

guideline range of 57 - 71 months. Ms. Slaton has filed objections to the PSR. Ms. Slaton requests the opportunity to address her objections, grounds for departure and variance as discussed below.

I. **GUIDELINE CALCULATIONS**

A. **THE COURT SHOULD SUSTAIN MS. SLATON'S OBJECTION TO THE USSG §3B1.1(B) ADJUSTMENT FOR HER ROLE IN THE OFFENSE.**

The Presentence Investigation Report for Ms. Denesseria Slaton (hereinafter “PSR”) incorrectly adds a three-level adjustment pursuant to USSG §3B1.1(B). The PSR states that Ms. Slaton was a manager or supervisor and the criminal activity involved five or more participants or was otherwise extensive. We concede that the criminal activity at hand involved five or more participants, but dispute the allegation that Ms. Slaton was a manager or supervisor. The facts in the case centered around Darrell Thomas and his scheme to fraudulently obtain money and via the Paycheck Protection Program (“PPP”). Thomas used Slaton to help perpetuate his scheme by positioning her as someone he could use as a buffer between himself and business owners looking to profit from the fraud. As the PSR states in Paragraph 33, “**Slaton** facilitated these PPP loans by acting as the middle-woman between the business owners and Thomas.” PSR ¶ 33. At the direction of Thomas, business owners who

were looking to receive illicit funds from his PPP scheme would send documents and information to Slaton and she would provide them to Thomas. After the loans were funded, Ms. Slaton would receive additional instruction from Thomas about how the loan proceeds were to be disbursed and she would pass along that information to the business owners. Slaton would then receive a portion of the proceeds from each loan that she helped facilitate, but less than Thomas and the aforementioned business owners.

In United States v. Rodriguez, 805 F. App'x 773 (11th Cir. 2020), the Eleventh Circuit Court of Appeals recently confronted the issue of whether a defendant was a manager or supervisor under USSG 3B1.1(b). In assessing a defendant's role, the appellate court considered the following factors: (1) whether they exercised decision-making authority, (2) the nature of their participation in the commission of the offense, (3) whether they recruited accomplices, (4) whether they claimed a right to a larger share of the fruits of the crime, (5) their degree of participation in planning or organizing the offense, (6) the nature and scope of the illegal activity, and (7) the degree of control and authority they exercised over others. U.S.S.G. § 3B1.1 cmt. n.4. This multi-factor analysis requires a district court to decide on a "case-by-case basis," under the totality of the

circumstances, whether the enhancement should apply. *See United States v. Ramirez*, 426 F.3d 1344, 1356 (11th Cir. 2005). There is no requirement that all the considerations have to be present for the enhancement to be applied. *Id.* As a factual basis for the three-level adjustment, the PSR lays out facts in paragraphs 33 through 36 that allegedly support the USSG §3B1.1(B) enhancement. We submit that these facts show quite the opposite.

1. Exercising decision making authority

Ms. Slaton did not exercise decision making authority in her role in the offense. There is no indication in the PSR or in any of the evidence that Ms. Slaton made decisions on how the PPP scheme was to be perpetuated. All of the evidence supports that Ms. Slaton acted at the direction of Darrell Thomas. This factor does not support an enhancement.

2. Nature of Ms. Slaton's participation in commission of the offense

As stated above, Ms. Slaton was primarily used as an intermediary between Darrell Thomas and the business owners he conspired with to take out fraudulent PPP loans. If Darrell Thomas had been a loan officer processing legitimate loans, Ms. Slaton would have been akin to his secretary or assistant. He used Ms. Slaton to retrieve documents from the

business owners, pass information back and forth, and keep the business owners up to date on the progression of the scheme. Nevertheless, Thomas took all necessary steps either himself or with other co-conspirators to actually create, manipulate, falsify, and/or alter documents for the submission and processing of loans. Ms. Slaton was not part of this integral part of the scheme. This factor does not support an enhancement.

3. Recruitment of accomplices

Although not referenced in the PSR, it is anticipated the Government will argue that Ms. Slaton actively recruited accomplices to participate in Thomas' scheme. Out of the three loans that Ms. Slaton participated in, she played a part in informing one business owner, Charles Hill, of Darrell Thomas' plan to prepare and submit PPP loans. It is worth noting that Charles Hill and Darrell Thomas were already acquaintances and had done some sort of business together prior to this scheme. There is no evidence that Ms. Slaton played a similar role for the other loans that she was involved in submitting. This factor alone should not support a USSG §3B1.1(B) enhancement.

4. Right to Larger Share of Fruits of Crime

Ms. Slaton was involved in the funding of three fraudulent PPP

loans. It was alleged in the evidence that Slaton was to receive 10% of the proceeds for her involvement in the loans that she helped facilitate. The other 90% was to be split between Darrell Thomas (50%) and the business owners submitting the applications (40%). The PSR in paragraph 34 states, “the lenders approved the PPP loans for Transportation Management in the amount of \$830,417, Continuing Success in the amount of \$727,000, and Infinite Education in the amount of \$854,805.” This amount totals \$2,406,222. PSR Para. 38. For Ms. Slaton’s role in the scheme, she received a total at least \$270,000.00 for her role in all three loans. PSR Para. 34. This amount totals approximately 11% of the fruits of the scheme for Ms. Slaton, close to the 10% alleged in the evidence. The other approximately 89% of the proceeds went to the business owners and Darrell Thomas. Using the facts provided in the PSR, it’s clear that Ms. Slaton received a much smaller share of the proceeds than her co-conspirators. This factor does not support an enhancement.

5. Degree of Participation in Planning or Organizing

The evidence does not support that Ms. Slaton participated in any degree of planning or organizing in the conspiracy to defraud the lenders. There is no indication in the PSR or in any of the evidence that Ms. Slaton

made decisions on how the PPP scheme was to be perpetuated. Again, all of the evidence supports that Ms. Slaton acted at the direction of Darrell Thomas as he was the architect of the scheme. The business owners were asked to forward documents to Ms. Slaton and she forwarded those documents to Darrell Thomas. Key plans that were integral to the fraud such as determining the amount of money sought for each loan, presenting the number of employees on payroll, and which documents to alter for submission were done without her counsel and participation. This factor does not support an enhancement.

6. Nature and Scope of Illegal Activity

The conspiracy at hand involved a fairly complex plan to submit altered documents, records, and false applications to take advantage of lenders. The scheme involved several corrupted business owners scheming with one another to profit off of the Paycheck Protection Program. Ms. Slaton was used by Darrell Thomas to serve as a buffer or “middle woman” between the corrupted business owners so he would have arguable less exposure to detection. The steps that Ms. Slaton took to facilitate the conspiracy were not even necessary for the scheme to profit as she was primarily a channel for communication. As referenced in some other sections of this memorandum, Ms. Slaton’s work in the

conspiracy was almost secretarial.

7. Degree of Control and Authority Exercised over Others

This is arguably the most significant factor in considering whether or not a defendant should receive an enhancement for their role in a criminal conspiracy or enterprise. The vast majority of the courts focus their analysis on this factor over all others as this factor seems to represent a core reason for USSG §3B1.1(B) enhancements. For the USSG §3B1.1(B) enhancement to apply, the defendant must exert "some degree of control, influence, or leadership" in the criminal conspiracy. United States v. Ndiaye, 434 F.3d 1270, 1304 (11th Cir. 2006) (internal quotation marks omitted). "The mere status of a middleman or a distributor does not support enhancement under Section 3B1.1 for being a supervisor, manager, or leader. *Id.* "[T]here must be evidence that the defendant exerted some control, influence, or decision-making authority over another participant in the criminal activity." United States v. Martinez, 584 F.3d 1022, 1026 (11th Cir. 2009).

The facts of this case do support an enhancement for this factor. There was no one subordinate to Ms. Slaton in this case. She was at the bottom of the totem pole. Ms. Slaton had contact with three business owners seeking to do business with Darrell Thomas, but they were not her

subordinates. She had no control, influence or decision making authority over them. Ms. Slaton was used by the business owners to get documents to Darrell Thomas and Darrell Thomas used Ms. Slaton as pawn to facilitate his scheme. The business owners were customers of Darrell Thomas and Ms. Slaton was their point of contact. The context of this relationship does not support her as a “manager or supervisor.” She was the point of contact for this enterprise much like a distributor or seller is a point of contact in a drug organization. See United States v. Ginton, 154 F.3d 1245, 1260 (11th Cir. 1998) (noting in reviewing a Guideline 3B1.1(c) enhancement based on the defendant's "managerial role " that "[a] mere buyer/seller relationship is not a sufficient basis to assess a managerial enhancement "); *see also* United States v. Jenkins, 742 F. App'x 455, 457 (11th Cir. 2018) (citing *Ginton* for this proposition in reviewing a Guideline 3B1.1(b) enhancement) ; Jiminez, 224 F.3d at 1251 (Defendant "correctly notes that being a drug supplier does not automatically make him a 'supervisor' under the Guidelines.").

It is anticipated that the Government will argue that Ms. Slaton supervised the activities of the conspiracy by passing information and communicating back and forth with her co-conspirators. They may even argue that she directed the business owners to provide her with

documents or take steps to further the conspiracy. However, the fact that a person in his interaction with another person may, at times, direct the other to do something is not necessarily indicative of control or authority--and, in particular, as to the criminal activity at issue. The giving of a direction may be merely incidental or casual to the relationship and not indicative of the overall relationship, and, in particular, it may not show that one person was in charge of or exercised authority over another in the criminal activity. The "degree of control and authority," as well as their nature, is important. U.S.S.G. § 3B1.1 cmt. n.4. Ms. Slaton was the go-between for Darrell Thomas and the customers of his criminal enterprise. The fact that Ms. Slaton in her role had to pass along information or instructions does not mean she had authority over the person to whom she was giving the information or instructions. As a point of persuasion, a line of cases of out the 7th Circuit have distinctly held that customers are subordinates for purposes of U.S.S.G. § 3B1.1. See U.S. v. Reneslakis, 349 F.3d 412, 417 (7th Cir. 2003) (rejecting argument that customers were subordinates) See United States v. Mustread, 42 F.3d 1097, 1104-05 (7th Cir. 1994); United States v. McGuire, 957 F.2d 310, 316 (7th Cir. 1992) (customers are not "employees" or "subordinates"). As Ms. Slaton did not have a degree of authority or control over any of the customers of Darrell

Thomas, this factor does not support an enhancement.

**B. THE COURT SHOULD CONSIDER MS. SLATON'S
FOR A MINOR ROLE ADJUSTMENT UNDER USSG
§3B1.2(B)**

Ms. Slaton was minor participant in the criminal activity and should receive a two-level minor role adjustment under USSG § 3B1.2(b). Ms. Slaton was involved in an intricate conspiracy that was orchestrated by Darrell Thomas and his associates. This conspiracy involved over twenty one co-conspirators, various shell companies, and bank fraud. Ms. Slaton was a participant in a minority of the transactions and in contrast to others, only had the role of receiving and delivering documents and information for Darrell Thomas.

II. REQUESTS FOR DEPARTURE AND VARIANCE

**A. THE COURT SHOULD GRANT A VARIANCE FROM
THE GUIDELINE RANGE BASED ON MS. SLATON'S
COOPERATION AND THE GOVERNMENT'S
MOTION FOR A DOWNWARD DEPARTURE**

Ms. Slaton played a key part in assisting the government and case agents in uncovering and understanding the widespread PPP scheme that took place in this case. Ms. Slaton cooperated with the authorities shortly after she was contacted by the government and communicated her knowledge of how the various schemes worked as well who was

potentially involved in the schemes. Ms. Slaton has continued to cooperate with the authorities and is open to any assistance that may be needed in future prosecutions.

The government has indicated that a § 5K1.1 motion for substantial assistance will be filed with the court. Ms. Slaton requests that the court accept this motion for substantial assistance and consider a reduction greater than what the government has suggested based on her level of cooperation to date and future ongoing cooperation.

WHEREFORE, Ms. Slaton respectfully asks this Honorable Court to consider this pleading prior to imposing sentence.

This the 4th day of April, 2022.

Respectfully submitted,

_____/S/_____

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Certificate of Service

I hereby certify that I have this day, I electronically transmitted the attached SENTENCING MEMORANDUM OF DENESSERIA SLATON in compliance with LR 5.1B to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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