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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**UNITED STATES OF AMERICA**

**3:20-cr-00228-SI-02**

v.

**GOVERNMENT'S SENTENCING  
MEMORANDUM**

**N. SCOTT GILLIS,**

**Defendant.**

**I. Introduction**

The United States of America submits this memorandum containing its sentencing recommendation for defendant N. Scott Gillis.

Starting in January 2015 until he resigned in January 2016, Defendant Gillis was a senior executive of Aequitas Management, LLC, and Chief Operating Officer and Chief Financial Officer of Aequitas Capital Management, Inc. and other Aequitas-related companies

(“Aequitas”). In July 2022 he pleaded guilty before this Court to one count of Making a False Statement to a Bank, in violation of 18 U.S.C. § 1014, relating to a \$4.2 million advance request made by Aequitas pursuant to a Receivables Loan Agreement with Wells Fargo Bank. Relying on false statements provided by defendant Gillis, the bank approved the request and transferred the funds to Aequitas in January 2016. Aequitas soon thereafter collapsed and was put into receivership.

Defendant Gillis pleaded guilty pursuant to a plea agreement. There are no disputed legal or sentencing guideline matters. The only issue for the Court is the appropriate sentence under 18 U.S.C. § 3553(a). For reasons set forth below, this Court should impose a sentence of time-served, a fine, and a period of supervised release.

## **II. Factual Background**

### **A. The Offense Conduct**

The offense conduct is accurately set forth in paragraphs 14-50 of the presentence report (PSR), and the parties agreed to a detailed statement of facts in paragraph 7 of the plea agreement (ECF No. 138). In addition, this Court is well-aware of the facts relating to the false loan application, having presided over the trial of Robert Jesenik, who was convicted of procuring the offense.

### **B. The Charges**

Defendant Gillis was charged in all counts of the Indictment returned on July 16, 2020, which alleged violations of wire fraud, money laundering, bank fraud, false statement to a financial institution and conspiracy (ECF No. 1).

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**C. The Plea Agreement & Guideline Computations**

Defendant Gillis pleaded guilty to Count 34 of the Indictment, admitting he violated 18 U.S.C. § 1014. He did so pursuant to a plea agreement in which the government agreed to move to dismiss the remaining charges after sentencing.<sup>1</sup>

The parties and the U.S. Probation Office agree on the sentencing guideline calculations. The base offense level is seven. As part of its Receivables Loan Agreement with Wells Fargo, Aequitas pledged the hospital receivables the bank funded. Thus, after Aequitas collapsed, Wells Fargo recovered the full principal of the loan. Under USSG § 2B1.1, the “loss” is reduced by the “amount the victim has recovered at the time of the sentencing from disposition of the collateral....” USSG § 2B1.1, comment. (n.3)(E)(ii). Accordingly, there is no loss enhancement to defendant’s offense level.

The only other Guideline application is a two-point downward adjustment for defendant’s acceptance of responsibility. USSG § 3E1.1. The adjusted offense level is thus five, producing an advisory sentencing range of 0-6 months.

**D. 18 U.S.C. § 3553(a) Factors**

In addition to the guidelines, the Court will consider defendant’s personal characteristics. They are summarized in the presentence report and in character letters submitted by defendant.

One important consideration for the Court to consider in fashioning its sentence is that defendant Gillis not only pleaded guilty, but he also agreed to cooperate in the government’s prosecution of his co-defendants. Prior to trial defendant Gillis met with agents and prosecutors

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<sup>1</sup> A superseding indictment was returned on July 17, 2022. Defendant Gillis was not charged in the superseding indictment. (ECF No. 171).

and proffered information relevant to the Aequitas fraud. Reports of those interviews were provided to the defense in advance of the April 2023 trial.

Defendant Gillis was listed as a government witness for its case-in-chief. He was prepared to provide credible testimony on subjects including:

- His role in submitting false information to Wells Fargo about the \$4.2 Receivables Loan Agreement advance, and defendant Jesenik’s role in aiding and abetting that offense;
- By at least late 2015, Gillis became aware that Private Note investor money was not being used to purchase receivables, but instead was largely diverted to pay operating expenses and redemptions and interest to prior investors;
- That defendant Jesenik micromanaged Aequitas and misled Gillis about the health of Aequitas. Jesenik routinely made the decision on which investors were redeemed;
- That one of the main reasons the Luxembourg fund was created was to raise funds in Europe and then “loan” that money to the parent company;
- That defendants Jesenik and MacRitchie helped arrange a \$3 million “loan” of funds raised through the Luxembourg bond program in October 2015 to ACF for redemptions and operating expenses; and
- That Defendant Jesenik instructed Aequitas treasury employees in late January 2016 to divert new IOF II investments to make deferred private note redemption and interest payments—without Gillis’s knowledge—causing defendant Gillis to submit his written resignation to Jesenik.

The government made a decision late in its case-in-chief that defendant Gillis’s testimony was unnecessary and decided not to call him, but he was ready, willing and able to testify. His testimony would have been helpful to the prosecution.

### **III. Government’s Sentencing Recommendation**

Pursuant to the plea agreement, the government recommends a low-end sentence. Since a term of probation is not permissible for the crime of conviction, *see* 18 U.S.C. § 3561(a)(1), the

Court should sentence defendant to time-served and a term of supervised release. A fine is also appropriate. There is no restitution for this defendant since the victim has been made whole.

Dated: October 3, 2023

Respectfully submitted,

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*/s/ Ryan W. Bounds*

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