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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,)	CASE NO. 21-CR-00144-CRB
14 Plaintiff,)	UNITED STATES' SENTENCING
15 v.)	MEMORANDUM
16 ESTER OZKAR,)	Hearing Date: December 15, 2021
17 a/k/a Eser Ozkay)	Time: 10:00 a.m.
18 Defendant.)	Judge: Hon. Charles Breyer

19 **I. INTRODUCTION**

20 Ester Ozkar is a fraudster. In 2019, he owed the IRS approximately 1 million dollars in back
21 taxes for his bankrupt business, Century Transportation LLC. Ester also had creditors piling up and was
22 facing foreclosure on his home. At the time, Ester had substantial assets in cryptocurrency and could
23 have started paying off his debt. But Ester didn't want to cash out his cryptocurrency; he believed it
24 would increase in value and wanted to wait.

25 In early 2020 the COVID-19 pandemic hit and caused devastation to small businesses across the
26 country. For Ester, the pandemic presented an opportunity. He took advantage of the easy availability
27 of government assistance and submitted fraudulent applications for Paycheck Protection Program (PPP)
28

1 loans and Economic Injury Disaster Loans (EIDL) Advances. In total, Ester submitted 8 fraudulent
2 applications and received \$483,132 in fraudulent funds. Ester used these funds, as well as a \$120,000
3 loan from his twin brother, Caesar Oskan – who was also engaged in PPP and EIDL loan fraud and has
4 been charged separately in a related case – to cover living expenses and make payments to keep his
5 creditors at bay. As a result, his cryptocurrency remained largely untouched and is presently valued at
6 approximately 6 million dollars.

7 Ester started paying back his PPP loans in July 2020, even before he was aware of the
8 government’s investigation into his conduct. Since a search warrant was executed at his home in
9 September 2020, Ester has been very cooperative. He participated in an interview, quickly admitted to
10 his conduct, and voluntarily forfeited funds sufficient to pay back his fraudulent PPP and EIDL loans
11 before he pleaded guilty. *See* ECF 5 (under seal due to bank information). On May 19, 2021, Ester
12 pleaded guilty to Count One in the Superseding Information charging him with making a false statement
13 to a financial institution in violation of 18 U.S.C. § 1014. *See* ECF 6.

14 In recognition of both Ester’s cooperation and the substantial assets that his fraud enabled him to
15 maintain, the government recommends a below-Guidelines sentence of 14 months’ imprisonment, the
16 maximum fine of 1 million dollars, 3 years’ of supervised release, restitution /forfeiture in the amount of
17 \$503,132.00 (+ any interest) and a special assessment.

18 **II. BACKGROUND**

19 **A. Ester’s PPP and EIDL Loan Fraud Scheme**

20 In March 2020, Ester began submitting fraudulent applications to two federal relief programs
21 designed to protect employees and provide financial relief for small business suffering due to the
22 COVID-19 pandemic. PSR ¶ 6. PPP loans are administered by the Small Business Administration
23 (SBA) through approved lenders and are designed to assist small business owners with expenses such as
24 payroll costs, rent, and utilities so that businesses can maintain their workforce during the COVID-19
25 crisis. The loan amount is determined by the monthly payroll of the small business: an applicant can
26 receive up to 2.5 times the monthly payroll up to \$10 million dollars. The loan money comes directly
27 from the approved lenders to the applicant and is guaranteed by the SBA. To qualify for a PPP loan, the
28 applicant’s business must have been in operation on February 15, 2020, have employees, and have

1 average monthly payroll costs. Further, the applicant may not have been currently delinquent, or
2 defaulted within the last 7 years, on a direct or guaranteed loan from SBA or any other federal agency.

3 EIDL Advances are administered and funded by the SBA. EIDL Advances are designed to give
4 emergency assistance to small business that are experiencing a temporary loss of revenue due to the
5 COVID-19 pandemic. EIDL Advances are completely forgivable emergency grants up to \$10,000 that
6 are issued almost immediately at the time of the application. Applicants for EIDL advances must meet
7 the same above-mentioned criteria as PPP loans.

8 Ester knew that the PPP and EIDL loans were intended to assist small businesses struggling due
9 to the COVID-19 pandemic. PSR ¶ 15. Nevertheless, in March and April of 2020, Ester submitted the
10 following fraudulent PPP and EIDL Advance applications and received a total of \$483,132.00 in
11 fraudulent funds (PSR ¶ 7):

Loan Type	Borrower Name	Principal Name	Lender/Victim	Loan Amount
PPP	7Transportations	Ester Ozkar	Customers Bank	\$51,291.00
PPP	ALYA LLC	Gulistan Ozkay	Customers Bank	\$104,530.00
PPP	BLOCKCHAIN TECH LLC	Ester Ozkar	JP Morgan Chase Bank	\$46,250.00
PPP	Century Transportations INC	Eser Ozkay	Readycap Lending, LLC	\$170,000.00
PPP	Last Mile Shuttle LLC	Ester Ozkar	Customers Bank	\$48,311.00
PPP	Rixos Shuttle LLC	Gulistan Ozkay	JP Morgan Chase Bank	\$53,750.00
EIDL	BLOCKCHAIN TECH LLC	Ester Ozkar	SBA	\$2,000.00
EIDL	Rixos Shuttle LLC	Gulistan Ozkay	SBA	\$7,000.00
Total				\$483,132.00

21 For one of the fraudulent applications, ALYA LLC, Ester registered a completely fictitious
22 business with the California Secretary of State for the sole purpose of obtaining the fraudulent PPP loan.
23 PSR ¶ 8. Ester then modified the California Secretary of State documents to make it appear as though
24 the business was created prior to February 15, 2020, which is the date by which a business must have
25 been operational by to qualify for a EIDL or PPP loan. *Id.*

27 The rest of the fraudulent applications involved businesses that Ester had registered prior to the
28 pandemic, but that were not operational on February 15, 2020. PSR ¶ 9. For these businesses, Ester

1 created fake IRS tax documents, such as IRS Form 940s (Employer's Annual Federal Unemployment
2 (FUTA) Tax Return) and IRS W-3s (Transmittal of Wage and Tax Statements), which he created by
3 downloading PDFs off the internet and filling them in. These fake IRS tax documents contained false
4 statements regarding the number of employees, the payroll costs, and the wages paid to employees,
5 among other things, for the various businesses he used to submit fraudulent PPP and EIDL applications.
6 Ester misrepresented the number of employees and the payroll costs because he knew that the amount of
7 the PPP and EIDL loans was tied to the number of employees employed by a business and the payroll
8 costs associated with a business. Ester also misrepresented information regarding the date of creation
9 and whether the businesses were operational on the PPP and EIDL applications he submitted that
10 involved the fictitious business he created.

11 Count One in the Superseding Information (ECF 6) charges Ester with making a False Statement
12 to a Financial Institution in violation of 18 U.S.C. § 1014 in relation to his fraudulent application for a
13 PPP loan on behalf of BLOCKCHAIN TECH LLC. The application was submitted on April 7, 2020 to
14 JP Morgan Chase, a bank that is insured by the Federal Deposit Insurance Corporation (FDIC). PSR
15 ¶ 10. On the PPP loan application, Ester stated that Blockchain Tech, LLC was in operation as of
16 February 15, 2020, employed 4 employees and had an average monthly payroll of \$18,500. *Id.* Each of
17 these statements was false; Blockchain Tech LLC was never an operational company and never had any
18 employees. *Id.* Ester also created and submitted a fraudulent IRS Form W-3 for the year 2019 and
19 fraudulent IRS Form 941s for each quarter in 2019. *Id.*

20 Ester submitted three applications – one for an EIDL Advance for Rixos Shuttle LLC, one for an
21 PPP loan for Rixos Shuttle LLC, and one for a PPP loan for ALYA LLC, using his wife, Gulistan
22 Ozkay's, name and personal identifying information. Ester states that he submitted these applications
23 without his wife's knowledge or consent and Ms. Ozkay has not been charged in this case. PSR ¶ 11.

24 The money Ester received from the fraudulent PPP loans and EIDL Advances was initially
25 deposited into various bank accounts. PSR ¶ 12. \$270,431.55 of the fraud proceeds received was still in
26 these accounts when the search warrant was executed in this case. *Id.* Ester paid back the
27 BLOCKCHAIN TECH LLC and Rixos Shuttle LLC loans (for a total of \$100,000.00) in July and
28 September of 2020. Ester reached out to the lenders regarding repayment of the Century Transportation

1 LLC and ALYA loans, but they were not repaid before the search warrant was executed. Ester spent the
2 remainder of the money. *Id.*

3 Ester learned in April or May of 2020 that his twin brother, Caesar Oskan, was also engaged in
4 PPP loan fraud and was using the fraudulent funds to invest in cryptocurrency. PSR ¶ 16. In mid-May
5 —after he learned about Caesar’s fraudulent PPP loan—Ester asked Caesar for a loan. Caesar loaned
6 Ester \$120,000, which Ester used to make payments on various debts. PSR ¶ 17. Ester “knew what they
7 were doing was wrong” but claims he didn’t know for sure that the loan from Caesar was funded by
8 PPP/ EIDL fraud until later. PSR ¶ 17. Ester discussed Caesar’s fraudulent PPP loans again in July 2020
9 and he urged Caesar to pay them back, but he did not reveal that he was also attempting to pay back his
10 own fraudulent loans. *Id.* ¶ 18. Ester claims he did not discuss his own fraudulent PPP and EIDL loans
11 with Caesar until after the search warrants in both of their cases were executed. Both brothers claim they
12 did not coordinate their fraud schemes and although the cases are related, they have not been charged as
13 co-defendants. Ester agreed to add the \$120,000 loan to his restitution amount and already forfeited the
14 funds sufficient to pay it.

15 **B. Procedural Background**

16 A search warrant was executed at Ester’s house in September 2020. In November 2020 Ester
17 was interviewed by law enforcement and the U.S. Attorney’s Office regarding his fraud. Ester admitted
18 to his criminal conduct and has been cooperative throughout the investigation. On May 12, 2021, Ester
19 was charged in the Superseding Information with one count of False Statement to a Financial Institution
20 in violation of 18 U.S.C. § 1014 and the Court ordered, pursuant to the parties’ stipulated consent
21 forfeiture agreement, that \$503,132.00 funds located in Ester’s bank account and attorney trust account
22 to be forfeited to the United States to pay restitution in this case. ECF 5. On May 19, 2021, Ester
23 waived indictment and pleaded guilty pursuant to a plea agreement to Count One in the Superseding
24 Information.

25 **C. Sentencing Guidelines Calculation**

26 The guideline for a violation of 18 U.S.C. § 1014 is USSG §2B1.1. The base offense level is 7.
27 Because Ester caused pecuniary losses of more than \$250,000, but less than \$550,000, a 12-level
28 increase pursuant to U.S.S.G. § 2B1.1(b)(1)(G) is required. After a reduction for acceptance of

1 responsibility, Ester's final adjusted offense level is level 16. The parties and Probation agree on this
2 calculation. The PSR scores Ester's CHC as I. The resulting advisory guideline range is 21-27 months
3 imprisonment.

4 **D. Restitution / Forfeiture**

5 On May 12, 2021, the Court ordered, pursuant to the parties' stipulated consent forfeiture
6 agreement, that \$503,132.00 funds located in Ester's bank account and attorney trust account to be
7 forfeited to the United States to pay restitution in this case. ECF 5. The agreed-upon restitution and
8 forfeiture amount of \$503,132.00 was calculated by taking the total fraud proceeds (\$483,132.00),
9 subtracting the amount that Ester had already paid back (\$100,000.00) and adding the loan from Caesar
10 (\$120,000.00). The forfeited funds are currently in IRS custody and will be paid back to the victim
11 banks once judgment in this case is entered. The government has contacted the victim banks for loan.
12 pay-off statements as Ester may also owe interest in an amount to be determined on the outstanding PPP
13 loans.

14 **III. LEGAL STANDARD**

15 The Court should impose a sentence sufficient, but not greater than necessary, to reflect the
16 purposes of sentencing that Congress identified in 18 U.S.C. § 3553(a)(2): to "reflect the seriousness of
17 the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence; to
18 protect the public; and to provide the defendant with needed educational or vocational training, medical
19 care, or other correctional treatment." *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The
20 Court should begin the process of determining an appropriate sentence by calculating the correct
21 sentencing range under the Guidelines. *Id.* After determining the appropriate Guidelines calculations, the
22 Court should then evaluate the sentence for substantive reasonableness in light of the factors set out in
23 Section 3553(a). *Carty*, 520 F.3d at 991–93. In arriving at the appropriate sentence for the defendant, the
24 Court should consider the factors set forth under 18 U.S.C. § 3553(a) applicable to this case, to include:

- 25 (1) the nature and circumstances of the offense and the history and characteristics of the
26 defendant;
- 27 (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote
28 respect for the law, and to provide just punishment for the offense;

- 1 (3) the need for the sentence imposed to afford adequate deterrence to criminal conduct;
2 (4) the need to avoid unwarranted sentence disparities among defendants with similar records
3 who have been found guilty of similar conduct.

4 **IV. ARGUMENT**

5 A sentence of 14 months' imprisonment, a 1 million dollar fine, 3 years' supervised release, and
6 restitution/ forfeiture of \$503,132 (plus any interest) is sufficient, but not greater than necessary
7 considering the 3553(a) factors.

8 **A. The government's recommended sentence adequately reflects the nature and**
9 **circumstances of the offense and the characteristics of the offender.**

10 Ester used the COVID-19 pandemic as a tool for his own personal gain. The government made
11 PPP and EIDL loans easily available so that struggling small businesses could quickly get the money
12 they needed to stay in business and keep paying their employees during an unprecedented shut-down of
13 activity. Ester took advantage of this time of national hardship and uncertainty to commit fraud. And
14 once Ester realized how "simple" it was, he kept going with additional fraudulent loans, taking more
15 resources away from those who really needed it. PSR ¶ 15. Ester used the money as a short-term lending
16 solution so that he could sit on his cryptocurrency and see if it would increase in value. This conduct is
17 extremely serious and justifies a 14-month custodial sentence and the maximum fine.

18 Despite the seriousness of the offense, the government is recommending a below-guidelines
19 custodial sentence of 14-months because of Ester's cooperation and willingness to take responsibility for
20 his actions. Ester paid back some of his loans and attempted to re-pay others before he learned that he
21 had been caught. Since the search warrant was executed on his home, Ester has been cooperative,
22 remorseful, and eager to re-pay his PPP and EIDL loans. Ester voluntarily forfeited the money sufficient
23 to pay restitution in May and pleaded guilty shortly after. Ester's cooperation warrants a below-
24 guidelines term of imprisonment.

25 **B. The government's recommended sentence will afford adequate general and specific**
26 **deterrence.**

27 The need for deterrence is an important consideration in this case. Ester has dabbled in various
28 types of fraud for years. Since 1986, he has maintained two names (Ester Oskar and Eser Oskay) and

1 two social security numbers. It was only a few years ago that he merged his identities and turned over
2 one of the social security numbers. In 1991, he sold a car with an inaccurate odometer reading and was
3 convicted of violating Penal Code 487.1 – Grand Theft. PSR ¶ 46. In 2000, Ester was again convicted
4 of theft when he and his brother were running a gas station together and were caught putting regular
5 octane gasoline into the super octane pump. PSR ¶ 47. In 2012, Ester stopped filing IRS Form 941s
6 (Quarterly Tax Returns) for his business, Century Transportation LLC. Ester failed to file any Form
7 941s for that business from 2012-2019 and as a result, in 2019, owed the IRS approximately 1 million
8 dollars in back taxes.

9 Ester turned to PPP and EIDL fraud as an easy short-term lending solution so that he could hold
10 onto his cryptocurrency, wait for it go up in value, pay off the IRS, and get out of debt. In some ways,
11 Ester’s criminal gamble was wildly successful. Ester currently has approximately 6 million dollars in
12 cryptocurrency. Even after paying off restitution in this case, a 1 million dollar fine (if the Court orders
13 one imposed), and his debt, Ester will still have at least two million dollars to spare. It is critical that
14 Ester not be rewarded for his crime. A monetary penalty – even the maximum monetary penalty – is not
15 sufficient in this case to ensure that the crime wasn’t worth it. A custodial sentence is necessary in this
16 case to deter future criminal conduct.

17 It is also important to deter others who may be tempted to take advantage of the on-going
18 pandemic or future disaster situations. The government made PPP and EIDL loans freely available so
19 that businesses in need could get help. It is key that those who contemplate profiting from government
20 assistance know that they will be vigorously prosecuted and face prison time and monetary penalties.

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1 **V. CONCLUSION**

2 For the reasons set forth above, the United States recommends the Court sentence the defendant
3 to 14 months' custody, a 1 million dollar fine, 3 years' supervised release, restitution /forfeiture in the
4 amount of \$503,132.00 (+ any interest owed), and a \$100 special assessment.

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6 DATED: December 8, 2021

Respectfully submitted,

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Acting United States Attorney

_____/s/
MAYA KARWANDE
Assistant United States Attorney

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