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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,
12 vs.
13 James Theodore Polzin,
14 Defendant.

No. CR-21-00264-PHX-JJT (DMF)
**UNITED STATES’ SENTENCING
MEMORANDUM**
(Sentencing, January 27, 2022 at 3:30)

15
16 **Introduction And Summary Of Sentence**

17 The United States asks the Court to (1) accept the terms of James Theodore Polzin’s
18 (“Polzin”) plea agreement; (2) sentence Polzin to 70 months imprisonment; (3) order
19 restitution in the total amount of \$2,211,396.39; and (4) Order that Polzin shall pay a total
20 of \$2,211,596.39 in criminal monetary penalties, subject to immediate enforcement by the
21 United States.

22 The above recommended sentence and terms fairly balances the serious nature of
23 Polzin’s offenses, his relative role in the offense, any positive attributes, and the public
24 policy concerns listed in § 3553(a).

25 **I. The Sentencing Guidelines Range and PSR Recommendation**

26 Polzin’s PSR (Doc. 61) calculates a total offense level of 27 and a criminal history
27 category of I, resulting in a Sentencing Guideline range of 70-87 months. In exchange for
28 him promptly accepting the plea agreement, avoiding unnecessary hearings, trial

1 preparation, not challenging forfeiture of assets that would further tax the United States’
2 time and investigative resources, the parties stipulated to a cap at the low end of the range.
3 The United States’ recommendation of a sentence of 70 months and the Presentence Report
4 (PSR) are in accord.

5 **A. Defendant’s Untimely Objections should be rejected**

6 Polzin makes two untimely objections to the PSR.¹ *First*, he argues that the offense
7 was not sophisticated to qualify for a two-level increase in the applicable guideline range
8 pursuant to USSG § 2B1.1(b)(10)(C). This objection should be rejected for obvious reasons
9 as Polzin’s schemes had all the hallmarks of sophistication. Indeed, Polzin’s scheme to
10 fraudulently obtain both EIDL and PPP loans was the definition of sophistication.

11 First, he conducted a portion of the scheme overseas from Ukraine.² Second, he
12 falsified numerous loan applications by misrepresenting the nature of the businesses, the
13 number of employees, annual revenue, and created fictitious entities. Third, Polzin even
14 funneled the proceeds from the fraudulently obtained loans to offshore accounts and
15 engaged in other acts of money laundering. (PSR ¶ 24); *See United States v. Tanke*, 743
16 F.3d 1296, 1307 (9th Cir.2014) (noting that while the defendant did not use corporate shells
17 or offshore financial accounts as mentioned in Application Note 9(B), the “sophisticated
18 means” enhancement under § 2B1.1(b)(10)(C) was justified because he engaged in
19 “dozens of various acts,” including falsifying invoices and checks, to conceal
20 payments); *United States v. Jennings*, 711 F.3d 1144,1145 (9th Cir. 2013) (upholding a
21 “sophisticated means” enhancement for using a bank account with a deceptive name to
22 conceal income and stating that conduct need not involve “highly complex schemes or
23 exhibit exceptional brilliance” to warrant the enhancement); *see also United States v.*

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26 ¹ Polzin attempts to characterize his objections as a variance or downward departure
27 when they are in reality objections to the PSR that should have been filed following the
issuance of the draft PSR.

28 ² Polzin could arguably receive an enhancement for conducting the scheme outside
of the United States to avoid law enforcement. *See* USSG § 2B1.1(b)(10)(A)(B).

1 *Horob*, 735 F.3d 866, 872 (9th Cir. 2013) (per curiam) (affirming application of the
2 “sophisticated means” enhancement under § 2B1.1(b)(10)(C), in part, because the
3 defendant falsified documents and left a “complicated and fabricated” paper trail that made
4 it hard to uncover his fraud). In sum, this enhancement was properly applied.

5 Next, Polzin objects to the application of the use of specialized skill enhancement
6 based on his background as a Certified Public Accountant pursuant to USSG § 3B1.3. (PSR
7 ¶ 34)³ Again, this “downward departure/variance” should be rejected. Polzin used his
8 accounting background to fraudulently obtain loans for his clients. Without this specialized
9 skill he would not have had the opportunity to submit false loan applications for clients
10 where he obtained a substantial commission. (*See* PSR ¶ 25); *See United States v. Jaradat*,
11 512 F. App'x 612, 615–16 7th Cir.2013)(unpublished)(applying special skill enhancement
12 when accountant used skills to provide phony tax documents in a way that avoided
13 suspicion into her mortgage-fraud scheme); *United States v. Downing*, 297 F.3d 52, 65 (2d
14 Cir.2002)(applying special skill enhancement when accountants used their expertise to
15 issue false audit reports to help divert suspicion from their stock-manipulation scheme).

16 **B. The Government’s Sentencing Recommendation**

17 In short, the government believes a sentence of 70 months sentence is sufficient but
18 not greater than necessary to comply with the factors set forth in 18 U.S.C. § 3553(a). The
19 seriousness of Polzin’s offenses that resulted in substantial losses to the taxpayers, the need
20 for deterrence, and the need to avoid unwarranted sentencing disparities all weigh in favor
21 of a sentence at the low end of the applicable guideline sentence.

22 As preliminary matter, Polzin is in a criminal history category I but that
23 categorization is obviously incomplete given his year-long fraud. In addition, the fraud was
24 sophisticated, deliberate and the loan proceeds were largely used for his own personal
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27 ³ The commentary to §3B1.3 further explains that “[s]pecial skill” refers to a skill
28 not possessed by members of the general public and usually requiring substantial
education, training or licensing. Examples would include pilots, lawyers, doctors,
accountants, chemists, and demolition experts.” *Application Note 2*, U.S.S.G. § 3B1.3
(1989) (emphasis added).

1 benefit to support an unsustainable lifestyle.

2 **C. The § 3553(a) Factors**

3 The government believes a sentence of 70 months is sufficient to comply with the
4 sentencing factors set forth in 18 U.S.C. § 3553(a). The recommended sentence balances
5 any of Polzin's positive attributes with the seriousness of the offense and public policy
6 concerns.

7 **i. Polzin's History and Characteristics**

8 As detailed in the PSR, for most of his adult life Polzin was law abiding until the
9 age of 45. It is also worth noting, however, that unlike many of the criminals who come
10 before this Court who began life with almost nothing, Polzin has enjoyed a number of
11 advantages during his life. (See PSR, ¶s 50-54, 62-64; summarizing Polzin's education,
12 family support and employment, etc.). Notwithstanding his advantages in life, Polzin
13 engaged in a fraud that was, in the final analysis, avoidable.

14 **ii. The Nature and Circumstances of the Offense**

15 As detailed in the PSR, the fraud underlying Polzin's offense was serious and caused
16 a significant loss to the taxpayers by fraudulently obtaining taxpayer funded loans during
17 a national emergency. The CARES Act is a federal law enacted on March 29, 2020,
18 designed to provide emergency financial assistance to the millions of Americans who are
19 suffering the economic effects caused by the COVID-19 pandemic. Instead, Polzin used
20 the money to finance a lavish lifestyle that included the purchase of a luxury vehicle (a
21 Porsche) valued at \$140,000, the purchase of a residence with loan proceeds that were also
22 used to remodel, among other things.

23 The scheme required considerable deliberation. Again, not only was he methodical
24 in his fraudulent actions (e.g., altering loan applications, misrepresenting information,
25 diverting loan proceeds to offshore accounts, etc.) he perpetuated the fraud by submitting
26 false applications for accounting clients. (PSR ¶ 25) Lastly, Polzin attempted to escape
27 justice by fleeing the United States. He was arrested on his way to the airport where he
28 had a one-way ticket to the Ukraine.

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iii. Public Policy Concerns

Protection of the public and specific deterrence are concerns in this case as Polzin’s fraud was protracted and complex. If a similar opportunity to access loans presents itself, Polzin could commit another offense. General deterrence is also a consideration. The United States believes that, in light of the collateral consequences of a felony conviction, a prison sentence of 70 months will deter Polzin and others from committing similar crimes, as well as promote respect for the law and provide just punishment.

In short, Polzin will have a felony conviction on his record for the remainder of his life. Once released this will prevent him from working in many industries, obtaining loans, and will prohibit him from obtaining many types of professional licenses in the future. At a minimum, he will have to disclose his conviction when applying for employment, just as he will have to disclose it when attempting to get a loan, or in countless other situations. This is a significant consequence for Polzin (in his fifties when released) who will have limited professional opportunities as a convicted felon. Considering the totality of circumstances, a sentence of 70 months is appropriate.

II. Conclusion

For the reasons set forth above, the government asks the Court to:

- Accept the terms of Polzin’s plea agreement;
- Sentence Polzin to 70 months imprisonment, followed by three years of supervised release;
- Order restitution and criminal monetary penalties in the amount of \$2,211,596.39.

Respectfully submitted this 21st day of January, 2022.

GARY M. RESTAINO
United States Attorney
District of Arizona

s/ Kevin M. Rapp
KEVIN M. RAPP
Assistant U.S. Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2022, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants who have entered their appearance as counsel of record.

s/ Marjorie Dieckman
U.S. Attorney’s Office