IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

v.

VALARIE WATSON

CASE NO. 5:20CR50070-001

DEFENDANT'S SENTENCING MEMORANDUM

Defendant, Valarie Watson ("Ms. Watson"), by and through her undersigned counsel, Stephen C. Parker, Jr., of Parker Law Firm, PLLC, respectfully requests the Court to: (1) sustain her objections to the Presentence Investigation Report ("PSR"); and (2) find that after applying the factors set forth at 18 U.S.C. § 3553(a) a downward variance from the advisory guideline range is warranted in her case. In support of *Defendant's Sentencing Memorandum*, Ms. Watson states as follows:

PROCEDURAL BACKGROUND

Ms. Watson is named in a one-count Information filed on November 19, 2020 ("Information"). On November 19, 2020, Ms. Watson appeared before this Court for her initial appearance, waived her right to be indicted, and consented to be charged by the Information. At the initial appearance a written plea agreement was presented, a factual basis set forth, and Ms. Watson formally entered a plea of guilty to Count One of the Information charging her with False Statement, in violation of 18 U.S.C. § 1001(a)(3) in exchange for negotiated concessions by the Government ("Plea Agreement"). The Court accepted Ms. Watson's plea, but deferred approval of

the Plea Agreement pending review of the PSR from the United States Probation Office ("Probation").

On February 2, 2021, an initial PSR was filed by Probation. According to the initial PSR Ms. Watson's total offense level is 12 and she is placed in criminal history category IV with a total criminal history score of 8. The initial PSR calls for an advisory guideline range of 21 to 27 months. The maximum term of imprisonment is 5 years pursuant to 18 U.S.C. § 1001(a)(3).

On February 17, 2021, Ms. Watson made 5 objections to the initial PSR. On February 18, 2021, the Government gave notice that it did not have any objections to the initial PSR. On February 22, 2021, Probation filed a final PSR, which includes an Addendum that responds to Ms. Watson's objections. In short, the final PSR concedes that Ms. Watson is not responsible for the conduct of Mr. Melvin Stout ("Stout") and Mrs. Tiffany Acuff ("Acuff") prior to May 11, 2020. This concession reduces the intended loss amount from $116,525.56 to $86,233.33 and reduces her total offense level to 10. However, the final PSR and Addendum do not resolve Ms. Watson's objections.

On March 2, 2021, the Government filed a Sentencing Memorandum. The Government states that it "agrees (with Watson and the PSR) that criminal conduct occurring prior to May 11, 2020, should not count toward Watson's loss amount." Gov't. Sent. Memo., pg. 4, ¶2. The Government further "agrees with Watson that she should not shoulder any loss resulting from Acuff's subsequent participation in the scheme, specifically the $28,400 EIDL for which Acuff applied on June 16, 2020[,]" and ultimately concludes that "excluding Acuff's $28,400 EIDL, Watson is responsible for $57,833.33 of intended loss." Gov't. Sent. Memo., pg. 4, ¶2 and pg. 6, ¶1.

Furthermore, the Government shows much reservation regarding whether Stout's May 22, 2020, EIDL application is relevant conduct with respect to Ms. Watson, and offers an alternative intended loss of $30,833.33 – resulting in only a four-level increase to her offense level. *See generally*, Gov't. Sent. Memo., pgs. 6-7. Ms. Watson maintains that her relevant conduct and intended loss are limited to $20,833.33, based on the facts, law and argument in *Defendant's Objections to the Presentence Investigation Report* and provided below.

Ms. Watson respectfully requests the Court to sustain her objections and direct Probation to amend the final PSR to find a total offense level is 8, criminal history score of 6 (category III), and a guideline imprisonment range of 6 to 12 months. These amendments place Ms. Watson in Zone B of the Sentencing Table, and make her eligible for probation, subject to a condition or combination of conditions.

This case is set for a sentencing hearing on April 1, 2021. Ms. Watson signed an Appearance Bond and has complied with the Order Setting Conditions of Release since her initial appearance on November 19, 2020.

ARGUMENT

Ms. Watson incorporates the facts, law and argument contained in *Defendant's Objections to the Presentence Investigation Report* as if set forth word-for-word below. For sake of brevity, she only addresses those objections that require a response to the final PSR, Addendum and Government's Sentencing Memorandum, but respectfully moves the Court to sustain all 5 objections.

1. Defendant's Objection 1 to the PSR.

The Government's timing with respect to the production of Ms. Watson's EIDL application and the PPP and EIDL applications of Stout and Acuff is concerning. When the Plea Agreement

was entered into by the parties on October 30, 2020, the Government had not produced Ms. Watson's EIDL application and there was no evidence that it contained any false statement. The Government had also not produced the EIDL and PPP applications of Stout and Acuff and there was no evidence of any conspiracy or jointly undertaken criminal activity. Ms. Watson entered into the Plea Agreement with the Government based on the limited disclosure of her PPP application and interviews conducted by law enforcement, exclusively. As part of the negotiated Plea Agreement, Ms. Watson was not being prosecuted for conspiracy and, to be transparent, neither the Government nor defense counsel anticipated that Probation would consider their conduct a jointly undertaken criminal activity. Absent evidence from the Government that Ms. Watson made a false statement in her EIDL application, the application is not relevant conduct even though it stems from the activities described in the Information and is subject to the Plea Agreement. Furthermore, absent evidence from the Government that Ms. Watson, Stout and Acuff entered into a conspiracy or jointly undertaken criminal activity, the PPP and EIDL applications of Stout and Acuff are not relevant conduct.

It was not until after the initial PSR was filed on February 2, 2021, that the Government revealed that it intended to pursue the conduct of Ms. Watson, Stout and Acuff as a jointly undertaken criminal activity. Then on or about February 18, 2020, for the first time the Government disclosed Ms. Watson's EIDL application and the PPP and EIDL applications of Stout and Acuff. The Government's claim that it "obtained the EIDL application data for all three defendants after their guilty pleas and has since provided the application data for these loans to defense counsel" is misleading. These applications were obviously disclosed to Probation well before defense counsel because they were used to formulate the intended loss of Ms. Watson in the initial PSR filed on February 2, 2021. In addition, the PPP applications of Stout and Acuff have

been in the possession of the Government well before appointment of counsel, yet it chose not to disclose them.

Now the Government relies on, "the timing and similarity of the various applications" to support its position that Ms. Watson's intended loss should include the application made by Stout. Gov't. Sent. Mem., pg. 6, ¶2. Allowing the Government to play jack-in-the-box with what it believes to be evidence, and ultimately relevant conduct, handcuff's defense counsel's ability to adequately advise defendants with respect to the Sentencing Guidelines will have a chilling effect during negotiation of plea agreements.

Certainly, there is a time and place for the Department of Justice to not prosecute all relevant conduct. For example, in a drug case against a minimal participant the Government may withhold evidence regarding leaders, organizers and kingpins to serve its need to arrest, indict and prosecute the same. Assuming the minimal participant was part of a conspiracy or jointly undertaken criminal activity, the acts of those participants not revealed is relevant conduct. However, without disclosure to defense counsel, Probation and the Court it is never considered at sentencing. Where do you draw the line on relevant conduct under the jointly undertaken criminal activity standard? When is the deadline to produce the evidence? Ms. Watson respectfully requests the Court to issue guidance on these questions, and if appropriate, exclude her and Stout's EIDL applications from consideration at sentencing.

Fortunately, this Court is the gate keeper in determining what is relevant conduct, not the Department of Justice, and certainly not Probation. Pursuant to USSG §1B1.3, comment. (n.3(B)), the sentencing court must assess the scope of the criminal activity the particular defendant agreed to jointly undertake. Acts of others that were not within the scope of the defendant's agreement, even if those acts were known or reasonably foreseeable, are not relevant conduct under subsection

(a)(1)(B). *See* United States v. Hunter, 323 F.3d 1314, 1319-20 (11th Cir. 2003) (reasonable foreseeability is irrelevant to relevant conduct if the acts in question are not also within the scope of the criminal activity). Nor can criminal activity of which a defendant had no notice be within the scope of his or her agreement, even if that activity was part of the same overall conspiracy and substantially similar to the defendant's own activity. *See, e.g.,* United States v. Presendieu, 880 F.3d 1228, 1246 (11th Cir. 2018) (a defendant's "mere awareness" of being part of a larger scheme did not mean that losses independently caused by an actor of whom she was unaware were within the scope of her agreement); United States v. Metro, 882 F.3d 431, 440 (3d Cir. 2018) (in an insider trading prosecution, gains realized by individuals relying on information originally revealed by the defendant were not relevant conduct if their actions were not within the scope of the activity agreed to by the defendant).

Ms. Watson maintains her objection to the EIDL and PPP applications provided post-PSR. The standard of proof applicable to relevant conduct determinations under the guidelines is a preponderance of the evidence. United States v. Villareal-Amarillas, 562 F.3d 892, 896 n.3 (8th Cir. 2009). Absent an agreement the Government has not met its burden of proof and the alleged acts, specifically Ms. Watson and Stout's EIDL applications, should not be considered relevant conduct or a factor in determine her guideline range.

Regardless of whether or not the Court considers Ms. Watson's EIDL application as relevant conduct, it does not increase her intended loss. At the time Ms. Watson made her PPP and EIDL applications the CARES Act required SBA to deduct the amount of any EIDL advance received by a PPP borrower from the PPP forgiveness payment remitted by SBA to the PPP lender. *See* Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Con. (2020) § 1110(e)(6). It was not until December 27, 2020, the President signed the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), which repealed Section 1110(e)(6) of

the CARES Act. *See* Defendant's Exhibit 1: *SBA Procedural Notice effective January 8, 2021*. Since Ms. Watkins made her PPP and EIDL applications on May 11, 2020 and June 22, 2020, respectively – both of which are prior to repeal of Section 1110(e)(6) – the maximum amount of funds that could have been fraudulently obtained by Ms. Watson is $20,833.33, which would have been an EIDL advance of $10,000.00 and an PPP forgiveness payment of $10,833.33 ($20,833.33 PPP minus $10,000.00 EIDL advance). Therefore, the total intended loss attributable to Ms. Watson is $20,833.33.

2. Defendant's Objection 2 to the PSR.

Ms. Watson maintains that the maximum intended loss that she is culpable for considering all relevant conduct, including PPP application she submitted on May 11, 2020 and the EIDL application she submitted June 22, 2020, is $20,833.33. Furthermore, there is no "actual loss" because Ms. Watson's PPP and EIDL applications were denied. She did receive a $10,000.00 EIDL advance, but this amount was in the form of a loan and she is responsible for repaying the funds to the SBA in accordance with the terms of the CARES Act. It is defense counsel's understanding that Ms. Watson was eligible for an EIDL "loan" regardless of the false statement made on the application.

Assuming, *arguendo*, that the Court finds there is a jointly undertaken criminal activity in this case, the accountability of Ms. Watson for the EIDL application of Stout depends upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities. In the case at bar, Stout's EIDL application is better viewed as a separate criminal act for the following reasons: (1) there is zero evidence Stout's EIDL application was within the scope of an alleged jointly undertaken criminal activity between he and Ms. Watson; (2) Mr. Stout's EIDL application is not in furtherance of Ms. Watson's criminal activity (single count of fraud); and (3) it was not

reasonably foreseeable to Ms. Watson in connection with her activity that Stout would file the EIDL. A finding in Ms. Watson's favor on any of these 3 points is dispositive of the issue.

The only evidence that links Stout with Ms. Watson is the following:

> Valerie Watson knew what they were doing and came to [Stout] and asked Stout to help her fill out a fraudulent loan application. Stout agreed to do this and assisted Watson with what figures to input on the loan application, Form 1099 and Schedule C.

See Memorandum of Interview Stout, pg. 4, ¶ 15. Ms. Watson agrees with the Government that "[f]rom the outset, the United States viewed this case as one where Stout helped his wife and sister file loan applications with false information, not as an open conspiracy amongst the three defendants." Gov't. Sent. Memo., pg. 3, ¶3. Neither party ever viewed this case as one where Ms. Watson agreed to help Stout or Acuff. Therefore, the implicit agreement, if any, is limited to Stout helping Ms. Watson prepare her PPP application, exclusively. While defense counsel agrees that Stout is likely culpable for the conduct of all participants, the same is not true with respect to Ms. Watson.

In this case USSG §1B1.3, comment. (n.4(C)(v)) is dispositive of the scope of Ms. Watson's relevant conduct. It states:

> Defendant O knows about her boyfriend's ongoing drug-trafficking activity, but agrees to participate on only one occasion by making a delivery for him at his request when he was ill. Defendant O is accountable under subsection (a)(1)(A) for the drug quantity involved on that one occasion. Defendant O is not accountable for the other drug sales made by her boyfriend because those sales were not within the scope of her jointly undertaken criminal activity (*i.e.*, the one delivery).

USSG §1B1.3, comment. (n.4(C)(v)). Here the interaction between Ms. Watson and stout is well below that of Defendant O and her boyfriend. Ms. Watson's PPP and EIDL applications are not filed on behalf of Stout, and Ms. Watson was not "making a delivery" for Stout at his request. Ms.

Watson simply solicited Stout for advice on how to fill-out her PPP application. The evidence is clear that he received nothing in return. Assuming this does create a jointly undertaken criminal activity, Ms. Watson's relevant conduct is limited to her PPP application and she is not accountable for Stout's other EIDL application because it was not within the scope of an alleged jointly undertaken activity (*i.e.*, Ms. Watson's PPP application).

3. Defendant's Objection 3 to the PSR.

Ms. Watson was not under any criminal justice sentence when she committed any part of the instant offense. For purposes of USSG § 4A1.1(d), a "criminal justice sentence" means a sentence countable under USSG § 4A1.2 having a custodial or supervisory component. *See* USSG § 4A1.1, Application Note 4. Ms. Watson was released from parole on November 11, 2013, and discharged from supervision on June 26, 2014. PSR ¶72. Ms. Watson's suspended sentence for theft of property (Docket Number CR 12-667A, paragraph 72) did not have a custodial or supervisory component after June 26, 2014, through the instant offense on May 11, 2020, and is not defined as a "criminal justice sentence" by USSG § 4A1.2.

Probation's claim that the "conditions of a suspended sentence extend beyond simple fine payment, as evidenced by the fact that the defendant is currently pending revocation of said suspended sentence, and there is an active warrant for her arrest on the matter," is without merit. USSG § 4A1.1(d) specifically addresses both of these circumstances, *i.e.*, fines and warrants. First, pursuant to USSG § 4A1.1(d), "a sentence to pay a fine, by itself, [is not] included." Second, "a defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (*e.g.*, a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence for the purposes of this provision if that sentence is otherwise countable, even if that sentence would have expired absent such warrant." Id.; *See also* §4A1.2(m).

The active warrant for Ms. Watson was issued after the instant offense, specifically on February 3, 2021, and is based on failure to pay a fine and the underlying conduct being prosecuted in this case. Therefore, at the time of the instant offense, Ms. Watson had completed all active supervision, there was no custodial component to her remaining sentence (which was payment of fines, exclusively) and there were no active warrants.

Probation admits that Ms. Watson was not actively supervised at the time of the instant offense and does not cite a custodial component. The admission and lack of evidence define her suspended sentence as a non-criminal justice sentence, which is dispositive of the issue.

APPLYING THE FACTORS SET FORTH AT 18 U.S.C. § 3553(a) A DOWNWARD VARIANCE FROM THE ADVISORY GUIDELINE RANGE IS WARRANTED IN HER CASE

As the Court is aware, district courts are now free from the mandatory nature of the Sentencing Guidelines ("Guidelines"). *See* United States v. Booker, 543 U.S. 220 (2005). Since 2005 the Guidelines have been considered advisory, and are now just one of several criteria district courts consider when imposing a sentence. Id. at 223. Pursuant to the decision in *Booker*, its progeny, and 18 U.S.C. § 3553(a), Ms. Watson moves the Court to impose a sentence that is sufficient, but not greater than necessary, to account for the nature and seriousness of the offense, provide just punishment, deter criminal conduct, protect the public, and avoid sentencing disparities. *See also*, United States v. Spigner, 416 F.3d 708, 711 (8th Cir. 2005).

The Supreme Court's latest decisions emphasize that district courts have wide discretion to fashion an appropriated sentence and that courts of appeals will not disturb those sentences absent an abuse of discretion. Gall v. United States, 522 U.S. 38 (2007) (finding a variance to probation for a drug offender reasonable); Kimbrough v. United States, 522 U.S. 85 (2007) (holding that the Guidelines are merely advisory in every respect; judges are free to disagree with them and sentence individuals reasonably). Ther Court is free to depart from the Guidelines so long as it states its

disagreement along with sufficient justification for the extent of the departure. *See* United States v Parris, 573 F.Supp. 2d 744, 754 - 755 (E.D.N.Y. 2008); and United States v. Gall, 128 S.Ct. 586 (2007) (departing from 360 months to 60 months – an 84.5% downward variance – considering the defendant's personal hertory and characteristics and finding that a "one-size-fits-all" approach to sentencing was not appropriate).

The process a sentencing court must follow since Booker involves three steps: (1) determine the appropriate guidelines sentencing range; (2) examine the propriety of a traditional departure under the guidelines; and (3) consider the factors set forth in 18 U.S.C. § 3553(a) to determine if a variance is warranted. *See generally*, U.S. v. Garlewicz, 493 F.3d 933, 937 (8th Cir. 2007).

In determining the minimally sufficient sentence, 18 U.S.C. § 3553(a) further directs sentencing courts to consider the following factors:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;
(2) The need for the sentence imposed:
    a. To reflect the seriousness of the offense; to promote respect for the law; and to provide just punishment for the offense;
    b. To afford adequate deterrence to criminal conduct;
    c. To protect the public from further crimes of the defendant; and
    d. To provide the defendant with the needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
(3) The kinds of sentences available;
(4) The guidelines promulgated by the Sentencing commission;
(5) Any pertinent policy statement issued by the Sentencing Commission;
(6) The need to avoid unwarranted sentencing disparities among similarly situated defendants; and
(7) The need to provide restitution to the victims.

Id. A sentencing judge must consider all of the factors to determine whether they support the sentence requested by a party. United States v. Gall, No. 06-7949, 2007 WL 4292116 (Dec. 10, 2007). The Guidelines are only a starting point and benchmark, not the only consideration. *Id*. The courts must make an individualized assessment based on the facts presented, and not presume that the Guidelines range is reasonable on its face. Id.

Of particular significance in this case is the need to provide a just punishment for the offense and the need to avoid unwarranted sentencing disparities among similarly situated defendants.

In support of her request for a sentence of probation, Ms. Watson asks the Court to consider her familial situation, work history, obligations to others. Ms. Watson has three children: (1) Katie Mayfield ("Katie"), age 23; (2) MaKenna Isaac, age 20; and Blake Isaac, age 14, who lives with Ms. Watson. Katie is seriously ill with an unknown seizure disorder and relies heavily on assistance from Ms. Watson. Ms. Watson has always worked full-time and is currently employed at ConAgra in Fayetteville. She works approximately 50 hours per week to provide for her family and meet her financial obligations to others, including the victim (SBA) in the case which will soon require her to repay the $10,000.00 loan. Considering these characteristics, along with others more thoroughly address in the final PSR, Ms. Watson prays that the Court find that probation, which allows her to maintain her personal, familial and third-party obligations, remain employed and a productive member of society, yet refrain from criminal conduct, as a just sentence in her case.

Although Ms. Watson's case may represent the first EIDL and PPP fraud case the Court has sentenced, she respectfully requests the Court to consider U.S. v. Brandon Barber, Case Number 5:12CR50035-001 and U.S. v. Brandon Rains, Case Number 5:13CR50004-003, and find that Mr. Brandon Rains ("Mr. Rains") is a similarly situated defendant. As the Court is aware, Mr.

Rains worked for Mr. Brandon Barber ("Mr. Barber") and was indicted for violation of U.S.C. § 1001(a)(2) for making a false statement to the IRS and FBI in connection with a criminal investigation relating to bank fraud, specifically, "that he was not aware of cash payments between buyers and sellers that were not included in the contracts for purchase of property that was funded by loans from a bank that was FDIC insured when in fact he was aware that he received a cash payment from the seller of Lot 7A1 of Executive Square in Springdale, Arkansas which was not included in the contract for purchase." *See* Defendant's Exhibit 2. *Indictment dated October 17, 2013*. Unlike Ms. Watson, Mr. Rains was a highly sophisticated business man. One would assume that by receiving a cash payment in association with a loan from an FDIC insured bank (if not multiple) that he would be culpable for a significant actual or intended loss based on relevant conduct and expanded relevant conduct. Yet, Mr. Rains was ultimately sentenced to a $5,000.00 fine. *See* Defendant's Exhibit 3: *Judgment in a Criminal Case dated November 6, 2014*. Although the *Statement of Reasons* in Mr. Rains' case is not available to Ms. Watson, on information and belief Mr. Rains is a similarly situated defendant and his sentence should be considered when determining hers.

The Court is in the best position to determine the custom tailored and minimally sufficient sentence necessary for Ms. Watson. Considering the history and characteristics cited above, as well as the sentence of a similarly situated defendant, Ms. Watson respectfully requests the Court to find that a sentence of probation is warranted in her case.

CONCLUSION

Ms. Watson respectfully moves the Court to sustain her objections to the PSR, amend it to state that her total offense level is 8 and criminal history category III, and find that her guideline imprisonment range is 6 to 12 months. Since these amendments place Ms. Watson in Zone B of

the Sentencing Table, she is eligible for probation, subject to a condition or combination of conditions. After applying the factors set forth at 18 U.S.C. § 3553(a) she respectfully asks the Court to find that a downward variance from the advisory guideline range is warranted in her case and respectfully request the Court to sentence her to probation.

Respectfully submitted,

Valarie Watson

By: ELECTRONIC SIGNATURE

Stephen C. Parker, Jr.
AR Bar No. 2005290
PARKER LAW FIRM, PLLC
P.O. Box 10444
Fayetteville, AR 72703
(479) 445-6295 *telephone*
(888) 680-6414 *facsimile*
stephen@justiceforarkansas.com

CERTIFICATE OF SERVICE

I, Stephen C. Parker, Jr., attorney for defendant, Mr. Valarie Watson, hereby certify that on March 18, 2021, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which will send notification of such filing and that a copy was also sent via email to the following:

Hunter Bridges
Assistant U.S. Attorney
hunter.bridges@usdoj.gov

Stephen C. Parker, Jr.

SBA Procedural Notice

TO: All SBA Employees and Paycheck Protection Program Lenders

CONTROL NO.: 5000-20075

SUBJECT: Repeal of EIDL Advance Deduction Requirement for SBA Loan Forgiveness Remittances to PPP Lenders

EFFECTIVE: January 8, 2021

Section 1110(e)(6) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) required SBA to deduct the amount of any Economic Injury Disaster Loan (EIDL) Advance received by a PPP borrower from the PPP forgiveness payment remitted by SBA to the PPP lender. On October 2, 2020, SBA began remitting forgiveness payments to PPP lenders, with the required EIDL Advance deductions. On December 27, 2020, the President signed the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), which repealed Section 1110(e)(6) of the CARES Act.[1]

In order to implement the repeal, the Forgiveness Platform has been updated and, effective immediately, SBA will no longer deduct EIDL Advances from forgiveness payments remitted to PPP lenders. This change will be applied to SBA forgiveness payments with a status of "Payment Confirmed" dated December 29, 2020 or later.

For those loans where SBA remitted a forgiveness payment to a PPP lender that was reduced by an EIDL Advance, SBA will automatically remit a reconciliation payment to the PPP lender for the previously-deducted EIDL Advance amount, plus interest through the remittance date. PPP lenders are not required to request remittance of the reconciliation payment.

SBA will identify forgiveness payments that were reduced by EIDL Advances and automatically remit a reconciliation payment to the ACH account identified by the PPP lender in the Forgiveness Platform. Upon confirmation that the payment has been accepted by the PPP lender, SBA will generate a Notice of Paycheck Protection Program Reconciliation Payment that will be available in the Forgiveness Platform.

[1] *See* Section 333 of the Economic Aid Act.

SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete

Must be accompanied by SBA Form 58

The PPP lender is responsible for notifying the borrower of the reconciliation payment. The PPP lender is also responsible for re-amortizing the loan and notifying the borrower of the amount of the next payment due, or advising the borrower that the loan has been paid in full, whichever is applicable. If the amount remitted by SBA to the PPP lender exceeds the remaining principal balance of the PPP loan (because the borrower made a payment on the loan), the PPP lender must remit the excess amount, including accrued interest paid by the borrower, to the borrower.

Questions concerning this Notice may be directed to the Lender Relations Specialist in the local SBA Field Office. Local SBA Field Offices can be found at https://www.sba.gov/tools/local-assistance/districtoffices

Jihoon Kim
Director
Office of Financial Program Operations

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 5:13-CR-50004-003
	)	
BRANDON RAINS	)	18 U.S.C. § 1001 (a)(2)

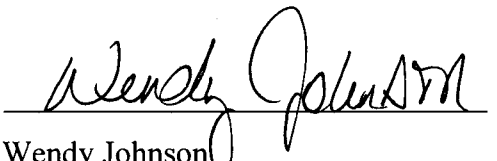
INFORMATION

The United States Attorney charges that:

On or about July 27, 2011, in the Fayetteville Division, in the Western District of Arkansas, BRANDON RAINS, did knowingly and willfully make a materially false, fictitious, and fraudulent statement and representation concerning a matter within the jurisdiction of the executive branch of the Government of the United States to wit: the defendant, Brandon Rains, while being interviewed by agents of the Internal Revenue Service and Federal Bureau of Investigation in connection with a criminal investigation relating to bank fraud and money laundering, a matter within the jurisdiction of both the Federal Bureau of Investigation and the Internal Revenue Service, falsely stated and represented that he was not aware of cash payments between buyers and sellers that were not included in the contracts for purchase of property that was funded by loans from a bank that was FDIC insured when in fact he was aware that he received a cash payment from the seller of Lot 7A1 of Executive Square in Springdale, Arkansas which was not included in the contract for purchase. All in violation of 18 U.S.C. § 1001(a)(2).

Respectfully submitted,

CONNER ELDRIDGE
UNITED STATES ATTORNEY

By: 

Wendy Johnson
First Assistant U.S. Attorney
Arkansas Bar No.94067
414 Parker Avenue
Fort Smith, AR 72901
(479) 783-5125
E-mail WJohnson2@usa.doj.gov

UNITED STATES DISTRICT COURT

WESTERN District of ARKANSAS

UNITED STATES OF AMERICA
V.

BRANDON RAINS

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:13CR50004-003

USM Number: 11416-010

J. Blake Hendrix
Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to a one-count Information on October 17, 2013

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1001(a)(2)	Knowingly and Willfully Making a Materially False, Fictitious or Fraudulent Statement or Representation	07/27/2011	1

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed within the statutory range and the U.S. Sentencing Guidelines were considered as advisory.

☐ The defendant has been found not guilty on count(s) _____

X Count(s) One (1), Three (3) and Forfeiture Allegation of the Superseding Indictment X are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 6, 2014
Date of Imposition of Judgment

/ S / P. K. Holmes, III
Signature of Judge

Honorable P. K. Holmes, III, Chief United States District Judge
Name and Title of Judge

November 6, 2014
Date

DEFENDANT: BRANDON RAINS
CASE NUMBER: 5:13CR50004-003

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$ 5,000.00	$ - 0 -

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0	$ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: BRANDON RAINS
CASE NUMBER: 5:13CR50004-003

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A X Lump sum payment of $ 5,100.00 due immediately.

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.