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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff

vs.

HASSAN SHABAN KANYIKE

Defendant.

CASE NO.: 2:21-CR00081-VAP

**OBJECTIONS TO THE PRE
SENTENCING REPORT**

**HONORABLE, VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE**

**SENTENCING DATE: SEPTEMBER
27, 2021**

INTRODUCTION

Defendant Hassan Kanyike respectfully submits the following Objections and Clarifications to the PSR in order to assist the Court in determining a proper sentence for his conduct. The Defense submits two objections and eight minor clarifications to the PSR:¹

¹ The defense does not suggest any malice in these clarifications. These errors may simply be those of a misunderstanding or a miscommunication.

CLARIFICATIONS

1. Page Two of the PSR states that Mr. Kanyike has a “Master Degree.” In fact, the highest degree Mr. Kanyike has received is an Associate’s Degree from the University of Phoenix.
2. PSR paragraph 10 and 94 states that Mr. Kanyike business, HK Development International, was a “purported business” whose purpose was “unclear.” In fact, HK Development was a Shopping Mall based business that placed virtual reality games into rented mall space. Customers paid a fee for the experience in the machines owned by HK Development.
3. PSR paragraph 9 suggests that Mr. Kanyike had no employees. This is correct in terms of wage or salaried employees. However, Mr. Kanyike paid multiple contract employees. In 2020 Falcon Motors paid over \$590,000 in commissions, casual labor, and professional fees. This is not reported in the employee wage section given that these fees are paid to contract individuals not as a wage or salary.
4. PSR paragraph 74 states that Mr. Kanyike has 11 siblings. In fact, Mr. Kanyike has 14 siblings.
5. PSR paragraph 79 states that Mr. Kanyike was separated from his wife in 2015 and divorced in 2016. In fact, Mr. Kanyike was separated in 2012 and divorced in 2012. Because the marriage was only a religious marriage and not civil, there are no actually divorce documents as the marriage lasted no longer than a few months. The marriage was never consummated.
6. PSR paragraph 76 states no history of mental or emotional problems. A full psychological evaluation will be submitted to address this from the point of view of a trained psychologist.

SPECIFIC OFFENSE CHARACTERISTICS

SOPHISTICATED MEANS

1
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3 The PSR suggests that the Court should add an additional 2 levels pursuant to
4 USSG 2B1.1(b)(10)(C) because Mr. Kanyike used sophisticated means when he transfred
5 \$760,000 to Uganda after he received it from the Small Business Admnsitration (SBA).
6 The PSR also claims that a sophisticated means increases is warranted because Mr.
7 Kanyike used multiple EIN numbers and falsified IRS forms to obtain the fraudulent PPP
8 money. The Defense objects and disagrees with the characterization of Mr. Kanyikes
actions as set forth in the PSR.

- 9
10 1. Mr. Kanyike is from Uganda and it is there that his father still resides. Mr.
11 Kanyike is living in the United States on a grant of assylum due to fear of
12 persecution for being homosexual and/or bi-sexual. Should Mr. Kanyike ever
13 return to Uganda he would face near certain death due to his sexual nature.
14 Over the past years Mr. Kanyike has been in contact with his father who sought
15 to open a automoblie import/export business. Mr. Kanyike’s father holds
16 considerable influence over his son and when it was learned that Mr. Kanyike
was finding success in the resale of automobiles to members of the local
Ugandan community in Los Angeles he began looking for a way to capitllize on
his sons success.

17
18 A plan was formulated for Mr. Kanyike to give his father money to buy a
19 building in Uganda to assit in the importing of automobiles for resale. When
20 Mr. Kanyike recived his first round of PPP money he had outstanding bills and
21 invoices due on his last round of automobiles purchased at auction. His father,
22 however, pushed him to send money immediatly to Uganda in order to
purchase a building. Mr. Kanyike complied.

23
24 To be clear, once Mr. Kanyike recived PPP money he sent a portion of it via
25 wire to his fathers bank in Uganda. Sending money overseas was not part of the
scheme nor did it paly any factor in how Mr. Kanyike obtained money from the
SBA. His enitre action was to simply instruct his bank to wire money to his

1 father account. There is nothing complex nor sophisticated beyond sending a
2 wire to his fathers preexisting account.

3 USSG 2B1.1 (b)(10)(C) reads in relevant part:
4

5 If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to
6 another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial
7 part of a fraudulent scheme was committed from outside the United States; or (C) the
8 offense otherwise involved sophisticated means and the defendant intentionally
9 engaged in or caused the conduct constituting sophisticated means, increase
10 by 2 levels.

11 Mr.Kanyike did none of these things. His actions all took place within the United States.
12 He did not set up a fake company nor his own accounts overseas. No part of his fraud occurred
13 outside of the United States and he left a perfectly clear an easy trail of what he did with the
14 money. Under the guidelines the scope of “sophisticated means” is clarified to mean "the
15 defendant intentionally engaged in or caused (rather than the offense involved)
16 sophisticated means." For example, the Commission adds

17 For purposes of subsection (b)(10)(C), “sophisticated means” means especially complex
18 or especially intricate offense conduct pertaining to the execution or concealment of an
19 offense. For example, in a telemarketing scheme, locating the main office of the scheme
20 in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily
21 indicates sophisticated means. Conduct such as hiding assets or transactions, or both,
22 through the use of fictitious entities, corporate shells, or offshore financial accounts also
23 ordinarily indicates sophisticated means.

24 In the case of Mr. Kanyike he simply transferred money to his father account. The
25 fact that his father lived in Uganda is neither sophisitcated nor neferious. Sending the
26 money to Uganda was not a part of the scheme to defraud nor was it intricate in any
27 fashion. The money went into the account of Mr. Kanyike and was sent to his father.
28 There was no hidden agenda and the transaction was open for anyone to see simply by
29 looking at the bank stament. While Mr. Kanyike agrees that the money was sent over seas,
30 there simply was nothing complex about his actions.

31 As for the use of false EIN numbers and IRS forms, and increase for these actions
32 would be a form of piling on for actions that were required by the SBA in order to process
33 the applications for the PPP loans. Indeed, EIN and false IRS forms were a mandatory
34 variable in the processing of the PPP dcouments and did not require any sophisticated

1 actions above and beyond what was required in every PPP applications. The fact that Mr.
2 Kanyike submitted fraudulent documents is the very reason why he is standing before the
3 Court and has plead guilty to his fraudulent activities. To call these actions sophisticated
4 would be to ignore the fact that this was a requirement of the SBA in order to even process
5 the loan application.

6 The defense also wishes to add that the issue of “sophisticated means” was discussed by
7 the Government and Mr. Kanyike’s prior attorney during the crafting of the plea agreement. In
8 an email from the government to Mr. Kanyike’s prior attorney, Victor Sherman, the government
9 states:

10 “The plea agreement does not stipulate to an enhancement for use of sophisticated
11 means. As a result, with reduction for your client’s acceptance of responsibility, the total
12 offense level is 20.”

13 While Mr. Kanyike’s current attorney was not a part of the plea agreement discussion
14 and is aware of the independent jurisdiction of the Court, he is of the honest belief that the
15 parties considered the potential issues of sophisticated means and were in agreement that such an
16 increase was not warranted based upon the actions of Mr. Kanyike.

17 **SPECIFIC OFFENSE CHARACTERISTICS**
18 **LOSS DERIVED FROM A FINANCIAL INSTITUTION**

19 At the outset of this objection, counsel states that extensive research and study did not
20 result in a definitive answer as to whether the PPP money came from a financial institution or
21 from the SBA. The fact that the PSR states that the money came from financial institutions does
22 not make it true given that the nature of the PPP loans system was extremely complex and
23 politically based. One issue is however clear, the SBA fully funded and administered this loan,
24 and no financial institution was on the hook for a single dollar of loss or fraud.

25 USSG 2B1.1 (b)(17)(A) states that if the defendant derives more than \$1,000,000 in
gross receipts from one or more financial institutions as a result of the offense there is a 2-level
increase. Mr. Kanyike obtained \$1,002,550.00. In the instant case the question is whether or
not the institution in question suffered the loss and thereby was placed in financial risk.

To determine whether funds are “derived” from a financial institution, the Court should
look not to the source of the funds but rather to the risk of loss posed by the defendant’s
conduct. The Court should conclude that the financial institution “must suffer a loss or liability,”
such as the risk incurred by a fraudulently obtained loan from the institution/s, for the

1 enhancement to apply. This standard, thereby, would effectuate the underlying purpose of the
2 enhancement: to punish those who place a financial institution at risk.

3 In the instant case the PSR assumes that it was the financial institution/s that lent the
4 money to Mr. Kanyike and thereby the enhancement should apply. We disagree. Unlike a
5 regular loan in which the financial institution provides the money from its own accounts and
6 reserves, the PPP money was wholly different. Here the money was provided to financial
7 institutions from the SBA. The financial institutions merely acted as a conduit from money that
8 was directly authorized by Congress and administered by the SBA. In fact, banks had no risk of
loss in any amount but rather were guaranteed an income as each PPP loan assured them of a
processing fee in the form of a percentage of the loan. The SBA stated in its Interim Final Rule²:

9 The CARES Act was enacted to provide immediate assistance to individuals, families,
10 and businesses affected by the COVID-19 emergency. Among the provisions contained
11 in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under
12 a new 7(a) loan program titled the "Paycheck Protection Program." **Loans guaranteed**
13 **under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by**
SBA, and the full principal amount of the loans may qualify for loan forgiveness. The
following outlines the key provisions of the PPP.... SBA is authorized to guarantee loans
under the PPP through June 30, 2020. Congress authorized a program level of
\$349,000,000,000 to provide guaranteed loans under this new 7(a) program.

14 In the case of PPP loans, the financial institution was not to follow its own loan protocols
15 but rather those set forth by the SBA. These loans were to be granted pursuant to SBA rules and
16 not bank rules. This was because it was the SBA who was at risk and not the institution.
17 Because USSG 2B1.1 (b)(17)(A) is designed to protect the financial institution in the event of a
loss of over \$1,000,000 the enhancement should not apply.

18 Mr. Kanyike recognizes that this a fine line with no prior precedent to fall upon for
19 guidance and the nature of the PPP program was complex in all of its variables. However, it is
20 clear that no financial institution was ever at risk of a loss (such as they are when they write a
21 bad loan) because the money used to fund the PPP was merely a pass through from the SBA.
22 This is not meant as an excuse for bad behavior but rather to state that this enhancement is not

23 ² SMALL BUSINESS ADMINISTRATION
24 [Docket No. SBA-2020-0015] 13 CFR Part 120
Business Loan Program Temporary Changes; Paycheck Protection Program RIN 3245-AH34 AGENCY: U. S.
Small Business Administration.
25 ACTION: Interim Final Rule.

1 what was intended in the guidelines and thus no two-level increase should occur for the \$2,550
2 above the \$1,000,000 that has been reported.

3 Mr. Kanyike would also ask the Court to consider that these facts were available to the
4 parties at the time of the plea agreement and it was his understanding that this enhancement
5 would not apply given the nature of the PPP loans. Mr. Kanyike was and is aware that the Court
6 maintains its separate power to evaluate the facts and to decide which enhancements do apply.

7 **CONCLUSION**

8 Based upon these arguments and those presented at the time of sentencing Mr. Kanyike
9 asks the Court to deny the specific character offense enhancements.

10 Dated: 09/06/2021

Respectfully submitted,

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DYKE E. HUISH
ATTORNEY FOR HASSAN KANYIKE