UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,	§	
	§	
v.	§	
	§	
MICHAEL FULLERTON,	§	**CRIMINAL NO. A21-CR-216-RP**
	§	
Defendant.	§	
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	§	

GOVERNMENT'S SENTENCING MEMORANDUM
REGARDING MICHAEL FULLERTON

The Government respectfully submits this sentencing memorandum regarding the sentencing of Michael Fullerton. Due to the egregious nature of the offenses, Defendant's efforts to delay and obstruct justice, and Defendant's prior history of fraudulent activity, the Government recommends a sentence of 327 months, which is the top of the guideline range calculated by the Probation Office.

I.   PROCEDURAL HISTORY

Defendant was initially charged in this case via information with 11 counts related to a PPP loan fraud scheme on October 27, 2021. Information [#1]. Defendant was later charged by Superseding Indictment [#11] on November 16, 2021, a Second Superseding Indictment on August 16, 2022 [#47], and a Third Superseding Indictment on July 18, 2023 [#152]. The Third Superseding Indictment charged Defendant with one count of Conspiracy to Commit Bank and Wire Fraud, in violation of 18 U.S.C. § 1349; two counts of Bank Fraud, in violation of 18 U.S.C. § 1344; two counts of Wire Fraud, in violation of 18 U.S.C. §1343; one count of Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. § 1956; three counts of Engaging in

Monetary Transactions in Criminally Derived Property, in violation of 18 U.S.C. § 1957; and two counts of Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A.

After several trial delays, Defendant and his wife were scheduled for trial on April 22, 2024. On March 26, 2024, less than one month before trial, Defendant elected to plead guilty to all 11 counts against him without any plea agreement. As part of his plea, Defendant agreed to the facts detailed in an Agreed Factual Basis for Guilty Plea [#234]. After having pled guilty, Defendant voluntarily testified on behalf of his wife at her trial during the week of April 22, 2024. The jury found Mrs. Fullerton guilty of both counts against her on April 29, 2024.[1]

Along with three other codefendants—his wife, Tiffany Fullerton, former business partner, David Scott Starkes, and former employee, Joseph Robles—Defendant engaged in a scheme to defraud the banks and the United States of PPP loan proceeds during the height of the Covid-19 pandemic in 2020. Defendant and his codefendants submitted six fraudulent PPP loan applications seeking approximately $3.7 million in PPP funds and actually received approximately $3 million in fraudulently obtained funding. Even after learning that federal agents were investigating his illegal activity, Defendant submitted three additional fraudulent PPP loan applications in 2021 for an additional $542,400.21. The 2021 fraudulent loan applications were not funded.

II.   DEFENDANT'S CRIMINAL CONDUCT WAS EGREGIOUS

In 2020, our country and the world were in the grip of a global emergency. To slow the spread of Covid-19 in the early phases of the crisis, businesses across the country were closed, threatening the financial survival of thousands of businesses, their employees' livelihood, and the entire economy. In order to prevent financial collapse, the federal government approved the

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[1] The jury did find Mrs. Fullerton not guilty of the wire fraud theory of Count 1, Conspiracy to Commit Bank and Wire Fraud, but found her guilty under the bank fraud theory of that same count, thus finding her guilty of both counts alleged.

Paycheck Protection Program (PPP) to support businesses affected by the pandemic. According to the U.S. Census, "61.7 percent of [U.S.] companies with employees" requested financial assistance from the PPP and 58.3 percent of U.S. companies with employees received some assistance.[2]

Defendant grossly took advantage of this situation. He falsified business records to request and obtain the first $599,900 PPP loan, then used falsified records and shell corporations to apply for five more loans in April-July 2020. This was not a case of someone applying for multiple loans at one time and then being surprised when more than one of them was approved–Defendant's fraudulent PPP loans were sequential, as the evidence at trial showed. Defendant would fraudulently apply for a loan, receive the payout, then apply for the next one. Even after he was aware of the federal investigation into his fraudulent activities in September 2020, Defendant continue his illegal behavior, applying for three more fraudulent loans in 2021. The total amount of the fraudulent PPP loan applications submitted by Defendant and his coconspirators was $4,335,051.32. The actual loss caused by Defendant and his coconspirators, e.g., the fraudulently obtained money they actually received, totaled $3,027,526.11.

The PPP funding was not infinite. That means that Defendant's greed had real consequences on businesses that were not able to obtain assistance when the funding ran out. And instead of using the PPP funds as intended, Defendant spent the money at casinos, on a boat, on furniture, on a Bentley and other vehicles, on Rolex watches, and Mr. Starkes bought a Corvette.

In addition to being motivated by greed, Defendant showed a significant amount of callousness as evidenced by his text messages with his coconspirator, David Scott Starkes. Highlights include:

> **"We get a second round of ppp so I'm supporting Covid"**

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[2] https://www.census.gov/library/publications/2022/econ/2020-aces-covid-impact.html

"I guess we can figure out what to do with another million or two"

"I think you missed the whole point of my text. I don't give a fuck about Joseph. I'm concerned about the money."

STARKES: Well I'm in Vegas with the check book so by the end of the day it might not be straight…lol"

FULLERTON: **"Have fun…More PPP coming in a few weeks…If we were really crooks we would be in Mexico but now we are responsible old men doing the right thing paying employees and bills…Not as much fun as the old days but far better upside"**

"I'll either need bail money or I'm leaving with our 1 million plus"

(emphases added).

Defendant clearly knew that his actions were fraudulent and criminal and continued to seek and protect his fraudulently obtained funds even after he became aware of the federal investigation. A significant sentence is necessary and appropriate to punish Defendant for his actions and to send a strong message to others who might be similarly tempted that such conduct will not be tolerated. It will also send a message to the public that frauds upon the taxpayer in a time of national crisis will not be tolerated. Taxpayers should be reassured that the justice system will impose harsh consequences on those who would defraud the government in these times.

III.   DEFENDANT'S EFFORTS TO DELAY AND OBSTRUCT THE PROSECUTION

Defendant went to significant effort to hide his criminal activity from the beginning. He stole the identities of his employees to file the fraudulent PPP loan applications; he forged tax and business records to support the fraudulent applications; he stole the identity of an accountant to legitimize his fraudulent applications; he recruited a previously uninvolved employee, Joseph Robles, to use his identity for three of the fraudulent applications; he stole his father-in-law's

identity to obtain an EIN; and he created a fake law firm and fake attorneys to hide his criminal activity.

From the moment he learned of the federal investigation into his scheme, Defendant knew that he, his wife, and Starkes all faced being held criminally responsible for the fraud. On September 3, 2020, the day after Special Agent Bob Rutherford first made contact with Defendant's father-in-law, Defendant texted Starkes, "I don't know how this is gonna work out but Joe Turner maybe (sic) getting another vacation home because you me and Tiffany may need him…Checks were written out of MTF to all of us plus Georgetown Collision, FCG, etc…Right now I'm trying to do damage control and limit this to MTF." The evidence at trial further showed that Defendant had a plan to "take the fall" for the criminal conduct if it was discovered and discussed the possibility of him "go[ing] to prison over this PPP deal" with Tiffany Fullerton in December 2020.

Defendant's obstructive behavior continued with respect to the prosecution of him and his wife. In October 2021, Defendant claimed to be suffering from some mysterious, debilitating illness. He claimed at the time to only have months to live and used the excuse of this illness repeatedly throughout the prosecution to delay the proceedings. Yet despite seeing multiple medical practitioners, there has been no clear diagnosis of any serious disease. And in repeated appearances in court, including his several hours testifying on behalf on his wife, he showed no physical impairment from this mystery illness.

Defendant also apparently faked a stroke in September 2023 to delay the trial scheduled in early October 2023. The morning after the Court denied Defendant's and Defendant's wife's motions to continue the trial setting, Defendant went to the hospital complaining of stroke-like symptoms. Defendant was treated for a stroke, but several MRI and CT scans of Defendant's brain

failed to show any physical evidence of a stroke. Doctors also noted conflicting presentation of symptoms and referred Defendant for a psychological consultation for consideration of conversion disorder as a possible explanation for his symptoms (no diagnosis was able to be made). Defendant's ploy worked, and the Court indefinitely continued the trial setting.

After several weeks passed and Defendant continued to claim that his condition prevented him from being able to proceed with trial, the Government insisted on a hearing to address those claims. On the eve of that hearing, Defendant had a miraculous recovery and informed the Court that he was able to proceed with trial.

Finally, Defendant attempted to obstruct justice by perjuring himself as a witness for his wife at her jury trial. Defendant lied under oath on several occasions including, but not limited to:

- *Defendant's statement that Joseph Robles was not a member of the conspiracy.* This lie is directly contradicted by Defendant's Agreed Factual Basis for Guilty Plea wherein Defendant admitted that: he "knowingly and intentionally conspired and agreed with one or more individuals, including David Scott Starkes and Joseph Robles, to commit bank and wire fraud…conspired and agreed with one or more individuals, including David Scott Starkes and Joseph Robles, to launder money obtained from PPP fraud" (p. 2); "Mr. Robles agreed with DEFENDANT to have his identity used to apply for fraudulent PPP loans in exchange for approximately $100,000" (p. 4); and "[i]n order to receive the PPP funds related to the MTF Racing applications, DEFENDANT instructed Joseph Robles to open a business account" (p. 5). Joseph Robles' guilty plea in this case and his testimony against Tiffany Fullerton wherein he admitted being a member of the conspiracy also prove Defendant's statement to be false.

- *Defendant's statement that Fullerton Consulting Group, LLC was an operating business in 2020.* This lie is directly contradicted by Defendant's Agreed Factual Basis for Guilty Plea wherein Defendant admitted that "Fullerton Consulting Group, LLC was a business name previously used by DEFENDANT, but was not an operating business in 2019 or 2020" (p. 3). The bankruptcy documents admitted into evidence at trial also show this to be a lie because the business was listed as a "no asset" business.

- *Defendant's statement that FCG Automotive & Collision, LLC was an operating business in 2020.* This lie is directly contradicted by Defendant's Agreed Factual Basis for Guilty Plea wherein Defendant admitted that "FCG Automotive & Collision, LLC was a business name previously used by DEFENDANT, but was

not an operating business in 2019 or 2020" (p. 3). The bankruptcy documents admitted into evidence at trial also show this to be a lie because the business was listed as a "no asset" business.

- *Defendant's statement that MTF Racing, LLC was an operating business in 2020.* This lie is directly contradicted by Defendant's Agreed Factual Basis for Guilty Plea wherein Defendant admitted that "MTF Racing, LLC was a business name previously used by DEFENDANT, but was not an operating business in 2019 or 2020" (p. 4). The bankruptcy documents admitted into evidence at trial also show this to be a lie because the business was not listed as an asset.

- *Defendant's claim that the first time he informed his wife about any fraud related to the PPP loan applications was in October 2021.* This was shown to be a lie at trial through text messages from the Defendant to his wife in December 2020 that specifically mentioned the possibility he might go to prison because of the PPP fraud.

Defendant also repeatedly accused the prosecuting attorney of dishonesty and repeatedly refused to answer questions on cross examination, leading the Court to admonish him more than once for his behavior.

Defendant's significant and repeated efforts to delay the proceeding and obstruct justice call for a sentence at the high end of the guidelines range.

IV. DEFENDANT'S PRIOR HISTORY OF FRAUDULENT BEHAVIOR

As detailed in the PSR, Defendant has a long history of theft and fraudulent behavior. His first conviction for theft was in 1993, over 30 years ago, and he has a total of 12 theft or theft-related convictions (and many other charges that did not result in a conviction). Defendant was sentenced to state prison on several occasions. Defendant was also convicted of fraud-related offense like Tampering with Government Record, False Name/False Information/Forgery, and Identity Theft. Defendant also has a prior federal conviction for Bank Fraud, for which he received 18 months imprisonment. Following his release from federal prison, Defendant violated his conditions of supervised release and was sentenced to an additional 24 months' imprisonment.

Significantly, only two of Defendant's prior convictions, a state felony conviction for Theft and a state felony conviction for Theft by Check, scored under the guidelines due to the age of his convictions. As a result, despite a significant criminal history, under the Guidelines Defendant is only a Criminal History Category III, a significant underrepresentation.

Beyond his formal criminal history, Defendant's testimony revealed additional repeated fraudulent behavior. Defendant admitted that he committed Bankruptcy Fraud by hiding assets from the Bankruptcy Court in his and his wife's 2017 bankruptcy. Defendant claimed certain assets, like expensive boats and trailers, were hidden from the Bankruptcy Court by being placed in the names of certain businesses. Defendant also claimed that he and his wife had income far exceeding what was disclosed in the bankruptcy.

Defendant also testified to his plan to commit insurance fraud. Per Defendant's sworn testimony, insurance companies will pay more for certain auto repairs (like painting, etc.) if those repairs are performed "out-of-house," *i.e.*, by another company. Defendant described a plan to use his other business names, such as Fullerton Consulting Group, FCG Automotive & Collision, and MTF Racing, to defraud insurance companies by claiming repairs were made out-of-house instead of in-house and charge the higher rate for the repair. This would likely constitute insurance fraud, but that fact clearly would not deter Defendant.

Defendant has repeatedly engaged in fraud/theft since he was 20 years old. He has continued to engage in such behavior despite having been sent to prison for those actions on more than one occasion. Defendant will continue to steal from and defraud victims given the chance, which further necessitates a significant sentence.

V.   DEFENDANT'S BASELESS CHALLENGE TO THE AGREED FACTUAL BASIS

Defendant's assertion that he swore to the information set forth in the Agreed Factual Basis but did not read it carefully (or that those facts are inaccurate or incomplete) is wrong and yet another example of his refusal to fully accept responsibility. [#291]. Notably, Defendant has at no point moved to withdraw his plea and has reaffirmed his guilt. *Id*. Thus, his last-minute attack on the plea process appears to be a stratagem to generate an issue for post-conviction review and the record should be clear from the outset that there is no basis for any future claims of ineffective assistance of counsel or that Defendant's rights were violated in any way. Defendant's plea was sound substantively and procedurally.

Regarding the substance, Defendant's plea came after lengthy negotiations in which multiple drafts of what became the Agreed Factual Basis were reviewed and rejected by Defendant. Defense counsel James Young has represented Defendant since September 2022 and counsel Jon Evans has been on the case since May 2023. He thus had experienced counsel with deep knowledge of the case advising him by the time he pled in March 2024. The events immediately leading up to Defendant's guilty plea are significant. In January 2024, the Government sent defense counsel a discussion draft of a conditional plea with a factual basis that required Defendant to admit that Tiffany Fullerton was one of his co-conspirators. Part of the benefit of the bargain for the Government would have been foreclosing Defendant's ability to testify on behalf of his wife at trial. By contrast, the Agreed Factual Basis to which Defendant eventually swore under oath omitted Tiffany Fullerton from the list of co-conspirators. This gave Defendant what he wanted, namely the ability to testify that his wife had no responsibility for the crime without a clear prior admission to the contrary. The Government provided a draft of this factual basis to Defendant's attorney the day before Defendant entered his guilty plea. The draft was similar in

length and detail to several prior drafts of factual basis that had been provided to Defendant through his attorneys as part of prior plea negotiations. The key change from the prior proposals—which included Tiffany Fullerton as a co-conspirator—and the final Agreed Factual Basis show that Defendant reviewed the relevant documents, identified his objections, and obtained the result he sought. He secured his ability to testify on behalf of his wife, which is what he had always wanted. Any suggestion that he did not know the substance of what he was signing is baseless.

The plea was also procedurally sound. The record shows his plea and admission of facts was knowing, voluntary, and carefully considered. Beyond affirming under oath that he was pleading of his own free will and that he agreed with the factual basis, Defendant took specific steps to clarify the accuracy of the facts. For example, he made a point to clarify that by using the term co-conspirator, he did not mean to implicate his wife. [Plea Tr. at 4]. On page 7 of the factual basis, he struck a phrase stating that he and his wife moved to Oklahoma "to start a business that would include a marijuana grow and dispensary, a bar and grill, and an auto/boat repair shop." [#234 at 7]. He initialed or signed every page of the Agreed Factual Basis and signed the last page that noted it was "Agreed." All of the evidence shows that Defendant read the Agreed Factual Basis in detail, knew what it said, made specific edits to its contents, and affirmed under oath that those facts as agreed were true. Any attempt to minimize, clarify, or question those facts now should be rejected by the Court, and further demonstrate Defendant's refusal to fully accept responsibility for his actions.

Regardless, the Agreed Factual Basis contains information that the government proved independently at trial or would have emphasized had the focus of the trial been Defendant. In other words, Defendant's admissions in the Agreed Factual Basis merely confirmed what the

evidence at trial would have been anyway. Having seen the evidence first-hand, the Court can be confident in the accuracy of the Agreed Factual Basis.

VI.   CONCLUSION

Defendant is a grifter, a con man, and a fraud. He has stolen millions of dollars from people who desperately needed it in the midst of a national and global emergency. And he has compounded his culpability by his delay, obstruction, and perjury on the stand. A significant punishment is reasonable, appropriate, and necessary in this case, and thus the Government recommends a sentence at the high end of the guideline range, specifically 327 months.

Respectfully submitted,

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By: */s/ G. Karthik Srinivasan*_____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Government's Sentencing Memorandum Regarding Michael Fullerton has been delivered via the CM/ECF automatic notification on this the 8th day of July 2024 to defense counsel.

/s/ G. Karthik Srinivasan
G. KARTHIK SRINIVASAN
Assistant United States Attorney