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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 UNITED STATES OF AMERICA,
10

Case No. 20CR2637-GPC

11 Plaintiff,

12 v.

**UNITED STATES’ SENTENCING
MEMORANDUM**

13 NIKOLE L. EDWARDS,

14 Defendant.

15 The UNITED STATES OF AMERICA, by and through its counsel, Randy S.
16 Grossman, Acting United States Attorney, and Andrew J. Galvin, Assistant United States
17 Attorney, hereby submits its sentencing memorandum as to Defendant Nikole L. Edwards.

18 **I.**

19 **STATEMENT OF FACTS**

20 Defendant Nikole L. Edwards concocted a scheme to fraudulently obtain Paycheck
21 Protection Program (“PPP”) loans by falsely claiming that her business employed several
22 individuals.

23 The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was passed
24 by Congress and signed into law on March 27, 2020. The CARES Act provides a source
25 of funding for small businesses affected by the economic downturn associated with the
26 Coronavirus pandemic through the Paycheck Protection Program (“PPP”).

27 Under the PPP, businesses may receive funds to pay up to eight weeks of payroll
28 costs including benefits. To obtain a PPP loan, the borrower must establish that the

1 business was in operation on February 15, 2020, the business had employees, and that the
2 business had average monthly payroll costs. The PPP is implemented by the Small
3 Business Administration (“SBA”) with support from the Department of the Treasury.
4 Businesses may apply through traditional lenders and some authorized non-traditional
5 lenders. The CARES Act temporarily permits the SBA to guarantee 100 percent of loans
6 made under the PPP.

7 On April 11, 2020, Defendant applied for a \$20,832 PPP loan from U.S. Bank for
8 her business Social Savvy Marketing, LLC (“Social Savvy Marketing”). In the loan
9 application, Defendant falsely claimed that Social Savvy Marketing employed two
10 individuals – referred to herein by their initials A.K. and L.D. – who earned annual salaries
11 of \$75,000 and \$50,000, respectively. Defendant also provided false addresses and Social
12 Security numbers for her purported employees. To support her false claim that A.K. and
13 L.D. were Social Savvy Marketing employees, Defendant knowingly submitted two
14 fraudulent Form W-2s to U.S. Bank as part of her PPP loan application. On May 9, 2020,
15 U.S. Bank denied Defendant’s request for a PPP loan.

16 On April 23, 2020, Defendant applied for a \$26,041 PPP loan from CDC Small
17 Business Finance for Social Savvy Marketing. In the loan application, Defendant falsely
18 claimed that Social Savvy Marketing employed A.K. and L.D. and provided the same
19 fraudulent Form W-2s that she provided to U.S. Bank. After a representative from CDC
20 Small Business Finance told Defendant that Social Savvy Marketing could not receive a
21 PPP loan, Defendant wrote the following false statement in an email on May 6, 2020 to the
22 representative: “This is a lifeline for my employees and my business and we won’t survive
23 without it.” CDC Small Business Finance ultimately denied Defendant’s request for a PPP
24 loan.

25 On May 3, 2020, Defendant applied for a \$19,583 PPP loan from Customers Bank
26 for Social Savvy Marketing. To obtain the PPP loan, Defendant falsely claimed that Social
27 Savvy Marketing had an average monthly payroll of \$7,384. To support her false claim,
28

1 Defendant submitted a fraudulent Form W-3, which represented that Social Savvy
 2 Marketing employed two individuals. Defendant’s PPP loan application was transmitted
 3 from Customers Bank to the SBA to assess Defendant’s eligibility to obtain a PPP loan.
 4 On June 1, 2020, Customers Bank disbursed \$19,583 to Defendant’s Union Bank account.

5 **III.**

6 **SENTENCING GUIDELINES**

7 The United States recommends the following United States Sentencing Guidelines
 8 (“USSG”) calculations:

9

10	Base Offense Level [§ 2B1.1]:	6
11	Loss [§ 2B1.1(b)(1)(C)]:	+4
12	Acceptance of Responsibility [§ 3E1.1]	-2
13	Departure/Variance* [§ 5K2.0/§ 3553(a)]	<u>-2</u>
14	Adjusted Offense Level	6

15 **Loss Over \$15,000: +4.** The Guidelines provide that the offense level should be
 16 increased by 4 if a fraudulent scheme caused losses of between \$15,000 and \$40,000. *See*
 17 USSG §§ 2B1.1(b)(1)(C). As a result of Defendant’s fraudulent loan application,
 18 Customers Bank disbursed \$19,583 to Defendant.

19 **Departure/Variance under USSG § 5K2.0, 18 U.S.C. § 3553(a): -5.** The United
 20 States recommends a downward departure or variance based on two factors. First,
 21 Defendant expeditiously resolved his case and entered into a pre-indictment resolution that
 22 saved resources the United States would have spent investigating and prosecuting the case
 23 against her. Second, Defendant paid the entire restitution amount – \$19,584 – to the Clerk’s
 24 Office before sentencing.

25 **B. SECTION 3553(a) SENTENCING ANALYSIS**

26 The Sentencing Guidelines are an important factor that must be calculated and
 27 considered by the Court in fashioning an appropriate sentence, but they are only one of the
 28 factors set out in 18 U.S.C. §3553(a) that ultimately guide a district court in the exercise of

1 its discretion. *See United States v. Sylvester Norman Knows His Gun, III*, 438 F.3d 913,
2 918 (9th Cir. 2006).

3 **1. Nature and Circumstances of the Offense.**

4 The offense involves a scheme to defraud various banks seeking to implement the
5 PPP program by making false claims about the number of employees at her business and
6 by providing fake documents to support her claims. The scheme is particularly egregious
7 given that Defendant took advantage of a program that sought to support businesses facing
8 losses associated with the Coronavirus pandemic.

9 **2. History and Characteristics of Defendant**

10 This is not Defendant's first scheme involving false loan applications. According to
11 the PSR, from 2004 to 2007, Defendant fraudulently obtained over half a million dollars
12 in student loans that she obtained in the names of family members. ECF 14 at 7. Defendant
13 did so to support a spending habit that resulted in tens of thousands of dollars each month
14 in purchases. *Id.*

15 **C. THE KINDS OF SENTENCES AVAILABLE**

16 **1. Probation**

17 If the recommendation of the United States is accepted, Defendant's adjusted offense
18 level falls within Zone A of the Guidelines Sentencing Table and, consequently, a sentence
19 of probation is authorized. USSG § 5B1.1, Application Note 2. Given Defendant's prior
20 criminal conviction, however, a sentence of imprisonment is necessary to impress upon
21 Defendant the gravity of the offense and to deter her from engaging in further loan fraud
22 schemes.

23 **2. Fine**

24 The United States does not recommend a fine considering the significant amount of
25 restitution owed to Customers Bank.

1 **3. Restitution**

2 Defendant should be ordered to pay restitution. In deciding upon an appropriate
 3 restitution order, the Court should consider “the amount of loss sustained by each victim
 4 as a result of the offense.” 18 U.S.C. § 3663(a)(1)(B)(i)(I). The Restitution Addendum to
 5 Defendant’s Plea Agreement mistakenly states that restitution is mandatory in this case.
 6 Restitution, however, is discretionary because Defendant pleaded guilty to making a false
 7 statement to the SBA in violation of Title 15, United States Code, Section 645.

8 Under Title 18, United States Code, Section 3663(a)(3) provides that: “The court
 9 may also order restitution in any criminal case to the extent agreed to by the parties in a
 10 plea agreement.” Because Defendant agreed to pay restitution as part of her plea
 11 agreement, the Court may order restitution in this case.

12 The parties agree that the readily provable total restitution amount is:

<u>Victim</u>	<u>Amount</u>
Customers Bank	\$19,583

15 The amount is based on information provided in the victim impact statements
 16 received by the United States and information obtained during the investigation. Based on
 17 the foregoing, the parties respectfully request that the Court enter a restitution order as set
 18 forth in the table above.

19 **V.**

20 **CONCLUSION**

21 The United States recommends that the Court sentence Defendant to four months in
 22 prison and order that she pay \$19,583 in restitution.

24 DATED: March 29, 2021

Respectfully submitted,
 RANDY S. GROSSMAN
 Acting United States Attorney

/s/ Andrew J. Galvin

 ANDREW J. GALVIN