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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA

3:21-cr-00053-BR

v.

**GOVERNMENT'S SENTENCING
MEMORANDUM**

DAVID ROGER UNITAN,

Defendant.

In the months before the declaration of the COVID-19 pandemic in early 2020, defendant David Roger Unitan was a divorced father of two teenaged children he rarely saw, forty-five years old, unemployed, and living with his mother in Walnut Creek, California. He suffered from ADHD and, after losing his health insurance, self-medicated with methamphetamine.

Unitan was also a college graduate and had developed considerable computer and graphics expertise in his earlier career as a digital videographer. He decided, however, that the time was right to develop a new skillset. While the goal of self-improvement is commendable, it was woefully misdirected in his case. Taking speed allowed Unitan to spend long hours online, and he eventually took to trolling the darker corners of the Internet. There, he found the building blocks for his new career: cybercrime.

I. DAVID UNITAN'S NEWFOUND AMBITION: STEALING MONEY

Unitan would later admit to federal agents that one of his early influences in this project was the AnglerPhish podcast. That audio program, which was first released in the fall of 2019, featured the purportedly autobiographical tale of one Brett Johnson, a convicted cybercriminal and con artist who recounted with relish how he had continued to run online scams even while working as a cooperating defendant with the U.S. Secret Service. When the feds found out, Johnson went on the lam, but his road trip didn't last long. After serving yet another lengthy prison term, he wistfully observed in the first episode of his podcast that "the bad guys never win."

Unitan didn't get the message, or not the right one anyway. He was lured instead by the easy money to be made from using stolen identities to access lines of credit and government benefits. He also derived personal satisfaction from his apparent skill at "social engineering"—the art of conning customer-service representatives into divulging the account information pertaining to his victims. While still living with his mom, Unitan started buying wholesale lists of stolen identities from sites on the dark web and operating under an alias: Daniel Cohen. He used that alias and stolen means of identification to finance a new Ford pickup in April 2020. When police tracked the fraudulently procured truck to his mother's apartment complex, Unitan abandoned it and moved north to Oregon, where he had once lived and where his ex-wife and children still resided. But he didn't reconsider his new line of work.

To the contrary, the worldwide pandemic—and the federal government's urgent efforts to cushion the resulting economic dislocation—yielded new and generous aid programs for Unitan to exploit. The instant prosecution arises from his large-scale abuse of business-lending programs created by the Coronavirus Aid, Relief, and Economic Security ("CARES") Act,

enacted in March 2020. Specifically, the CARES Act appropriated billions of dollars for the Small Business Administration (“SBA”) to use in issuing Economic Injury Disaster Loans (“EIDLs”) and guaranteeing Paycheck Protection Program (“PPP”) loans to businesses who promised to use the funds to keep their lights on and to maintain their idled workforces.

Unitan perpetrated some of the earliest high-dollar swindles of these programs, at least in this district. He was the first defendant to be arrested in Oregon for filing fraudulent EIDL and PPP loan applications, following a report of identity theft to the Clackamas County Sheriff’s Office in the summer of 2020 by the individual named in the Indictment as “AV-1.” The complaining victim was the owner of a food-distribution business in Wilsonville, Oregon, who had briefly retained Unitan for some marketing work. They had parted ways on less-than-amicable terms years before, but AV-1 hadn’t given Unitan much thought since then. Unitan, in contrast, held a grudge, and so Unitan used the identifying information of AV-1 and his business (identified in the Indictment as VB-1) in one of his first fraudulent EIDL applications in June 2020. On June 24, 2020, Unitan used half the proceeds of that loan—\$77,898.11—to buy himself a new Ford pickup to replace the one he’d stolen and abandoned in California.

The three-count Indictment returned in this case arises from these transactions, as well as a PPP loan and another EIDL that Unitan obtained under his go-to alias of Dan or Daniel Cohen, the putative owner of a fictitious California business: “Albright LLC.” The loan applications constituted the wire fraud scheme charged in Count 1, the misuse of AV-1’s identity constituted the aggravated identity theft charged in Count 2, and the transfer of the loan proceeds for the purchase of the new pickup constituted the money laundering charged in Count 3.

But Unitan had been arrested months before the Indictment was returned in this case. Magistrate Judge Youlee Yim You had issued a criminal complaint and arrest warrant for Unitan

on December 21, 2020, following federal agents' discovery, in cooperation with the Clackamas County Sheriff's Office, that the "Daniel Cohen" who had purchased the Ford pickup with SBA money had similarly acquired a Tesla Model X that was associated in Tesla's records with a residence Unitan had leased in Lake Oswego (under another stolen identity) and a business address in Portland that Unitan had leased in his own name years before.

On December 22, 2020, federal agents arrested Unitan at the leased residence and seized the Ford pickup and Tesla sedan. They also obtained a warrant to seize and review computers and digital media observed at the residence during the arrest. That digital evidence, along with IP records and bank-account information compiled by the SBA, would confirm that Unitan had applied for dozens of EIDLs and PPP loans, using the identities of at least four innocent victims—including a well-known criminal defense lawyer who is a longtime friend of his ex-wife's¹—and seeking millions of dollars. Although most of these applications were unsuccessful, Unitan admits he succeeded in causing actual fraud losses of nearly \$1 million.

Once apprehended, Unitan purported to be embarrassed, contrite, and eager to assist the government in reversing the damage of his wide-ranging frauds. Two weeks after his appearance on the complaint, during which he was ordered to appear for his arraignment on February 19, 2021, Unitan voluntarily sat for a proffer interview with government agents. In that interview, Unitan readily admitted to the foregoing conduct, abandoned much of his ill-gotten gains, and pitched himself as ideally suited to assist the government in investigating other criminals engaged in similar schemes. He went so far as to propose maintaining his online

¹ The lawyer, Edie Rogoway, preferred to be identified here and desires to address the Court at the sentencing hearing in this matter.

presence on dark web chat sites so that he could offer to collaborate with other targets and help government officials identify them.

It was not to be.

It turned out that Unitan was just following another of Brett Johnson's bad examples. Far from coming clean, he failed to disclose cryptocurrencies he had acquired and online bank accounts he maintained. He started funneling cash out of some of the undisclosed accounts to his girlfriend, Chelsea Grace. When it became clear that Pretrial Services had discovered Unitan was using an unauthorized digital device and that federal law enforcement agencies had no desire to enlist him as cooperator—perhaps allowing him, like Brett Johnson, not only to remain out of custody but also to commit more scams—Unitan absconded from supervision.

By January 29, 2021, Unitan had taken Grace and her young child along for seven weeks of life on the run. They headed to the Oregon Coast, returned briefly to Portland and Troutdale, and then headed as far north as Marysville, Washington—just over an hour south of the Canadian border—before they were apprehended by U.S. Marshals deputies in hotel rooms Grace had rented. As a fugitive, Unitan skipped his arraignment and continued to funnel fraud proceeds to Grace to pay for food, gas, and hotels. On March 17, 2021, the day they were caught, Unitan transferred \$1,000 to Grace using an online payment platform. Over the preceding month, he had similarly transferred nearly \$7,000 more from multiple accounts in the name of “Albright LLC” or “Daniel Cohen.”

II. GUIDELINES APPLICATION AND RECOMMENDED SENTENCE

As with Brett Johnson, so it must be David Unitan. His life of crime and flight from justice must end with a serious prison sentence. Although he has once again expressed contrition, entered into a plea agreement with the government, and undergone a polygraph

examination to corroborate his lack of remaining assets, Unitan’s crimes were numerous, long-running, costly, and exacerbated by his flight. Accordingly, the government recommends a sentence of just over five years’ imprisonment, followed by three years of supervised release, and an order of restitution to the SBA and participating PPP lenders totaling \$819,376.55.

A. The Guideline Calculation

Base Offense Level, Count 1 (USSG § 2B1.1(a)(1)).....	7
Enhancement for loss > \$550,000 (USSG § 2B1.1(b)(1)(H))	14
<u>Enhancement for sophisticated means (USSG § 2B1.1(b)(10))</u>	<u>2</u>
Total Offense Level, Count 1.....	23
Base Offense Level, Count 3 (USSG § 2S1.1(a)(1))	23
<u>Enhancement for § 1957 conviction (USSG § 2S1.1(b)(2)(A))</u>	<u>1</u>
Total Offense Level, Count 3.....	24
Combined Offense Level, Counts 1&3 (USSG § 3D1.2(d))	24
Adjustment for Obstruction –failure to appear (USSG § C1.1).....	2
Adjustment for Acceptance of Responsibility (§ 3E1.1)	-3
Total Offense Level	23
<u>Defendant’s Criminal History Category</u>	<u>I (0 points)</u>

The foregoing Guideline calculation for Counts 1 and 3—accounting only for his *successful* frauds—yields an advisory sentencing range of 46 to 57 months’ imprisonment.²

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² This office has generally agreed to limit the “intended loss” for Guideline calculations to successful EIDL and PPP loan applications as a concession to defendants and to streamline resolution of these cases—Unitan’s is the first of many. The result of this approach is that Unitan’s offense level is at least two levels lower than it otherwise would be under the Sentencing Guidelines.

B. Government Recommendation and Justification

Pursuant to the parties' plea agreement and considering defendant's waivers, successful polygraph examination, and stipulation to a sentence of at least 44 months' imprisonment, the government recommends a two-level downward variance from the Guideline range for Counts 1 and 3 and a low-end sentence of 37 months' imprisonment on each of those two counts. In addition, the Court must impose an additional 24-month sentence for Count 2. *See* 18 U.S.C. § 1028A(a)(1), (b)(2) (establishing mandatory 2-year sentence and providing that "no term of imprisonment to be imposed on a person under this section shall run concurrently with any other term of imprisonment"). The government thus recommends a total sentence of 61 months' imprisonment, and the Probation Office echoes this recommendation.³

A sentence of sixty-one months is required in this case "to reflect the seriousness of the offense, . . . to promote respect for the law, . . . to provide just punishment" and—perhaps most important in this context—"to afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(A)-(B). The facts and circumstances of Unitan's crimes are particularly serious relative to other fraud schemes in their scale, numerosity, and abuse of individual victims. And their gravity is substantially exacerbated by Unitan's obstructive conduct and flight from justice. These considerations alone merit a sentence at the high end of the parties' stipulated range.

But general deterrence is an even more important consideration in the context of the emergency programs created by the CARES Act. They were designed—necessarily—to get money to people and businesses in need as quickly as possible. In times of national calamity, the

³ The Court is obliged to impose a sentence of at least 44 months' total imprisonment in accordance with the parties' stipulation or allow the parties to rescind the plea agreement. *See* Fed. R. Crim. P. 11(c)(1)(C).

government must be able to aid to its citizens expeditiously and with minimal delays borne of bureaucratic scrutiny. And yet it is precisely the lack of scrutiny that Unitan (and many others) wrongfully exploited. The only answer to this dynamic is the imposition of criminal penalties severe enough to deter others who may seek to take similar advantage of public largesse in future disasters. The anonymous, online nature of these offenses will otherwise prove too tempting to far too many. Undeterred fraud of this sort will also undermine public support for similar relief efforts even when they are unquestionably needed.

In addition to imprisonment, the defendant must pay restitution for the moneys he stole from the SBA, in the case of EIDLs, and from participating lenders, in the case of PPP loans. *See* 18 U.S.C. § 3663A. The parties have stipulated that the proven extent of those losses totals \$819,376.55. The government agrees with the payment schedule recited in the Presentence Investigation Report. (PSR ¶ 110.)

Finally, because defendant must discharge this substantial financial obligation, he should be ordered to serve a three-year term of supervised release under the conditions recommended by the Probation Office.

III. CONCLUSION

For the foregoing reasons, defendant should be sentenced on counts 1 and 3 to thirty-seven months' imprisonment, followed by twenty-four more months for Count 2, followed by a three-year term of supervised release under the conditions recommended by the Probation Office

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and ordered to remit \$819,376.55 in mandatory restitution for the benefit of the SBA and the PPP lenders named in the PSR.

Dated: February 16, 2022

Respectfully submitted,

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/s/ *Ryan W. Bounds*

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