



(PSR, ¶¶ 125-135). Notably, the PSR also showed that Mr. Read would not receive a reduction for acceptance of responsibility. (PSR, ¶ 134). Thus, his guideline range is 51 to 63 months' imprisonment based on a total offense level of 24 and a criminal history category of I. (PSR, ¶¶ 135, 144, & 183).

The Government had one objection to the PSR; however, Mr. Read had 8 objections to the PSR, one of which was resolved by revisions made in the final report. (Doc. 16-1). Mr. Read's remaining objections involve an acceptance of responsibility reduction, his accountability for PPP funds received by Wanda Payne, and a Second Draw loan with Cross River Bank prior to the entry of his guilty plea. Mr. Read maintains that he made a legitimate loan application to Cross River Bank with legal documents and that he should not be denied a reduction for acceptance of responsibility because he has not falsely denied relevant conduct under U.S.S.G. § 1B1.3. Furthermore, the loss amount in this case is between \$150,000 and \$250,000 because he should not be held accountable for loans made to Wanda. If the Court sustains Mr. Read's objections, his total offense level would be 19, after a reduction for acceptance of responsibility, resulting in a guideline range of 30 to 37 months in prison.

### **ARGUMENT**

#### **I. Mr. Read Did Not Apply For or Obtain a PPP Loan With Fraudulent Documents After He Executed the Written Plea Agreement.**

Mr. Read maintains that he did not continue in his crimes after he executed his written plea agreement on February 19, 2021, or after his change of plea hearing on March 17, 2021. Mr. Read applied for and received a legitimate Paycheck Protection Program ("PPP") loan on March 10, 2021, with the Cross River Bank in the amount of \$8,957.00 using legitimate documents in the application. He contends that this amount

should not be used in calculating the loss amount or in denying him a reduction for acceptance of responsibility.

On March 27, 2020, in response to the COVID-19 pandemic, Congress passed a federally guaranteed loan under the PPP of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).<sup>1</sup> The covered period for the First Draw PPP loans began on February 15, 2020 and ended on June 30, 2020, although it appears that coverage period may have been extended. These loans are often referred to as the “First Round” loans or “First Draw” loans. The PPP is “a multi-billion-dollar loan guarantee program.” *All Sorts of Servs. of Am., Inc. v. SBA*, No. 8:20-cv-1688-TPB, 2020 WL 6270915, at \*1 (M.D. Fla. July 31, 2020) (citation omitted). To obtain a PPP loan, borrowers must apply to participating private lenders and make several good-faith certifications, including that the loan funds “will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.” 15 U.S.C. § 636(a)(36)(G)(i). Upon approval, the private lender executes a promissory note with the borrower and disburses the funds. In other words, it is the lender that processes the PPP loan application and, if approved, the lender disburses the funds, not the SBA. Interim Rule on PPP Requirements for Promissory Notes, Authorizations,

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<sup>1</sup> To assist with understanding the statutory framework underlying the CARES Act and the PPP, the undersigned provides a summary here. Congress created the Small Business Administration (“SBA”) through the Small Business Act of 1953, Pub. L. No. 83-163, 67 Stat. 232 (1953) (codified as amended at 15 U.S.C. §§ 631– 57). The statute’s purpose was to “aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise.” 15 U.S.C. § 631(a). To fulfill this goal, Congress gave the SBA “broad powers . . . including that of lending money to small businesses whenever they could not get necessary loans on reasonable terms from private lenders.” *SBA v. McClellan*, 364 U.S. 446, 447 (1960).

The SBA’s primary tool for lending money is the “7(a) loan”—named after section 7(a) of a 1958 amendment to the 1953 statute. Pub. L. 85-563, § 7, 72 Stat. 384 (1958) (codified at 15 U.S.C. § 636). One form that a 7(a) loan might take is “[a] guaranteed loan . . . by which [the] SBA guarantees a portion of a loan made by a [participating] Lender.” 13 C.F.R. § 120.2(a).

Affiliation, and Eligibility, 85 Fed. Reg. 23,450, 23,451 (Apr. 28, 2020). Up to one hundred percent of a PPP loan is forgivable if the borrower satisfies certain conditions. 15 U.S.C. § 9005(b).

Subsequently, Congress designated \$137 billion for PPP second draw loans as part of a larger funding and relief package. The bill, signed into law on Dec. 27, 2020 included a total of \$284.5 billion for PPP loans, which are often referred to as “Second Round” loans or “Second Draw” loans. According to the current website for the Small Business Administration (“SBA”), there are two (2) types of PPP loans available to small businesses: First Draw PPP loans are for those that have not received a PPP loan before, *i.e.*, did not receive First Round or First Draw loans, while the Second Draw PPP loans were limited and available only to certain businesses that previously received a prior PPP loan.

On January 21, 2021, Mr. Read applied for a Second Draw PPP loan with Cross River Bank. The application clearly stated that it was for the “Paycheck Protection Program, Second Draw Borrower Application Form, Revised March 3, 2021.” Additionally, under the “Terms & Conditions” section which formed the basis for the Second Draw PPP loan, the following language is found:

- I attest that I have not applied for a Paycheck Protection Program loan with another lender. If I have applied for more than one loan, I understand that I can be personally liable for any duplicate loans and it can exclude these loans for forgiveness eligibility.
- **I confirm that I have not applied for a PPP loan with another lender.** (Emphasis in original)

Similarly, under the Certification section found on page 3 of the application form, it states, “The Applicant has not and will not receive another Second Draw Paycheck

Protection Program Loan.” Mr. Read notes that the loan date was listed as March 4, 2021 although the application date was January 21, 2021. Thereafter, Cross River Bank requested additional information from Mr. Read including a Borrower Resolution and IRS Form 4506-T. (PSR ¶¶ 117-118).

Mr. Read maintains that he has not made any other loan applications regarding the Second Draw Borrower Application, and therefore his representation that he has “not applied for a PPP loan with another lender” is factually correct. Per the definition of the SBA, Mr. Read was eligible for the Second Round only if he received a PPP loan during the First Round. Thus, the statement in the Second Round application requiring him to “confirm that [he had] not applied for a PPP loan with another lender” applies only to a second round of loans and not the first. In other words, he confirmed that he had not previously applied for a second-round loan, which is factually true.

Additionally, Mr. Read denies that he “submitted a falsified IRS Schedule C (Profit or Loss from Business)” along with his loan application. (PSR ¶ 115). Mr. Read asserts that the Schedule C was a copy of the one filed with his 2020 taxes. Similarly, Mr. Read maintains that he did not “submit[] a fraudulent Spending Account Statement from Chime, ending in account number 8424, for February 2020.” (PSR ¶ 116). Mr. Read states that the account statement is a true and correct copy of an authentic business record maintained by Chime and was not “falsified” by him.

Although the Plea Agreement was executed on February 19, 2021, it was not formally submitted to the Court until the change-of-plea hearing was held on March 17, 2021. Further, the Order Setting Conditions of Release for Mr. Read did not prohibit him

from seeking a legitimate loan. (Doc. 9). Mr. Read submits that he was not in violation of the law or the conditions of release when he applied for the second loan.

**II. Mr. Read Should Not be Held Accountable For the Loss Amounts Attributable to Wanda Payne.**

Mr. Read acknowledges that he assisted his mother-in-law, Wanda Payne, in applying for a PPP loan at her request. However, he denies that he benefitted from her loan or that he participated further in her criminal conduct. Thus, he requests that this Court reduce his loss amount by \$20,102—the amount that Wanda received for her fraudulent loan application. Wanda received the exclusive benefit of this loan and Mr. Read contends that the amounts paid to Wanda should not be considered in his guideline calculation.

To determine the amount of loss, the Sentencing Guidelines state that a defendant is responsible for “(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and (B) all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity.” U.S.S.G. § 1B1.3(a). “A jointly undertaken criminal activity’ is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy.” U.S.S.G. 1B1.3, cmt. 2. Some of the “[f]actors relevant to foreseeability include whether the defendant benefitted from his co-conspirator’s activities and whether he demonstrated a substantial level of commitment to the conspiracy.” *United States v. Harvey*, 413 F.3d 850, 853–54 (8th Cir. 2005) (citing *United States v. Bad Wound*, 203 F.3d 1072, 1076 (8th Cir. 2000)).

The Eighth Circuit has found that defendants’ actions met the definition of jointly undertaken criminal activity where the evidence showed they traveled together to obtain

and use identifications to pass counterfeit checks during the same period of time. *United States v. Harvey*, 413 F.3d 850, 854 (8th Cir. 2005). Further, they shared resources to carry out their scheme when they both used the same apartment and van to carry out their criminal enterprise. *Id.* In that case, the Eighth Circuit found that the men “both benefitted from the others activities” and shared resources, such as a car, an apartment address, computer printed checks, and a computer check-writing program to further the crime. *Id.* “By working together, the defendants benefitted by being able to cover more territory, and thereby were able to pass more checks, obtain more identities, and better avoid detection.” *Id.* The Eighth Circuit also found that the defendants’ scheme and extent of their travel to carry it out, demonstrated their commitment. *Id.* at 854–55.

Mr. Read submits that the facts in his case differ from those in *Harvey*. He did not benefit from the loan that Wanda received and they did not travel together to further the scheme. Instead, Mr. Read advised Wanda as to how to apply for the loan and she received the funds in full. On June 15, 2020, Wanda applied for and received PPP funds through her application in the amount of \$20,102. Further, Mr. Read did not share any of Wanda’s resources in advising her of the process. Therefore, it was error to attribute the loans Wanda received in the loss amount calculation in Mr. Read’s case.

**III. Mr. Read Qualifies For an Adjustment For Acceptance of Responsibility Pursuant to U.S.S.G. § 3E1.1(a).**

Mr. Read contends he should be awarded an adjustment for acceptance of responsibility under § 3E1.1. Mr. Read applied for a legitimate PPP loan on January 21, 2021 with Cross River Bank. Importantly, there exists no pre-trial condition, bond condition, or any other condition that prevented Mr. Read from conducting lawful business, including the legitimate application for a PPP loan. The PSR includes a

statement that Mr. Read made on his Facebook page to his subscribers admitting generally to the offense conduct and apologizing. The PSR suggests that this indicates that he has denied acceptance of responsibility. Mr. Read contends that he felt compelled to make a general statement to his subscribers, who he relied upon for monetary support, to admit his conduct without going into great detail regarding the offense.

“Entry of a plea of guilty prior to the commencement of trial combined with truthfully admitting the conduct comprising the offense of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which he is accountable under § 1B1.3 . . . , will constitute significant evidence of acceptance of responsibility.” *United States v. Torres-Rivas*, 825 F.3d 483, 486 (8th Cir. 2016) (citing U.S.S.G. § 3E1.1, cmt. n. 3). However, “a defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true” may be denied the adjustment because he has “acted in a manner inconsistent with acceptance of responsibility.” U.S.S.G. § 3E1.1 cmt. n.1(A). See *United States v. Zeaiter*, 891 F.3d 1114, 1123–24 (8th Cir. 2018).

Mr. Read submits that he has truthfully admitted the conduct comprising the offenses of conviction, and truthfully admitted or not falsely denied any additional relevant conduct for which he is accountable under §1B1.3. Mr. Read timely entered a plea of guilty to an Information which did not require the Government to present its case before a Grand Jury or prepare for trial. Thus, he maintains that his actions constitute evidence of acceptance of responsibility for the purposes of § 3E1.1.

**IV. Mr. Read Requests a Below-Guideline Sentence Pursuant to 18 U.S.C. § 3553(a).**

18 U.S.C. § 3553(a) begins with the mandate that “[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth

in paragraph (2) of this subsection.” These sentencing purposes can be satisfied by sentencing Mr. Read to a sentence below the Guidelines’ range. The Guidelines as currently calculated recommend a sentence of 51 to 63 months for his crimes involving the illegal applications for PPP loans. Mr. Read not only pleaded guilty to all three charges but pleaded guilty to an Information without requiring the Government to proceed before a Grand Jury. In addition, Mr. Read is in the lowest criminal history category. Therefore, Mr. Read believes that a downward variance to a sentence of 12 months and one day in prison is an appropriate sentence.

A. Nature and Circumstances of the Offense

Mr. Read recognizes that his crimes are serious felonies that involve the acquisition of loans to which he was not entitled. However, he maintains that the current guideline range is greater than necessary to satisfy the purposes of sentencing for this offense and that it is an overly harsh punishment for someone who has not been incarcerated for more than a brief period of time.

B. History and Characteristics of the Defendant

Although Mr. Read was born into a two-parent household, his father gambled and drank heavily. His father was verbally and physically abusive and would sometimes point a gun at Mr. Read and his mother. Mr. Read began experiencing anxiety in his late teen years, and it is notable that he continues to take medication for depression and anxiety. Mr. Read reports that he suffers from severe panic attacks and bipolar episodes. (PSR, ¶ 163). His mental illness appears to be reflected in how Mr. Read spent the loan money he received – with a substantial amount going toward his gambling addiction and for baseball cards. Mr. Read also has a number of health problems, including carpal tunnel,

degenerative disc disease, hypertension, diabetes, gastroesophageal reflux disease, and asthma. He takes pain medication, including medical marijuana.

Mr. Read is 44 years old and is in criminal history category I with minor violations for a hot check and trespassing. The COVID-19 pandemic had a direct effect on his income and he became desperate and wrongly viewed the PPP loan as a way to help his family. He relied solely on his online presence on Facebook as a storm chaser under the name Snowbird Bob for income. People would support him by subscribing to his site and he would earn money. The economic downturn during the COVID-19 pandemic effected Mr. Read's ability to support himself, his wife, and his daughter. While not an excuse, Mr. Read turned to the PPP loans to support his wife and 15-year-old daughter during this crisis. Mr. Read acknowledges that he made frivolous purchases. However, he suffers from several mental health issues, including possible bipolar disorder, which leads him to be impulsive, gamble, and otherwise make poor decisions.

He cares for his wife with COPD and a 15-year-old daughter who suffers from mental illness. Very recently, his daughter attempted to take her own life as a result of the stress the family is under and was rushed to the ICU. Mr. Read is very ashamed of his conduct and the effect it has had on his family and society. He pleaded guilty to this crime without requiring the Government to proceed before a Grand Jury, recognizing that he deserves punishment and wishing to save time and resources. He asks this Court to consider that this is his first serious offense and that he can be punished and rehabilitated with a sentence of 12 months and a day in prison.

C. Need for Just Punishment in Light of the Seriousness of the Offense

While his crimes are certainly serious, Mr. Read requests that the Court sustain his objections and find that the properly calculated guideline range is 30 to 37 months in prison and grant a downward variance to 12 months and a day. Mr. Read submits that such a sentence is reasonable under the circumstances of his case. Mr. Read's crime was a result of desperation during the pandemic and he is ashamed of his conduct. He believes his recommended sentence is a significant and just sentence.

D. Adequate Deterrence; Protect the Public

Mr. Read recognizes that the Court is required to deter him and protect the public; however, a sentence of 12 months and one day is significantly greater than necessary to protect the public from Mr. Read. He can be adequately treated and reformed in much less time. He recognizes that he has committed serious crimes and that the Court is required to deter him and others who may seek to obtain loans to which they are not entitled. However, Mr. Read has not spent any real time behind bars and this sentence will be a strong deterrent to future conduct. The Court recognized that Mr. Read is not a serious danger to society as he was permitted to be released on bond while he awaited sentencing.

E. Medical Treatment, Vocational Training, Education, or Correctional Treatment

Mr. Read is educated and has some college credit. Until the pandemic, he was able to earn a living operating a Facebook account named Snowbird Bob, in which he provided information regarding the weather to his subscribers. He plans to continue this site and pursue additional skills that will make him successful upon his release. Recognizing that he has a gambling addiction, Mr. Read has signed away his rights in

surrounding states at gambling facilities, and therefore he will not be permitted to enter those businesses. He is committed to being a better father, husband, and member of society going forward.

F. The Need to Avoid Unwarranted Sentencing Disparities

In Mr. Read's case, a sentence of 12 months and one day would address the goals of sentencing. While Mr. Read's offenses are certainly serious, such a sentence would be sufficient but not greater than necessary to establish the goals of sentencing. Other district courts in the nation have sentenced similarly situated defendants to prison time far below what the guidelines recommend for Mr. Read. See e.g. Judgment, *United States v. Jafaar*, No. 1:20-CR-0085-CMH-1 (E.D. Va. Nov. 18, 2020), ECF no. 67 (defendant received a 12-month sentence for conspiracy to commit bank fraud and to defraud the United States involving PPP loans and ordered to repay \$220,573 in restitution). In addition, district courts have sentenced defendants to approximately 5 to 7 years in prison when they obtained far greater loan payments than Mr. Read. See e.g., Judgment, *United States v. Smith*, No. 20-CR-0196-bhl-1 (E.D. Wis. June 2, 2021), ECF 108 (defendant received a sentence of 57 months for bank fraud seeking over 1.2 million in PPP loans); <sup>2</sup> Amended Judgment, *United States v. Hines*, No. 21- 20011-CR-COOKE (S.D. Fla. May 17, 2021), ECF 62 (sentencing defendant to 78 months for obtaining approximately 3.9 million in fraudulent PPP loans).<sup>3</sup>

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<sup>2</sup> <https://www.justice.gov/opa/pr/man-sentenced-his-role-directing-covid-19-relief-fraud-scheme>

<sup>3</sup> <https://www.justice.gov/opa/pr/florida-man-who-used-covid-relief-funds-purchase-lamborghini-sports-car-charged-miami-federal>

**CONCLUSION**

Mr. Read requests a sentence of 12 months and one day based on the 18 U.S.C. § 3553(a) factors.

WHEREFORE, Mr. Read respectfully requests this Court impose a sentence of 12 months and one day.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification to the attorneys of the United States Attorney's Office registered in this case, and I hereby certify that I have mailed the document by the United States Postal Service to the following non-CM/ECF participants: none.

/s/ James B. Pierce  
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