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 15 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

16 UNITED STATES DISTRICT COURT
 17 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 18

19 UNITED STATES OF AMERICA,
 20 Plaintiff,
 21 v.
 22 HASSAN KANYIKE,
 23 Defendant.

Case No. CR 21-00081-VAP
 GOVERNMENT'S COMBINED (1) RESPONSE
 TO THE PRESENTENCE INVESTIGATION
 REPORT AND (2) SENTENCING POSITION
 Sentencing Date: Sept. 27, 2021
 Time: 9:00 a.m.

24
 25
 26 Plaintiff United States of America, through its counsel of
 27 record, the Acting United States Attorney for the Central District
 28 of California and Assistant United States Attorney Richard E.

1 Robinson, and the Fraud Section of the Criminal Division of the U.S.
2 Department of Justice, hereby files its Combined (1) Response to the
3 Presentence Investigation Report and (2) Sentencing Position with
4 respect to defendant HASSAN KANYIKE ("defendant").

5 The government's response to the Presentence Investigation
6 Report and its Sentencing Position are based on the attached
7 memorandum, the Plea Agreement between defendant and the government,
8 the other files and record in this case, and such further evidence
9 and argument as the Court may permit.

10 Dated: September 7, 2021 Respectfully submitted,

11
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13 SCOTT M. GARRINGER
14 Assistant United States Attorney
Chief, Criminal Division

15
16 /s/ Richard E. Robinson
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18 WILLIAM E. JOHNSTON
19 Assistant Chief, Fraud Section
United States Department of Justice

SENTENCING MEMORANDUM

I. INTRODUCTION

Defendant Hassan Kanyike faces sentencing by the Court following his guilty plea to one count of wire fraud, in violation of 18 U.S.C. § 1343, as charged in the information. ECF 42, 51. Defendant pleaded guilty pursuant to his plea agreement with the government dated February 22, 2021 (the "Plea Agreement"). ECF 44. Defendant's offense conduct arises from his scheme to defraud the Small Business Administration ("SBA"), banks, and other lenders participating in the CARES Act Paycheck Protection Program ("PPP") and the SBA's Economic Injury Disaster Loan ("EIDL") program ("lenders").

To carry out his scheme, defendant submitted eight false and fraudulent applications seeking more than \$1.775 million in EIDL and PPP loans for his businesses, Falcon Motors and HK Development.¹ The loan proceeds were supposed to be used to retain workers, maintain payroll, make lease and utility expenses, and pay other permitted expenses for Falcon Motors and HK Development because defendant's businesses were purportedly experiencing substantial financial disruption due to the COVID-19 pandemic. Defendant's bogus loan applications misrepresented and inflated the total revenue, costs of goods sold, number of employees and payroll for his businesses, which defendant supported by submitting fake payroll tax records, payroll registers, and bank records. Defendant secured three EINs from the IRS to facilitate obtaining multiple PPP loans for the same

¹ Defendant submitted his bogus loan applications to the SBA and six participating PPP lenders, two of which lenders declined the applications.

1 Falcon Motors business. Defendant fraudulently obtained more than
2 \$1.3 million in EIDL and PPP loan proceeds from the SBA and four
3 other victim lenders. Instead of using loan proceeds for their
4 stated and authorized purposes, defendant used proceeds for his own
5 personal benefit, including wire transferring \$762,000 offshore, to
6 a bank account in his home country of Uganda for the benefit of an
7 entity in the name of defendant's father.

8 For the reasons discussed below, the government recommends that
9 the Court sentence defendant to a term of 33 months' imprisonment,
10 followed by a three-year term of supervised release, and order
11 defendant to pay: \$1,302,550 in restitution to the SBA and four
12 other victim lenders identified in the PSR, a substantial fine, and
13 a special assessment of \$100.

14 **II. RESPONSE TO PRESENTENCE INVESTIGATION REPORT**

15 With respect to the Presentence Report for defendant issued
16 August 23, 2021 (the "PSR"), the government has no objections or
17 corrections to the PSR's description of defendant's offense conduct,
18 offender characteristics, determination that defendant is in
19 criminal history category I, and finding that defendant's conduct
20 resulted in actual losses to the victim lenders in the total sum of
21 \$1,302,550.

22 The PSR concluded that defendant's total offense level is 24
23 and his advisory guideline imprisonment range is 51 to 63 months.
24 PSR ¶¶ 61, 113. The government, consistent with its obligations
25 under the Plea Agreement and as calculated in Section III below,
26 maintains that defendant's total offense level is 20 and his
27 imprisonment range is 33 to 41 months. This four-level difference
28 arises from the PSR's applying two special offense characteristics

1 not supported by the government. PSR ¶ 114. Specifically, the PSR
 2 applies +2 levels for use of sophisticated means, pursuant to USSG
 3 §2B1.1(b)(10)(C); and +2 levels for deriving more than \$1 million in
 4 gross receipts from one or more financial institutions, pursuant to
 5 USSG §2B1.1(b)(17)(A). PSR ¶¶ 51, 52. These two specific offense
 6 characteristics were not included in the Plea Agreement and the
 7 government does not support or suggest imposing them here. PSR ¶
 8 114; Plea Agreement ¶ 16.

9 Accordingly, the government objects to the PSR to the extent it
 10 provides that defendant's total offense level is greater than 20 and
 11 his advisory guideline imprisonment range is greater than 33 to 41
 12 months.

13 **III. ADVISORY SENTENCING GUIDELINES**

14 The government submits that the following Sentencing Guidelines
 15 calculations, as stipulated to by the parties in the Plea Agreement,
 16 are applicable to the facts of this case:

17	Base Offense Level:	7	[USSG §2B1.1(a)(1)]
18	Specific Offense		
19	Characteristics:		
20	Loss greater than \$1,500,000		
	Not more than \$3,500,000	+16	[USSG §2B1.1(b)(1)(I)]
21	Acceptance of Responsibility:	-3	[USSG §3E1.1(a),(b)]
22	Total Offense Level:	<u>20</u>	

23
 24 Defendant fraudulently applied for EIDL and PPP loans in the
 25 total amount of \$1,775,675, which sum represents defendant's
 26 intended fraud loss. PSR ¶¶ 49, 50; Plea Agreement Exhibit B ¶¶ 27,
 27 28. Because defendant's intended fraud loss is greater than
 28 \$1,500,000 and not greater than \$3,500,000, the base offense level

1 of 7 is increased +16 levels to 23. USSG §§2B1.1(a), (b) (1) (I).
2 Defendant's acceptance of responsibility reduces level 23 by -3
3 levels to total offense level 20. USSG §3E1.1(a), (b).

4 The government concurs with the PSR's determination that
5 defendant is in criminal history category I, given defendant's lack
6 of prior convictions and criminal history points. PSR ¶¶ 66, 67.

7 Given defendant's total offense level of 20, and criminal
8 history category I, defendant's advisory guideline imprisonment
9 range is 33 to 41 months. The government's guidelines calculations
10 for defendant are fully consistent with the parties' Sentencing
11 Guidelines stipulations. Plea Agreement ¶ 16.

12 **IV. RESTITUTION**

13 Defendant pleaded guilty to wire fraud, in violation of 18
14 U.S.C. § 1343. Defendant is required by the Mandatory Victim
15 Restitution Act of 1996 to pay full restitution to the victims of
16 his offense conduct. 18 U.S.C. § 3663A; PSR ¶¶ 39, 124. In
17 addition, under the terms of the Plea Agreement, the Court may order
18 defendant to pay restitution for victims of any relevant conduct in
19 connection with the offense to which defendant pleaded guilty. Plea
20 Agreement ¶ 8.

21 The PSR correctly determined the amounts of actual loss
22 sustained by the SBA and the other four victim lenders identified in
23 the PSR, which totals \$1,302,550. PSR ¶¶ 40, 124. Restitution owed
24 to these victims in these amounts is undisputed and is supported by
25 the stipulated facts concerning defendant's offense conduct set
26 forth in Exhibit B Statement of Facts in Support of the Plea
27 Agreement at ¶¶ 7-14, 18-25, 27.

1 **V. FINE AMOUNT**

2 Defendant may be fined up to \$250,000, or twice the gross gain
3 or gross loss resulting from the offense, whichever is greater,
4 pursuant to 18 U.S.C. § 3571(b)(3), (d). The applicable advisory
5 fine guideline range for defendant's total offense level 20 is
6 \$15,000 to \$150,000. USSG §5E1.2(c)(3). The Court should impose a
7 fine in every case, except where the defendant establishes that he
8 is unable to pay and is not likely to become able to pay any fine.
9 USSG §5E1.2(a); PSR ¶ 98.

10 Defendant has not been forthcoming regarding his financial
11 condition and ability to pay. Although defendant provided a
12 Personal Financial Statement ("PFS") to the Probation Officer, as
13 required by General Order 03-01, defendant failed to: (1) provide
14 any supporting documentation for his PFS; (2) disclose any bank
15 accounts and other information to make clear where defendant keeps
16 his substantial monthly cash flow; and (3) disclose all his
17 outstanding liabilities on his PFS. PSR ¶¶ 96, 100, 102.

18 As to the \$1,302,500 defendant derived from his fraud scheme,
19 he claimed to the Probation Officer that it is "all gone." PSR
20 ¶ 104. As to the \$762,000 defendant transferred to Uganda to an
21 account controlled by his father, he claimed it was all lost "on a
22 bad investment," but defendant provided no documentation or other
23 means to support that contention. PSR ¶ 105. Likewise, defendant
24 has not disclosed to the Probation Officer the whereabouts of the
25 remaining \$540,550 in fraud proceeds that defendant did not transfer
26 to offshore. PSR ¶ 106.

27 Nonetheless, defendant's PFS reported hundreds of thousands of
28 dollars of other assets and a net worth that is sufficient to pay a

1 substantial fine. PSR ¶ 97, 109. The government therefore
2 recommends that the Court impose a substantial fine in this case.

3 **VI. SENTENCING RECOMMENDATION**

4 The government recommends that defendant be sentenced to a term
5 of imprisonment of 33 months and that upon his release be placed on
6 supervised release for a term of three years. The government
7 recommends that defendant's supervised release be ordered to include
8 all the Probation Officer's recommended terms and conditions,
9 particularly conditions 6, 7, and 8 relating to defendant's
10 employment to prevent recidivism. The government further recommends
11 that defendant be ordered to pay: restitution totaling \$1,302,500 to
12 the SBA and four other victim lenders, as detailed in the PSR, a
13 substantial fine, and a \$100 special assessment to the United
14 States. The government submits that the recommended sentence is
15 sufficient, but not greater than necessary, to comply with the
16 purposes of 18 U.S.C. § 3553(a)(2).

17 A. Nature, Circumstances, and Seriousness of the Offense

18 Defendant's offense conduct exploited and defrauded the CARES
19 Act PPP and SBA EIDL programs intended to provide government-backed
20 forgivable loans to help sustain and preserve small businesses
21 suffering from the COVID-29 pandemic. Defendant's fraud scheme
22 sought more than \$1.775 million in EIDL and PPP loan proceeds from
23 multiple lenders, from which defendant derived more than \$1.3
24 million that he says is "all gone." EIDL and PPP loan funds were
25 not used by defendant for their stated and authorized business
26 purposes, but rather consumed for defendant's own personal benefit
27 and/or sent offshore to his father in Uganda. Defendant's fraud
28 scheme was extensive: he submitted eight false and fraudulent loan

1 applications to the SBA and six PPP participating lenders, using
2 fake supporting documents and multiple EINs that defendant secured
3 from the IRS for that purpose.

4 B. History and Characteristics of Defendant

5 Defendant, age 29, came to the United States from Uganda on a
6 student visa in 2012 and was granted in asylum in 2013. Defendant
7 has a degree in accounting, obtained in the United States, and has
8 provided bookkeeping services for others. He has primarily worked
9 in car sales and for a linen service. Although defendant may have
10 had a difficult life growing up in Uganda, he had been working and
11 living in the United States for approximately eight years when he
12 committed in the instant offense. Other than defendant's
13 willingness to enter into the Plea Agreement, and his lack of a
14 prior criminal record, nothing in defendant's history or personal
15 circumstances significantly mitigates his guilt or warrants a prison
16 sentence below the low-end of his guideline imprisonment range,
17 i.e., 33 months.

18 C. Goals of Sentencing

19 Defendant deserves a very substantial sentence to reflect the
20 seriousness of his offenses, promote respect for the law, provide
21 just punishment for the offense, and afford adequate deterrence to
22 criminal conduct, which encompasses both specific and general
23 deterrence. United States v. Goff, 501 F.3d 250, 261 (3d Cir.
24 2007). Because economic and fraud-based crimes are more rational,
25 cool, and calculated than sudden crimes of passion or opportunity,
26 these crimes are prime candidates for general deterrence. United
27 States v. Livesay, 587 F.3d 1274, 129 (11th Cir. 2009).

1 Defendant's offense conduct was very serious, particularly
2 because such loan fraud schemes impair the effectiveness and
3 resources of the EIDL and PPP programs to assist small businesses
4 experiencing substantial financial disruption due to the COVID-19
5 pandemic. Defendant committed his offense out of pure greed and
6 opportunism in exploiting and defrauding government-backed emergency
7 loan programs during the COVID-19 pandemic. Defendant's guideline
8 imprisonment range of 33 to 41 months reflects the seriousness of his
9 offense conduct, so that a sentence within that range affords
10 appropriate deterrence to such criminal conduct. The recommended
11 sentence serves the purposes of the Section 3553(a) factors, but is
12 not greater than necessary to do so.

13 **VII. CONCLUSION**

14 For the foregoing reasons, the Court should (1) determine the
15 applicable advisory guideline imprisonment range to be 33 to 41
16 months, based on a total offense level of 20 and criminal history
17 category I; (2) sentence defendant to a term of imprisonment of 33
18 months; (3) impose a three year term of supervised release that
19 includes all the terms and conditions of supervised release
20 recommended by the Probation Officer; (4) order defendant to pay
21 restitution totaling \$1,302,500 to the SBA and four other victim
22 lenders, as detailed in the PSR; (5) order defendant to pay a
23 substantial fine; and (6) order defendant to pay a \$100 special
24 assessment to the United States.