmless error may result if the district court" takes the following steps:

> (1) acknowledges that the correct Guidelines range is in dispute and performs [the] sentencing analysis twice, beginning with both the correct and incorrect range; (2) chooses a within-Guidelines sentence that falls within both the incorrect and the correct Guidelines range and explains the chosen sentence adequately; (3) imposes a statutory minimum or maximum and adequately explains why no additional or lesser term of imprisonment is necessary; or (4) performs the sentencing analysis with respect to an incorrect Guidelines range that overlaps substantially with a correct Guidelines range such that the explanation for the sentence imposed is sufficient even as to the correct range. This list is not exhaustive, but is intended merely to illustrate the general principle that harmless error is possible only where the requirements of *Gall* and Carty are met.

Id. at 1030 n. 5.

Here, the court could calculate the Guidelines with and without a 2B1.1(b)(12) enhancement and sentence Defendant to a custodial term within both Guideline ranges, and explain that the sentence is appropriate under either Guidelines calculation and the Title 18, United States Code, Section 3553(a) factors.

C. Adjustments

1. *Defendant's Leadership Requires an Aggravating Role Enhancement*

This Court should apply a **2-point increase** for Defendant's aggravating role as an organizer, leader, manager, or supervisor" of the criminal activity. *See* USSG § 3B1.1(c). Not only did trial evidence establish that Defendant was the majority owner of the Restaurant Group, text message evidence and testimony revealed that he was the leader of the criminal conspiracy involving himself and Ravae Smith.

"To qualify for the adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more participants." *Id.* cmt. n. 2. While a person's titles are "not controlling," a court should consider the following factors: (1) "the exercise of decision-making authority;" (2) "the nature of participation in the commission of the offense;" (3) "the recruitment of accomplices;" (4) "the claimed right to a larger share of the fruits of the crime;" (5) the degree of participation in planning or organizing the offense;" (6) "the nature and scope of the illegal activity;" (7) "the degree of control and authority exercised over others." *Id.* cmt. n.4. The Ninth Circuit has distilled these factors into a simple test. "For the enhancement to apply, there must be evidence that the defendant (1) exercised control over others involved in the commission of the offense or (2) was responsible for organizing others for the purpose of carrying out the crime." *United States v. Vinge*, 85 F. 4th 1285, 1288 (9th Cir. 2023).

The undisputed trial evidence confirms that Defendant exercised control and influence over his co-conspirator, Ravae Smith, during the commission of the offenses. First, Defendant was the majority owner of the Restaurant Group—85% of Rockstar Dough and 70% of Chicken Feed—thereby demonstrating his oversized influence over its employees and Ravae Smith, who only controlled a minority share of the Restaurant Group, 15% for each entity. Second, the admitted text messages between Defendant and Ravae Smith confirm that Defendant exercised control over her; Ms. Smith always sought permission from Defendant before engaging in a criminal act thereby confirming the power dynamic between the two. For example, on March 11, 2022 and as part of the criminal effort to have Eric Pierre prepare fraudulent 2021 business returns, the two co-conspirators had the following exchange:

> Ravae Smith: I'll ask Eric about Losh. Taxes for RD [Rockstar Dough] and CF [Chicken Fee] will be $1300. They sent over DocuSign agreement. Okay to move forward with it?
>
> Leronce Suel: OK What's up with the ERC?

Tr. Ex. 400. This exchange shows Ms. Smith's permission seeking behavior towards Defendant before engaging in an act and his explicit permission granting authority. Mr. Suel exercised similar control over Ms. Smith on March 22, 2021, when he and her deposited $957,966 in cash at Wells Fargo when he texted her "Make sure those numbers are correct on the wire. Quadruple check" or when Ms. Smith texted him "Do you want me to have them count [the cash] in front of me?" *See* Tr. Ex. 395. On April 29, 2021, while Defendant and Ms. Smith prepared their fraudulent RRF applications, Ms. Smith sought guidance from Defendant and he provided it. Tr. Ex. 397. For instance, Defendant and Ravae Smith had the following text message exchange demonstrating his control role in their criminal conspiracy:

> Ravae Smith: Got a call from Eric. Do you want him to submit stuff for Restaurant Revitalization Fund? He said it was part of what he proposed. Told him I'd talk to you. And that I have the conference call today and tomorrow about it.
>
> Leronce Suel: You can consult with him concerning it but he would have to be on top of it submitted as soon as portal opens
>
> Ravae Smith: Ok. I'll see how much help or questions I have after call this afternoon.
>
> Leronce Suel: They don't get a piece of it or anything just so you know
>
> Ravae Smith: Ok. Good.

Id. These messages again demonstrate Defendant's managerial control over Ms. Smith as she engaged in the criminal conduct related to their fraudulent RRF applications.

Significant amounts of other evidence corroborate Defendant's leadership role in the offense. On June 23, 2022, law enforcement discovered $2,421,345 in Defendant's bedroom closet, indicating his ownership and control over the illicit proceeds obtained through the wire fraud conspiracy. Similarly, on March 22, 2021, when Defendant and Ravae Smith wired nearly one million dollars to purchase real estate with money from Rockstar Dough's account, Defendant excluded Ms. Smith from an ownership interest and took title to the real estate in his own name. Similarly, trial witnesses Nathan Benedetto, Eric Pierre, Zach Dimenstein, and Howard Greenberg all testified that Defendant was the principal control person behind the Restaurant Group.

This overwhelming evidence confirms that Defendant exercised control over Ravae Smith during the commission of their crimes and was the leader of their conspiracy.

2. *Defendant Obstructed the Administration of Justice*

This Court should apply a **2-level increase** for obstructing justice. USSG § 3C1.1. This adjustment applies for two reasons. First, Defendant obstructed the investigation into his COVID-19 relief fraud by filing false tax returns that made it appear he used COVID-19 relief money on authorized expenses. Second, Defendant impeded the administration of justice with respect to the prosecution by committing a fraud on this Court through his submitting false financial affidavits about his net worth. *See* ECF 21.[5]

The Guidelines provide for a two-level enhancement if "(A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) a closely related offense." USSG § 3C1.1. "Obstructive conduct can vary widely in nature, degree of planning, and series" and "is not subject to precise definition." *Id.* cmt. n. 3. Application note 4 provides "a non-exhaustive list of examples of types of" applicable conduct, which includes "providing materially false information to a judge or magistrate judge" and "producing or attempting to produce a false . . . document or record during an official investigation." *Id.* cmt. n. 4.

The Ninth Circuit recognizes that the 3C1.1 enhancement applies when Defendant is aware of a criminal investigation and takes affirmative steps to cover up the conduct

[5] Defendant filed a second financial affidavit under seal on or about October 4, 2023. ECF 51.

being investigated. For example, in *United States v. Yip*, the Ninth Circuit affirmed a 3C1.1 enhancement where the defendant filed false tax returns and then submitted false bank statements during the subsequent civil IRS audit. 592 F.3d 1035, 1041-42 (9th Cir. 2010).

a. <u>Defendant Filed False Returns to Obstruct the Criminal Investigation into his COVID-19 Relief Fraud</u>

On June 23, 2022, law enforcement executed a series of premises search warrants on the Restaurant Group and Defendant's home. This enforcement activity alerted Defendant to the ongoing federal criminal investigation. Indeed, on the day of the search, law enforcement handed Defendant the search warrant, *see* Ex. 1 at 2 and 3, which on its face stated that "The search is related to a violation of: 26 U.S.C. § 7201 (tax evasion), 18 U.S.C. § 1343 (wire fraud), and 18 U.S.C § 1344 (bank fraud)." Ex. 2.[6] Thus, Defendant was put on notice of the criminal investigation.

He retained attorneys from RJS Law who engaged with the government in pre-indictment negotiations concerning the COVID-19 relief fraud, the false original 2020 business return from Rockstar Dough, and Defendant's unpaid personal taxes. At trial, this Court learned that Defendant also hired accountant Matthew Howard, who testified to preparing dozens of original personal and amended business tax returns for Defendant. The evidence at trial established that Defendant and Ravae Smith supplied Matthew Howard with false information to prepare those returns, that Defendant reviewed the returns, and in some instances demanded that additional deductions—without any proof that such business expenses existed—be applied to his business returns. In March 2023, Defendant signed and filed dozens of these original personal and amended business tax returns.[7]

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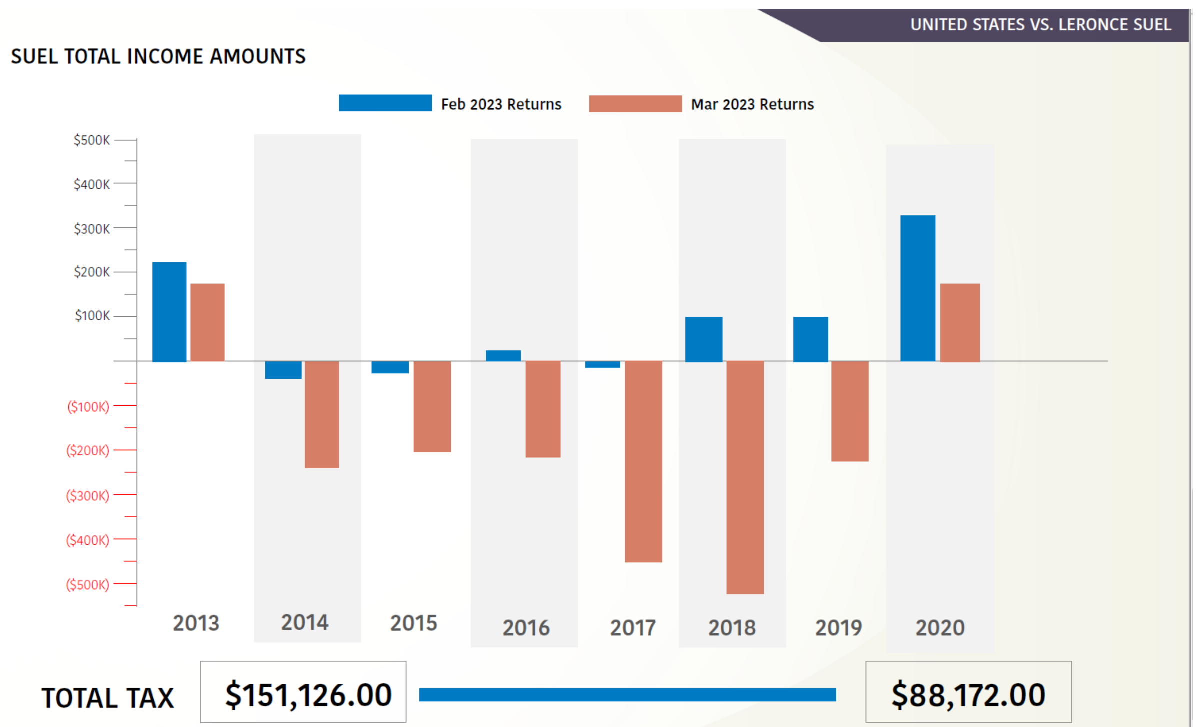
[6] While this exhibit states the warrant is sealed, on May 25, 2023, United States Magistrate Judge Jill L. Burkhardt signed an order unsealing it. *See* 22-MJ-2225 at ECF 11.

[7] In his objection to this enhancement, Defendant seeks to minimize this conduct, commenting that he did not receive adequate legal advice and simply did not have "good records of buildouts." ECF 176 at 11. However, a federal jury convicted Defendant of *willfully* filing false tax returns that included these false business expenses, after hearing argument and receiving an instruction about an advice of counsel defense.

One aspect of Defendant's false business returns that he signed in March 2023 under penalty of perjury was the inclusion of false rent deductions on Chicken Feed's amended 2020 and 2021 business tax returns. The testimony of Chicken Feed's landlord, Howard Greenberg, and the admission of his company's business records pertaining to its rental ledger associated with Chicken Feed proved that Defendant did not pay any rent with COVID-19 relief funds. The only rational conclusion the Court should draw from these false deductions is that Defendant, upon learning of the federal criminal investigation into his COVID-19 relief fraud, sought to cover up his COVID-19 relief fraud by filing false business returns to create a fictional paper trail that he had used COVID-19 relief funds on an eligible expense like rent.

These March 2023 tax returns also fabricated the startup expenses that Defendant paid for the businesses. These expenses were included at the Defendant's instruction and were designed to wipe out a significant amount of his tax loss, the ultimate driver of any sentence in a criminal tax case. A comparison between draft returns and the filed returns with the additional startup costs shows the dramatic effect:



Tr. Ex. 392A. This reduction in tax works by utilizing net operating losses and estimates buried in the business records for tax years not previously at issue. The disclosure of the estimates only appeared on the tax returns at the insistence of the return preparer.

This conduct impeded the government's investigation because it caused the government to have to untangle Defendant's web of lies embedded in over twenty false tax returns that he filed after learning about the criminal investigation. The nature of the lies created significant work to reconcile the tax returns with hundreds of pages of business books and records. To properly unwind the falsities in these returns, the Special Agents and Revenue Agent had to examine, and essentially recreate, nine years' worth of tax returns. Thus, Defendant's obstructive post-search warrant behavior falls within the heartland of 3C1.1 because it "impeded . . . the administration of justice with respect to the investigation" by seeking to cover up *pre*-search warrant behavior. USSG 3C1.1.

b. <u>Defendant Provided Materially False Information to a Magistrate Judge</u>

Since Defendant's initial appearance and through his conviction, Mr. Suel maintained he lacked any money to pay for his own attorney. He supported this appearance by signing two financial affidavits and filing them with the court. But at the time of those affidavits, Defendant had money and continued to have money through trial. Defendant's false statements to the court about his financial position warrants an obstruction enhancement.

On May 31, 2023, Defendant filed a financial affidavit to initially qualify for the appointment of counsel. ECF 21. He declared "0" of income, a $975,000 home subject to a lis pendens, $9,500 in a bank account, and Chicken Feed liquid assets worth approximately $25,000. *Id.* But Defendant had undisclosed assets. On February 23, 2023, Defendant deposited a $137,500 check into a business bank account. Hayman Decl. ¶ 5(a), ECF 29-1. The memo on the cashier's check stated "Net proceeds." *Id.* On March 1, 2023, Defendant withdrew $110,000 in cash from that business bank account. *Id.* ¶ 5(b). Thus, before his *first* financial affidavit, Defendant had *at least* $110,000 in cash that he did not report to the court.

On September 5, 2023, the United States filed a motion seeking an order compelling Defendant to reimburse the court for attorney's fees because the government had learned Defendant sold various Restaurant Group assets. ECF 29. In response to the government's motion to reimburse attorney's fees, Magistrate Judge William V. Gallo ordered Defendant to complete a second financial affidavit, which he signed on October 4, 2023, and filed with the court on October 6, 2023. ECF 51. In *this* affidavit, Defendant admitted to having $18,320 in cash and a monthly income of $2,121.27, but he failed to account for the net proceeds he received from the sale of the Restaurant Group and its liquor license. On or about July 25, 2023, Defendant sold a restaurant and its liquor license for $350,000. Hayman Decl. ¶ 7. After the State of California Tax and Fee Administration (CDTFA) seized $221,151.18 of the sale proceeds for the Restaurant Group's unpaid sales tax, Defendant was due approximately $100,000 from the sale. *See* Ex. 3 (IRS-CI Memo of Conversation). Defendant never reported this sale or asset to the court in his October 4, 2023 affidavit.

The court should include an obstruction enhancement because Defendant provided materially false information to a Magistrate Judge when he signed two financial affidavits that substantially understated his financial position. The Ninth Circuit has upheld an obstruction enhancement when a defendant made false statements on a financial affidavit to obtain court-appointed counsel. *United States v. Hernandez-Ramirez*, 254 F.3d 841, 843-44 (9th Cir. 2001). Defendant's lies were obstructive to the administration of justice because his conduct resulted in the appointment of counsel and the depletion of court funds that could have been used for other well-deserving defendants. His lies were also obstructive to the investigation and the prosecution because Defendant's material misstatements acted to deny the existence of money that the IRS could have seized as part of Defendant's tax obligations. Knowing he was under investigation for tax evasion, Defendant had every incentive to hide his assets, pretend they didn't exist, and hope the government would never be able to track down his money

Defendant must now essentially concede he knowingly filed false financial affidavits because he has coughed up the money to pay for retained counsel. ECF 151. Bank records from United Bank in Arkansas show that Defendant opened a bank account for Chicken Feeds[8] LLC in February 2024 and immediately deposited approximately $107,000 into the account. *See* Ex. 4. That money remained in Chicken Feeds LLC's bank account through all pre-trial litigation and during his September 2024 trial where he was represented by a court-appointment attorney. *Id.* Only when a jury convicted Defendant, and this Court wisely remanded him, did Defendant acknowledge the existence of significant assets. The United Bank records show that he used these assets to retain his current counsel. The use of money from Chicken Feeds LLC's account at United Bank to pay for Defendant's newly retained counsel confirms what everyone knew all along; Defendant used the Restaurant Group to act as a nominee for money that Defendant considered to be his.

II. Forfeiture

On June 23, 2022, the government seized $2,421,345 in U.S. currency from Defendant's bedroom. The government returned $200,000 to Defendant prior to his indictment to allow him to pay RJS Law for pre-indictment representation. Thus, the government has $2,221,345 in its possession. On September 17, 2024, Defendant and the United States stipulated to criminal forfeiture of $1,466,918 of the money seized on June 23, 2022. Accordingly, the court should issue a final order of criminal forfeiture in conjunction with sentencing for this amount.

"Forfeiture is an element of the sentence imposed *following* conviction." *Libretti v. United States*, 516 U.S. 29, 38-39 (1995) (emphasis in original). "Criminal forfeiture statutes empower the Government to confiscate property derived from or used to facilitate criminal activity. Such statutes serve important governmental interests such as "separating a criminal from his il-gotten gains," "returning property, in full, to those wrongfully deprived or defrauded of it," and "lessen[ing] the economic power" of criminal

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[8] The government speculates that Defendant made the word "Feed" plural on the bank account to make it more difficult for the government to locate his assets.

enterprises." *Honeycutt v. United States*, 581 U.S. 443, 447 (2017). Criminal forfeiture is a "punishment following conviction of a substantive criminal offense" and "operates in personam against a defendant to divest him of his title to proceeds from his unlawful activity as a consequence of his criminal conviction." *United States v. Lazarenko*, 476 F.3d 642, 647 (9th Cir. 2007). "Criminal forfeiture reaches any property involved in the offense or any property traceable as proceeds to it." *Id.* At sentencing, criminal forfeiture is mandatory. 28 U.S.C. §2461(c).

By stipulating to criminal forfeiture of $1,466,918, Defendant has agreed that this property is traceable to his offenses of conviction, namely Title 18, United States Code, Sections 1349 and 1343.

III. Restitution

A. Restitution is Mandatory to the Small Business Administration

The court should order restitution to the U.S. Small Business Administration in the amount of $1,773,245.

The Mandatory Victims Restitution Act of 1996 states that "the court shall order . . . that the defendant make restitution to the victim of the offense" where the offense was "against property," "committed by fraud or deceit," and the "identifiable victim or victims has suffered a physical injury or pecuniary loss." Pub. L. 104-132, Title II, § 204(a) codified at 18 U.S.C. §§ 3663A(a)(1), 3663A(c)(1). The crimes of wire fraud of which Suel was convicted "qualify as ones for which restitution may be ordered for all persons directly harmed by the entire scheme." *United States v. Booth*, 309 F.3d 566, 576 (9th Cr. 2002).

The evidence introduced at trial established that Suel deprived the SBA of $1,773,245 by (1) obtaining First Draw PPP loans and then submitting fraudulent loan forgiveness applications that resulted in the forgiveness of his First Draw PPP loans ; (2) submitting fraudulent Second Draw PPP loan applications, misappropriating the money, and then failing to pay the loans back; and (3) submitting fraudulent RRF applications, misappropriating the grant money, and submitting false post-award reports to SBA. SBA directly issued RRF grants to the Restaurant Group and fully secured the PPP loans issued by Harvest Small Business Finance to the Restaurant Group. Defendant has not repaid any PPP loan or RRF grant to SBA, and therefore SBA is an identifiable victim of Defendant's wire fraud scheme. *See e.g.*, *United States v. Dadyan*, 76 F.4th 955 (9th Cir. 2023) (affirming PPP related restitution award); *United States v. Kasali*, 111 F.4th 637, 651 (5th Cir. 2024) (affirming SBA as the victim in a PPP restitution case).

B. Restitution is Mandatory to the Internal Revenue Service

The Court should order restitution to the Internal Revenue Service in the amount of $1,292,796 plus interest; the loss associated with his conviction of conspiracy to defraud the IRS. Although the MVRA does not apply to Title 26 income tax offenses, it does apply to Section 371 conspiracy offenses. *United States v. Meredith*, 685 F.3d 814, 827 (9th Cir. 2012).

The evidence at trial established the following tax loss associated with Defendant's conspiracy to defraud the IRS, namely in the collection of personal income taxes and employment taxes. The expert testimony of Revenue Agent David Hewell described the four categories of taxes that contributed to this overall loss:

Type of Tax	**Tax Due and Owing**
Leronce Suel Personal Income Tax	$733,109
Ravae Smith Personal Income Tax	$292,306
Employment Taxes on Employee Cash Wages	$111,308
Employment Taxes on Officer Wages	$116,074
Total	**$1,292,796**

See Tr. Ex. 390; Transcript pg. 727-38. These tax losses were caused by acts that were part of the same scheme to defraud the IRS. *See United States v. Anieze-Smith*, 923 F.3d 565, 573 ("[T]he MVRA does not limit restitution to the reach of the indictment, but instead authorizes district courts to order restitution for all losses directly resulting from conduct throughout the course of the fraudulent scheme."). For example, the personal income taxes due relate in part to Defendant's filing of false business tax returns and withdrawal of business funds for personal use. The withdrawal of business funds also gave rise to the employment taxes on officer wages, and the unpaid employment taxes on employee wages relate to paying some Restaurant Group employees under the table in cash.

The MVRA requires Defendant to pay the greater of the value of the property on the date of the loss or the value of the property on the date of sentencing. *See* 18 U.S.C. § 3663A(b). The value of the of the tax loss to the IRS on the sentencing date should include interest, and the inclusion of interest is necessary to make the IRS whole. At sentencing, the government will provide updated restitution figures calculating the interest owed.

C. Remainder of the Seized Money Should be Applied to Restitution

Following forfeiture, the United States has in its possession approximately $754,427 plus any accrued interest from the cash seized on June 23, 2022. As part of its restitution order, the court should order that this seized money be applied to restitution and that the United States shall deposit it to the Clerk of Court to disburse pro rata to the SBA and IRS.

The Ninth Circuit favors this practice because Defendant has no lawful claim to this money. In *United States v. Mill*, the Ninth Circuit held that "a valid restitution order . . . gives the government a sufficient cognizable claim of ownership" in seized currency to defeat a motion for the return of property under Federal Rule of Criminal Procedure 41(g), and that "[i]t follows that the district court had a legitimate reason to order that the defendant's property already in the government's possession be applied to [Defendant's] restitution obligation." 991 F.2d 609, 612 (9th Cir. 1993); *United States v. Kaczynski*, 416 F.3d 971, 974 (9th Cir. 2005) (same). Federal law buttresses the Ninth Circuit's well-reasoned holding because the United States may enforce a restitution order "by all other available and reasonable means." 18 U.S.C. § 3664(m)(1)(A)(ii).

IV. Sentencing Factors

Pursuant to the Sentencing Reform Act, 18 U.S.C. § 3553, the Court "shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in" Section 3553(a)(2), and, in so doing, the Court "shall consider," various factors enumerated in Section 3553(a). Given the nature of Defendant's crimes, the factors of particular importance in this case are the history and characteristics of Defendant, the need to promote deterrence, and the avoidance of sentencing disparities. A sentence of 108 months is sufficient, but not greater than necessary, to comply with the sentencing guidelines. This term sentence reflects the seriousness of Defendant's years of lying, stealing, and cheating for his own financial gain.

A. Nature and Circumstances of the Offense

Defendant's trial illuminated his extensive fraud to obtain over $1.7 million in COVID-19 relief funds and avoid over $1 million in taxes. To effectuate these crimes, Defendant and his co-conspirator spent years lying, including on many forms filed under penalties of perjury. This culminated in taking advantage of emergency programs designed to save businesses, and its employees, from economic ruin during a pandemic. These programs were not a gift; not a windfall to be stored in cash in the business owner's bedroom closet.

These programs were also not finite. While Defendant's business succeeded, independent of the relief programs, in a food delivery focused environment, Defendant stole government funds that could have saved restaurants that were *truly* economically disadvantaged. Defendant and his co-conspirator then spent years covering up this crime, including by filing and providing federal agents and prosecutors false tax returns.

B. History and Characteristics of Defendant

The seriousness and extent of this conduct is not out of character for Defendant. The trial record is littered with examples of Defendant lying to achieve the best outcome for himself. In some cases, he would have no money. *See e.g.*, Tr. Ex. 208 (lying to Chicken Feed landlord about not having funds to pay rent); Tr. Ex. 33-39 (failing to timely file and pay seven years of taxes). In others, he would have significantly more money. *See e.g.*, Tr. Ex. 412 (falsifying bank statements as part of business deals); Tr. Ex. 83-84 ("estimating" over $800,000 of startup expenses he paid for to lower taxes).

Defendant also has a significant a history of disregard for tax laws. He stopped filing and paying his personal federal taxes after tax year 2013 up until 2023 when Defendant filed false tax returns in response to this investigation. The California Department of Tax and Fee Administration (CDTFA) conducted an audit of his restaurants in 2020 and 2021. The audit resulted in a sales tax assessment, and a finding that one of the contributing factors to the loss was that the total sales of the restaurants were underreported on their tax filings; tax filings that often-listed Defendant as the preparer. Thus, in the relevant period, Defendant caused a significant federal and state tax debt: $1,292,796 and $431,198, respectively.

Perhaps the most poignant demonstrations of Defendant's character are the recently discovered attempts to steal from his deceased business partner and co-conspirator. As described in Special Agent Dena Thilenius's declaration, *see* ECF 164-1, the day after Smith passed away, Defendant began attempting to access her USAA bank account, eventually succeeding in adding himself as a secondary account holder on January 24, 2024. Documents obtained from this Court's Rule 17(c) subpoena to USAA confirm Defendant conducted crimes associated with Ravae Smith's bank account while on Pretrial Supervision. For example, USAA business records demonstrate that Defendant likely committed aggravated identity theft in violation 18 U.S.C. § 1030A when he forged Ravae Smith's signature to add himself to her USAA Savings account nearly a month after she died. *See* Ex. 5. The records also reveal that between January and June 2024, Defendant conducted financial transactions totaling approximately $23,527.07. Some of these transactions include cash withdrawals, transfers to Mr. Suel's bank accounts, and payments on Ms. Smith's credit card account directed towards Defendant's child support in California, ostensibly for Defendant's underage child. USAA was not notified of Smith's death until her mother contacted the bank in April 2024, leading to the internal investigation into Defendant's unauthorized actions.

At every turn, Defendant has continued to lie, cheat, and steal for his own benefit; at the expense of the government, the taxpaying public, and those closest to him.

C. Deterrence

There is a significant need to deter Defendant from future financial crimes. As described above, notice of a federal investigation and even an indictment did not deter Defendant from filing false tax returns, lying on financial disclosures signed under penalties of perjury, and stealing money from his deceased partner.

In addition to the need for specific deterrence, the need for general deterrence warrants a serious sentence. The COVID-19 emergency was not the first and will not be the last time the government relies on self-reporting to get much needed assistance to the public. Put simply, there needs to be a real risk of incarceration to weigh against the opportunity to enrich oneself. *See United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (finding that crimes that are "rational, cool, and calculated" rather than "crimes of passion or opportunity" are "prime candidates for general deterrence") (citation omitted).

General deterrence is also of particular importance in criminal tax cases because of the limited criminal tax prosecutions:

> The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations, deterring others from violating the tax laws is a primary consideration underlying these guidelines. Recognition that the sentence for a criminal tax case will be commensurate with the gravity of the offense should act as a deterrent to would-be violators.

U.S.S.G. Ch. 2, Part T, Introductory comment.

As with the COVID-19 fraud, Defendant made a calculated risk in disregarding his tax obligations for years and then filing false tax returns designed to minimize his tax exposure, and thus possible sentence. A 108-month sentence in this case is necessary to disincentivize this tactic and preserve the integrity of tax laws and enforcement.

D. Sentencing Disparities

Defendants across the country have received similar sentences following trial convictions related to COVID-19 relief fraud. A father and son were sentenced to 48 and 87 months, respectively, related to their fraudulent receipt of more than $1.7 million in PPP loans for their restaurant businesses.[9] A woman was sentenced to 90 months incarceration using over $400,000 in fraudulently obtained COVID-19 relief funds on personal purchase, including a custom-built home.[10] These cases demonstrate that a 108-month sentence would not create a sentencing disparity. While a 108-month sentence is higher than some other COVID-19 related sentences, Defendant's unique conduct is responsible for that small difference.

CONCLUSION

Defendant is appearing to be sentenced for two overlapping schemes to steal COVID-19 relief funds and defraud the IRS. Mr. Suel's crimes encompass years of lying for his personal financial benefit. Even after notice of a federal investigation, multiple warnings of the penalties of perjury, and an indictment Defendant remains undeterred and has demonstrated no remorse. The government respectfully submits that a sentence of 108 months incarceration, three years supervised release, and forfeiture and restitution as described herein is an appropriate and fair sentence.

DATED: April 4, 2025

Respectfully submitted,

ANDREW R. HADEN
Acting United States Attorney

/s/ *E. Christopher Beeler*
E. CHRISTOPHER BEELER
Assistant United States Attorney
JULIA M. RUGG
Special Assistant United States Attorney

[9] Office of Public Affairs | Father and Son Sentenced for $1.7 Million COVID-19 Relief Fraud | United States Department of Justice *available at* https://www.justice.gov/archives/opa/pr/father-and-son-sentenced-17-million-covid-19-relief-fraud.

[10] District of Colorado | Owner Of Online Luxury Baby Boutique Sentenced To 90 Months For Defrauding Covid-19 Relief Programs | United States Department of Justice *available at* https://www.justice.gov/usao-co/pr/owner-online-luxury-baby-boutique-sentenced-90-months-defrauding-covid-19-relief.