UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-20290-CR-BLOOM(s)

UNITED STATES OF AMERICA

vs.

ERIC DEAN SHEPPARD,

Defendant.
_______________________________________/

UNITED STATES' RESPONSE IN OPPPOSITION TO DEFENDANT'S
POST-TRIAL MOTION FOR JUDGMENT OF ACQUITTAL

The United States of America, through the undersigned Assistant United States Attorney, files this response to the defendant's motion for judgment of acquittal, pursuant to Fed. R. Crim. P. 29. The government's evidence admitted in this trial was sufficient for a reasonable jury to find the defendant guilty beyond a reasonable doubt as to Counts 5, 7, 8, 9, 13 and 14 of the Superseding Indictment. Accordingly, the defendant's motion should be denied.

BACKGROUND

The Superseding Indictment charged the defendant with devising and participating in a scheme to defraud, by using materially false representations, in order to receive loan proceeds from PayPal/ WebBank, ACAP SME/ Northeast Bank, Cross River Bank, and the U.S. Small Business Administration ("SBA"), to which the defendant and his companies were not entitled. The Superseding Indictment charged the defendant with nine counts of wire fraud and five counts of aggravated identity theft, in violation of 18 U.S.C. §§ 1343 and 1028A(a)(1), relating to Paycheck Protection Program ("PPP") and Economic Injury Disaster Loan ("EIDL") applications on behalf of HM Management and Development, LLC ("HM Management"), HM-UP Development Alafaya Trails, LLC ("Alafaya Trails"), and HM Four, LLC ("HM Four"). Following a jury trial, on

January 12, 2024, the jury returned Guilty verdicts as to four counts charging wire fraud (Counts 5, 7, 8, and 9), and as to two counts charging aggravated identity theft (Counts 13 and 14).

Following the jury's verdict, the defendant filed a motion for judgment of acquittal in which he advances many of the same arguments he made in his motion for judgment of acquittal after the close of the government's case, which motion this Court denied: he challenges the wire fraud counts arguing that the government's evidence failed to show that the defendant's scheme to defraud implicated a traditional property interest, as required by the Supreme Court in *Ciminelli v. United States*, 598 U.S. 306 (2023); and he challenges the aggravated identity theft counts on the basis that the evidence was insufficient to satisfy the requirements set forth under the Supreme Court's decision in *Dubin v. United States*, 599 U.S. 110 (2023). The defendant's motion should be denied, as the government's evidence was sufficient for a reasonable jury to find the defendant guilty beyond a reasonable doubt as to the wire fraud counts (Counts 5, 7, 8, and 9), and as to the aggravated identity theft counts (Counts 13 and 14).

LEGAL STANDARD

After a jury verdict, a defendant may move for a judgment of acquittal, and "the court may set aside the verdict and enter an acquittal." *See* Fed. R. Crim. P. 29(c). When deciding a motion for judgment of acquittal, the Court must determine "whether the evidence, examined in the light most favorable to the Government, was sufficient to support the jury's conclusion that the defendant was guilty beyond a reasonable doubt." *United States v. Williams*, 390 F.3d 1319, 1323-24 (11th Cir. 2004) (citing *United States v. Varkonyi*, 611 F.2d 84, 85-86 (5th Cir. 1980)). When applying this test, "[a]ll credibility choices must be made in support of the jury's verdict." *Williams*, 390 F.3d at 1323. "The district court must view the evidence in the light most favorable to the government … resolve any conflicts in the evidence in favor of the government, … and must accept all reasonable inferences that tend to support the government's case." *United States v. Ward*, 197 F.3d 1076, 1079 (11th Cir. 1999) (internal citations omitted). "'It is not necessary for the evidence to exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilty, provided a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt.'" *Williams*, 390 F.3d at 1323-24 (quoting *United States v. Young*, 906 F.2d 615, 618 (11th Cir. 1990)); *Ward*, 197 F.3d at 1079. "A conviction must be affirmed unless there is no reasonable construction of the evidence from which the jury could have found the defendant guilty beyond a reasonable doubt." *United States v. Ignasiak*, 667 F.3d 1217, 1227 (11th Cir. 2012) (internal citation omitted).

DISCUSSION

I. The evidence at trial was sufficient to convict the defendant of wire fraud as set forth in Counts 5, 7, 8 and 9.

In order to convict the defendant of wire fraud, the government has to prove the following elements:

(1) The defendant knowingly devised or participated in a scheme to defraud someone by using false or fraudulent pretenses, representations or promises about a material fact;
(2) The defendant acted with the intent to defraud; and
(3) The defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

Eleventh Circuit Pattern Jury Instruction No. 051; *see United States v. Machado*, 886 F.3d 1070, 1082-83 (11th Cir. 2018). "'A scheme to defraud requires proof of material misrepresentation, or the omission or concealment of a material fact calculated to deceive another out of money or property.'" *United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009). A defendant's intent to defraud requires that one "intend to use deception to cause some injury …" meaning "to obtain, by deceptive means, something to which the defendant is not entitled." *United States v. Waters*, 937 F.3d 1344, 1353 (11th Cir. 2019); *Maxwell*, 579 F.3d at 1301 ("An intent to defraud may be found when the defendant believed that he could deceive the person to whom he made the material misrepresentation out of money or property of some value."). "A material misrepresentation is one having a natural tendency to influence, or capable of influencing, the decision maker to whom it is addressed." *United States v. Hasson*, 333 F.3d 1264, 1271 (11th Cir. 2003); *Maxwell*, 579 F.3d at 1299. "Because the issue is whether a statement has a tendency to influence or is capable of influencing a decision, and not whether the statement exerted actual influence, a false statement can be material even if the decision maker did not actually rely on the statement." *United States v. Neder*, 197 F.3d 1122, 1128 (11th Cir. 1999). "'The focus of the language defining a scheme to defraud is on the violator, not the victim.'" *United States v. Svete*, 556 F.3d 1157, 1165 (11th Cir. 2009) (*quoting United States v. Drake*, 932 F.2d 861, 864 (10th Cir. 1991)).

A. The purpose of the defendant's scheme to defraud was to deprive the lenders and the SBA of a "traditional property interest."

Through the testimony of the SBA and the lender witnesses (PayPal, Northeast Bank and Cross River Bank), the government presented evidence that the Paycheck Protection Program offered very favorable terms, including that the loan amount could be entirely forgiven, or would be paid back at 1% interest, and that the Economic Injury Disaster Loans had very favorable terms as well, including below-market interest rates and a repayment term of 30 years. The testimony and documents admitted through IRS expert Philip Palmer, Tamara Och, Florida Department of Revenue, accountant Neal Cupersmith, and through the SBA and the lender witnesses, showed that the defendant received PPP and EIDL loans to which his businesses were not entitled.

The defendant argues that the evidence did not establish that the scheme to defraud in this case was designed to cause harm involving a "traditional property interest," as required by the Supreme Court's decision in *Ciminelli v. United States*, 598 U.S. 306, 308-309 (2023). The defendant argues that the SBA only suffered a "regulatory" harm and that the banks were not harmed at all because they received what they bargained for. Def. Motion (DE 205) at 16-18. The defendant's arguments lack merit.

In *Ciminelli v. United States*, 598 U.S. 306 (2023), Ciminelli was convicted of wire fraud for his involvement in a scheme to rig the selection process for companies that bid on state-funded development projects in a way that favored his construction company. The Government relied on a "right-to-control" theory of wire fraud recognized in the Second Circuit, "under which the Government can establish wire fraud by showing that the defendant schemed to deprive a victim of potentially valuable economic information necessary to make discretionary economic decisions." *Id.* at 310. "Consistent with the right-to-control theory, the District Court instructed the jury that the term 'property' in § 1343 'includes intangible interests such as the right to control the use of one's assets.'" *Id.* at 311. The Supreme Court reversed Ciminelli's conviction, holding that "the wire fraud statute reaches only traditional property interests" and that "[t]he right to valuable economic information needed to make discretionary economic decisions is not a traditional property interest." *Id.* at 316.

In this case, the "right-to-control" theory of wire fraud was not suggested anywhere in the Superseding Indictment, in the evidence presented at trial, in the prosecutors' presentations to the jury in opening statements or closing arguments, or in the jury instructions. Instead, the focus of the wire fraud allegations and the trial evidence was grounded in the "traditional property interest" of the wire fraud statute: that the defendant carried out a scheme to defraud that involved making material misrepresentations in PPP and EIDL loan applications and in falsified supporting documents in order to obtain loan proceeds, i.e. money, from the banks and the SBA to which he was not entitled. As this Court stated in its order denying the defendant's motion for judgment of acquittal, "Sheppard does not argue, nor can he, that loan proceeds are not 'money or property' within the meaning of the Wire Fraud statute." DE 170 at 7. There is no question that the sole object of the defendant's scheme to defraud involved depriving the victims of a traditional property interest contemplated by the Supreme Court in *Ciminelli*: the loan money made available through the PPP and EIDL programs offered under the CARES Act. *See, e.g., United States v. Mansouri*, 2023 WL 8430239, *3 (W.D.N.Y. Dec. 5, 2023) (trial court rejected arguments to dismiss the wire fraud and bank fraud counts charging a scheme to defraud involving fraudulent PPP and EIDL applications; court found *Ciminelli* decision irrelevant where the indictment said "nothing about depriving the lenders or the SBA of their 'right to control' property," but instead alleged a scheme that "involved false statements designed precisely to obtain money [belonging to the financial lenders and the SBA], fitting well within the realm of 'traditional property interests' identified by the Supreme Court.").

B. Both the banks and the SBA were victims of the defendant's scheme to defraud.

The defendant further argues that neither the SBA nor the banks can be considered victims. As to the SBA, the defendant claims that it did not suffer a harm that involved a "traditional property interest," and that any harm to the SBA was "purely regulatory." DE 205 at 16.[1] Focusing on the PPP aspect of the fraud, the lender witnesses testified about SBA's involvement in the PPP loan application process, which included providing *de facto* approval for the banks to disburse the loan proceeds to the applicant. The SBA also functioned as a guarantor, paying back the loan amounts, plus interest, to the banks if and when the loans were forgiven. In fact, in this case,

[1] The defendant also argues that the SBA cannot be considered a victim because "the government's "SBA as victim' theory varies from the Indictment …." Yet the Superseding Indictment specifically alleges that the PPP loans were fully guaranteed by the SBA, and that the SBA paid the EIDL funds directly to the applicant. Superseding Indictment (DE 60) at ¶¶ 4, 8.

Alafaya Trails had its May 2020 PPP loan amount (plus interest) forgiven in 2021 by PayPal/WebBank, and the SBA reimbursed WebBank the entire forgiveness amount. Govt. Exh. 18-6; Tr. 11/27/23, at 50; Tr. 11/29/23 PM, at 99. These transactions involved money – a traditional property interest – that the defendant received as a result of his scheme to defraud.

The defendant incorrectly claims that Ms. Harris testified that the SBA's interest was not financial, but that it sought to "implement the government's policy interests favoring (among other things) traditional employment relationships." DE 205 at 16. Ms. Harris testified about the PPP and the Congress's allocation of billions of U.S. Treasury dollars for the program. Of course the SBA had a "regulatory" interest in ensuring that the PPP rules were followed so that those who were actually eligible for the funds were the ones receiving the money. The SBA having this interest does not negate the fact that the defendant's wire fraud scheme, as alleged and proven, was for the purpose of obtaining money from this government program that the SBA was tasked to administer and to provide payment guarantees to lenders.

The Seventh Circuit's decision in *United States v. Griffin*, 76 F.4th 724 (7th Cir. 2023), is instructive. In that case, the defendants were charged with conspiracy to commit wire fraud and substantive wire fraud counts, involving a scheme to obtain SBA-guaranteed financing for loans that did not meet the SBA's guidelines and requirements. *Id.* at 734. In a post-trial motion for judgment of acquittal, the defendants argued that the government "did not prove that the wire fraud scheme deprived the SBA of a protectable money or property interest." *Id.* at 737. The Court distinguished the Supreme Court's *Ciminelli* decision, explaining that the Government "did not pursue a right-to-control theory of fraud in this case; rather, the Government's allegations focused explicitly on the defendants' attempts to deprive the SBA of loan guarantees and the millions of dollars the SBA lost paying out on these loan guarantees." *Id.* at 738. The Court upheld the wire fraud convictions, concluding that "[t]hese guarantees, that committed the SBA to stand behind a significant portion of the loan amount in case of default, are most certainly 'property' as required by the wire fraud statute." *Id.* at 339 (quoting *Pasquantino v. United States*, 544 U.S. 349, 356 (2005)). Even if the SBA's role in the context of the PPP loans was as a guarantor of private loans, the defendant's scheme to defraud still involved a property interest, as the Seventh Circuit in *Griffin* determined.[2]

Relying on *Ciminelli* and the Eleventh Circuit decision in *United States v. Takhalov*, 827 F.3d 1307 (11th Cir. 2016), the defendant argues there was no evidence that the defendant's scheme would harm the banks' property interest because the banks stood to gain financially from making the loans. DE 205 at 17. The Court in *Takhalov* explained that "if the defendant does not intend to harm the victim – 'to obtain, by deceptive means, something to which [the defendant] is not entitled' – then he has not intended to defraud the victim." *Id.* at 1313 (quoting *United States v. Bradley*, 644 F.3d 1213, 1240 (11th Cir. 2011)). Neither *Takhalov* nor *Ciminelli* (as discussed above) applies to this case.

The defendant's material misrepresentations in the loan applications and loan documents were intended to deceive *and to defraud*. The banks were harmed. Northeast Bank and Cross River Bank (and WebBank) disbursed the loan proceeds to the defendant's companies. The

[2] The defendant also makes a "convergence" argument that the SBA was not a victim because the false representations were made to someone else, i.e., the loan processors. DE 205 at 17. This argument is baseless. Ms. Harris, the SBA witness, and the lender witnesses testified about the SBA's involvement in the PPP application process. Moreover, Ms. Harris explained that the public was informed that the PPP was a government program offering potentially forgivable loans to small businesses during the COVID-19 pandemic. The defendant surely knew he was dealing with the SBA, as he was required to review the application -which was SBA Form 2483 with the SBA's logo on the top– and certify that the information he provided was true and accurate. Govt. Exhs. 17-11, 18-5, 20-12. He also signed the loan note, which was on SBA letterhead, and contained language explaining the PPP and the SBA's involvement. Govt. Exhs. 20-14, 22-6.

defendant is now making monthly payments on the loans. The banks are being deprived of the funds they loaned the defendant, which he is paying back at a very advantageous 1% interest.

The wire fraud statute requires a scheme to defraud and intent to defraud. It does not require that the victims of the fraud actually be injured. *See United States Mansouri*, 2023 WL 8430239 (W.D.N.Y. Dec. 5, 2023) (rejecting similar argument that financial institutions could not have suffered a loss in PPP and EIDL fraud case, court explained that the "government need not prove 'that the victims of the fraud were actually injured'" but that the defendants "'contemplated some actual harm or injury to the victims'") (citing *United States v. Novak*, 443 F.3d 150, 156 (2d Cir. 2006)). It is well established that the government must prove that a fraudulent scheme existed, but the government does not have to prove that the fraudulent scheme succeeded. *See United States v. Bradley*, 644 F.3d 1213, 1239 (11th Cir. 2011) (explaining that the victim does not have to actually rely on the misrepresentation, and to gauge the defendant's intent to defraud, the court must determine whether the defendant "attempted to obtain" something to which he was not entitled). In other words, the defendant can be guilty of wire fraud even if the loan was not approved and funded and the fraud did not ultimately succeed. Similarly, the fact that a bank is being paid back the money, or that it was reimbursed by the SBA for a loan that was forgiven does not negate the crime of wire fraud. Thus, the defendant's argument that the defendant did not commit wire fraud because the banks suffered no actual financial loss must fail.

C. Other arguments against the wire fraud convictions lack merit.

The defendant advances several other meritless arguments challenging the sufficiency of the wire fraud evidence against the defendant: (1) that there was no evidence connecting the defendant to the submission of the false IRS Forms 940, 941, or 1065, and that the Forms 941 were linked to the defendant based only on speculative handwriting evidence from a single witness, Jeff

Graff; (2) that the 1065 tax return that is the subject of Count 8 is not material to the fraud; (3) that the government did not establish that the defendant was the person who actually filled out the portal application as to Count 9, or that he submitted the application for Count 8; and (4) that the government failed to establish that the defendant's "workers" were not truly "employees."

As to the first three arguments above, the evidence tying the defendant to the fraud was substantial. The companies that received the PPP funds, HM Management and Alafaya Trails, were the defendant's companies for which he was the undisputed managing member and decisionmaker. The defendant was the sole signer on the bank accounts that received the PPP funds, which funds he controlled and spent as he saw fit. The defendant's personal information was provided for all of the loan applications, including his phone number, email address, home or office address, and copy of his driver's license. In all instances in which the lenders had records of communications with the applicant, those communications were with the defendant's email address. The falsified 1065 tax returns, including the one listed in Count 8 and discussed in greater detail below, were requested by the lenders primarily to corroborate payroll figures and were integral to the fraud scheme. Because the defendant himself can transmit, or cause the wire transfers to be transmitted by others, the law does not require the defendant to be the person who sits in front of his computer to personally answer the questions posed in the portal or to be the person who personally presses the button that uploads or submits the loan application's supporting documents. Nevertheless, in every instance in which the lender or DocuSign captured an IP address in connection with a PPP loan application in this case, that IP address was tied to the defendant's home internet service.[3] *See* Govt. Exh. 71.

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[3] The defendant relies on two documents to shift the blame to Jeff Vasilas. The defendant argues that Mr. Vasilas "forged" the defendant's name on Defense Exhibit G. Defense Exhibit G involved a rental agreement for equipment relating to the Burlington project, the very project Mr. Vasilas

The defendant's argument regarding the lack of evidence of "employees" vs. "independent contractors" appears to be that the government failed to establish that the "workers" the defendant paid were in fact, or should be if applying IRS employment rules, classified as "independent contractors" whom the defendant could not count as "employees" for purposes of the PPP loan applications. This is a meritless argument. The point of the PPP was to cover 2.5 months of a business's employee wages and related compensation, so the relevant inquiry was focused on the defendant's companies – the loan applicants – and how much *they paid in wages* and other employee compensation (as reflected on their tax forms) in order to arrive at a payroll amount. The overwhelming evidence in the case was that this amount was zero; the defendant's companies paid no wages during the relevant time period.[4]

Finally, the jury was entitled to draw reasonable inferences from the evidence, and the evidence presented was more than sufficient to find the defendant guilty of wire fraud as to Counts 5, 7, 8, and 9.

II. The Evidence of Aggravated Identity Theft Satisfies *Dubin v. United States*.

The offense of aggravated identity theft, pursuant to 18 U.S.C. §1028A, requires the

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was tasked to oversee. There is no evidence the defendant's name was "forged" other than the defendant's testimony, which the jury did not believe; the defendant's name was written on the agreement as a guarantor, and as owner of the shopping center and the person funding the project, he was the guarantor. Notably, the page with Mr. Vasilas' signature, where he is listed as "owner," has his name misspelled ("Vasillias" instead of "Vasilas"), which indicates that someone other than Mr. Vasilas filled in portions of this document. The second document, Defense Exhibit I, was a proposal to fix the defendant's gate to his Bal Harbour residence, again showing Mr. Vasilas engaging in contractor work for the defendant, not having anything to do with the defendant's fraud scheme.

[4] HM Management was the only company for which the defendant ever reported having paid employee wages to the IRS or to the Florida Department of Revenue. He never reported having more than three employees and the last year he reported employee wages was for 2018. Govt. Exhs. 12-2, 12-3, 12-5, 12-6, 16-1.

government to prove that (1) the defendant knowingly transferred, possessed, or used another person's means of identification; (2) without lawful authority; and (3) during and in relation to the specified wire fraud counts alleged in the Superseding Indictment. *See* Eleventh Cir. Pattern Jury Instr. O40.3 (Mar. 2023). The evidence was sufficient for the jury to find the defendant guilty beyond a reasonable doubt of aggravated identity theft, as charged in Counts 13 and 14 of the Superseding Indictment, pursuant to the Supreme Court's decision in *Dubin v. United States*, 599 U.S. 110 (2023).

A. <u>Pertinent Facts from the Trial</u>.

1. <u>Alafaya Trails PPP Loan Application to ACAP SME/ Northeast Bank</u>

Count 13 of the Superseding Indictment involved the use of accountant Neal Cupersmith's identity, including his name, employer identification number ("EIN"), and preparer tax identification number ("PTIN") on a falsified IRS 1065 partnership tax return for tax year 2020, submitted to ACAP SME, loan processor for Northeast Bank, in support of Alafaya Trails' second draw PPP loan application. Government Exhibit 20-16, admitted as part of ACAP SME's records, showed that several documents were uploaded to its portal at different times, starting on March 11, 2020, and that the loan application information and the supporting loan documents were separate wire transmissions to ACAP SME/ Northeast Bank. Tr. 12/4/23, at 112. Count 7 charged the defendant with wire fraud involving the submission of the Alafaya Trails loan application information to ACAP SME, and Count 8 separately charged the defendant with wire fraud involving the submission of the falsified IRS 1065 income tax return that is the subject of Count 13. The jury returned guilty verdicts as to Counts 7, 8, and 13.

The evidence at trial showed that Alafaya Trails was a company that owned a shopping center in Orlando, Florida, and that it was structured as a partnership, over which the defendant exercised control as the managing member. Tr. 12/6/23 PM, at 12-13, Govt. Exhs. 23-1, 23-2. The false information and documents that the defendant submitted to ACAP SME and Northeast Bank on behalf of Alafaya Trails reported an average monthly payroll of $59,359, 19 employees, and a total loan amount of $148,397 (based on 2.5 times the amount listed as average monthly payroll). The defendant falsely reported gross revenues in 2020 as having declined by more than 25% from 2019, and he falsely represented Alafaya Trails as a construction business. Northeast Bank approved the loan application, and on March 31, 2021, it disbursed the amount of $148,397 to the defendant's bank account. Govt. Exhs. 20-20 through 20-23, 41-1. The facts show that the falsified and forged 2020 1065 income tax return using the identity of Mr. Cupersmith supported all of these misrepresentations and was integral to this fraud.

The evidence at trial established that had the defendant submitted truthful information and documents for Alafaya Trails, it would not have qualified for a PPP loan. Alafaya Trails had no employees, it paid no wages or salaries, or employee benefits, and its partners had no net earnings, which meant that its payroll was zero and its loan amount should have been zero; it had a revenue increase instead of a revenue decrease in 2020 over 2019, which meant that it was not eligible for a second draw of PPP funds; and it was a landlord of commercial property, which was a business category excluded from the Paycheck Protection Program.

David Toye, Vice President for Northeast Bank, testified that ACAP SME was responsible for interacting with the applicant, receiving the documents that Northeast Bank requested of the applicant, and screening the applicant per the SBA's rules. Tr. 12/4/23, at 73-75. Northeast Bank, as the underwriter of the loan, reviewed the information and documents received and made a decision whether to fund the loan. *Id.*

The SBA and the lender witnesses testified that the amount of a PPP loan was based on the applicant's average monthly payroll, multiplied by 2.5 times. The defendant applied to ACAP/ Northeast Bank as a limited liability company ("LLC"), with employees, and thus, the loan amount was based primarily on the wages paid to the employees, plus certain other expenses, such as the employer's payments for employees' benefits like health insurance coverage. Govt. Exhs. 20-12, 20-21. Although Alafaya Trails was not identified on the loan application as a partnership, it was a partnership that filed income tax returns using an IRS Form 1065 for reporting partnership income. Govt. Exh. 13-2.

Mr. Toye explained that Government Exhibit 20-3 ("UW Template"), admitted as part of ACAP SME and Northeast Bank's exhibits, was an on-line tool that guided both ACAP and Northeast Bank regarding what documents and information to request and review from the applicant. Tr. 12/4/23, at 87-90; Govt. Exh. 20-3 (Partnership and Corporations tabs attached as Exhibit 1).[5] Exhibit 20-3 instructed ACAP (as verifier) and Northeast Bank (as the underwriter) to request and review the applicant's income tax return, which was listed as an IRS Form 1120 for corporations. *See* Exh. 1. Because Alafaya Trails was a partnership, however, Mr. Toye explained that its IRS Form 1065 and K-1 were the corporate tax documents that ACAP and Northeast Bank would have requested here. Tr. 12/4/23, at 90-91; *see* Exh. 1. Indeed, the defendant submitted a (false) 2020 IRS Form 1065 tax return for Alafaya Trails with its loan application to ACAP/ Northeast Bank.[6]

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[5] Portions of this trial exhibit, in pdf format, were filed by the defendant as defense Exhibits A and B. Government Exhibit 20-3 is an excel spreadsheet having several tabs, with each one corresponding to the type of applicant indicated (sole proprietorship, partnership, corporation, etc.). The filed Exhibit 20-3 has additional columns on the right side that are not included on the defendant's version in Exhibits A and B, which are important here, as they list the types of tax documents that ACAP and Northeast Bank were supposed to request and review.

[6] The fact that Government Exhibit 20-3 (the guidance tool for the reviewer and the underwriter) had the corporations tab marked (where the underwriter was prompted to request an 1120 tax

Mr. Toye explained that the loan amount was based on the business's payroll, which consisted of payments to its W-2 employees. Tr. 12/4/23, at 95. Mr. Toye also explained that, as a partnership, Alafaya Trails' 1065 partnership return and its K-1 were requested because a partnership's payroll amount included the partners' net earnings, capped at $100,000 for the year. *Id.*; Govt. Exh. 20-21 (SBA Form 2483), at 5 (explaining that for the PPP, a partnership's payroll costs includes the general partners' net earnings, as reported on the IRS Form 1065 K-1).[7]

The corporations tab on Exhibit 20-3, which was the tab filled in for the Alafaya Trails application, listed the loan amount the defendant requested of $148,397, and what he reported as gross wages of $815,358.[8] Exhibit 20-3 guided the underwriter to calculate the payroll amount, consisting of wages, and other payments to employees, such as for health insurance and retirement plans, to be drawn from: IRS Form 941s (Employer's Quarterly Tax Returns) or IRS Form 940 (Employer's Annual Federal Unemployment Tax Return), IRS Form 1120 (for corporation, which for a partnership was IRS Form 1065), and State quarterly wage reporting forms.[9] The evidence showed that the defendant submitted all of these forms, and that all were false. Govt Exhs. 20-8,

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return) and the partnership tab was listed as "the wrong tab" (where the underwriter was prompted to request a 1065 return) did not mean that the lender did not request an income tax return from Alafaya Trails. It only indicated that as an LLC, the underwriter was automatically directed to the "corporations" tab that listed an 1120 tax return, instead of a 1065 partnership return.

[7] The defendant was a limited partner of HM Four, owner of Alafaya Trails, and he reported no net earnings on the IRS Form 1065, K-1. This aspect of the false 1065 tax return submitted to ACAP/ Northeast Bank was not changed from the real tax return.

[8] Based on the annual payroll amount of $815,358 the defendant reported on the false tax forms (Form 940 and 1065 tax return), Alafaya Trails was eligible for a greater loan amount of $169,866 than the amount requested of $148,397. Govt. Exh. 20-3 (corporations tab). As Mr. Toye testified, a loan amount greater than $150,000 would have prompted Northeast Bank to conduct a more in-depth review of the loan application. Tr. 12/4/23, at 90-91.

[9] Government Exhibit 20-3 instructed the underwriter which lines on the 1120 or 1065 tax return reported payments for employee health insurance and retirement plans (1065 lines 18 & 19).

20-10, 20-11, 20-19, 20-20. Both the Form 940 and the 1065 tax return contained the (false) annual "payroll" figure of $815,358 that the defendant reported.

The Alafaya Trails application to ACAP/ Northeast Bank was for a second draw loan, having previously received a PPP loan from PayPal/WebBank. For a second draw loan, Alafaya Trails had to show a revenue decline in 2020 from the same time period (quarter or annual) in 2019. Tr. 12/4/23, at 78. As a result, the applicant's income tax return had the additional purpose of verifying that the business had at least a 25% revenue decline in 2020 from 2019. Alafaya Trails' 2020 1065 tax return falsely reported gross rents to support a 25% revenue decrease from 2019, whereas the real tax return reported a revenue increase. Govt. Exhs. 20-11, 20-20, 30-3, 30-7; Tr. 12/4/23, at 91-92. Because the loan amount the defendant requested was below $150,000, however, the defendant could have waited to submit documentation supporting the revenue decline when applying for forgiveness. Tr. 12/4/23, at 91-92; Govt. Exh. 20-3.

Ms. Harris from the SBA testified that certain types of businesses were excluded from the Paycheck Protection Program, such as developers and landlords. Tr. 11/28/23, at 145-46. Mr. Toye explained that the type of business of the applicant was verified through the business code listed on the income tax return. Tr. 12/4/23, at. 105, 107. Indeed, the 2021 version of the SBA Form 2483 directed the applicant to use the business code that was listed on its income tax return. *Id.*; Govt. Exh. 20-21, at 6. The 2020 1065 tax return the defendant submitted to ACAP/Northeast Bank falsely reported Alafaya Trails as a company in the construction business, instead of the business that Mr. Cupersmith assigned to Alafaya Trails on its real tax return, which was a landlord/lessor of non-residential buildings. Mr. Toye testified that a lessor of non-residential buildings was a business category that was not eligible for a PPP loan. Tr. 12/5/23 AM, at 5.

Mr. Toye explained that the income tax return needed to be signed, even if it had not yet been filed with the IRS: "[t]hat was one of SBA's requirements or rules was that if you haven't filed it yet to sign the document showing that you're certifying that this is accurate and true." Tr. 12/4/23, at 103. Finally, Mr. Toye explained the importance of the tax return to the Bank's loan decision in the context of a standard commercial loan. Tr. 12/5/23 AM, at 6.

As Mr. Toye testified, had the defendant truthfully reported that he made payments only to independent contractors, and that he paid no wages to employees, no net earnings to partners, his payroll amount and his "loan amount would be zero dollars." *Id.*

Mr. Cupersmith, the defendant's accountant for 25 years, testified that Alafaya Trails never reported wages. Tr. 12/12/23 AM, at 76. Mr. Cupersmith also testified that he did not prepare or sign the 1065 tax return submitted to ACAP/ Northeast Bank, or authorize the defendant or anyone on the defendant's behalf to use his name, his PTIN, or his business in this manner. Tr. 12/12/23 PM, at 6-8; Govt Exhs. 20-11, 20-20.

Regarding the false entries and the forgery on the tax return, Mr. Toye stated:

> Q: If you had information that that 1065 tax return was falsified as to the business code and the wages, and the gross rents and that the tax preparer name was forged on that document, would it have affected the decision that you made with respect to this loan?
> A: Yes. Definitely.
> Q: What would it have done?
> A: We wouldn't have funded the loan.

Tr. 12/4/23, at 108.

2. <u>HM Management's PPP Loan Application to Cross River Bank</u>

Count 14 of the Superseding Indictment also involved the use of Mr. Cupersmith's identity, including his name, EIN, and PTIN on a falsified IRS 1065 tax return for tax year 2020, submitted to Cross River Bank in support of a PPP loan application, this one on behalf of the defendant's company, HM Management. Unlike the process that Northeast Bank had in place in which the applicant communicated with the loan processor ACAP SME, Cross River Bank received the loan application information and supporting documents directly from the applicant. Spencer Lord, program manager for Cross River Bank, testified that once the applicant had all of the information and supporting documents uploaded, these were submitted all at once to Cross River Bank's portal. Tr. 12/5/23 PM, at 40, 53, 123.[10] Count 9 charged the defendant with wire fraud involving the submission of the HM Management loan application information, together with the falsified IRS 1065 tax return that is the subject of Count 14, and a falsified IRS Form 940. The jury returned guilty verdicts as to Counts 9 and 14.

The evidence at trial presented HM Management as a real estate company through which the defendant managed his other properties, specifically the shopping centers owned by Alafaya Trails and another company, CJUF III Flagler, LLC. Tr. 12/6/23, at 8, 18; 12/12/23 PM, at 17; Govt. Exhs. 23-1, 23-2. HM Management was also structured as a partnership, although the defendant was the managing partner and 99% owner. Tr. 12/6/23, at 19; 12/12/23, at 71. For the HM Management PPP application, this was a first draw application in which the defendant falsely reported an average monthly payroll of $59,437, a total loan amount of $148,592, and 18 employees. Govt. Exh. 22-6. The defendant falsely listed HM Management as a construction company. *Id.* Cross River Bank approved the loan application, and on March 29, 2021, it disbursed the amount of $148,592 to the HM Management bank account. Govt. Exhs. 22-6, 22-7, 41-1.

Because HM Management applied to Cross River Bank as an LLC with employees, the loan amount was based on the company's wages paid to employees in the tax year selected, 2020. Mr. Lord explained the application process in which the applicant would "proceed through the

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[10] The defendant refers to a loan processor for Cross River Bank, "Revenued," but the evidence at trial was that Cross River Bank received and reviewed the PPP applications and supporting documents directly from the applicants.

application flow answering the questions and providing the requested information." Tr. 12/5/23 PM, at 40. The last step of the process "was uploading the requested documents to the application." *Id.* Mr. Lord testified that Cross River Bank requested "filed tax forms, identification and voided check." As for the types of tax forms, Mr. Lord said, "it depended on the type of business." In this case, what was provided was "a 1065 and a 940." *Id.* at 59. Mr. Lord explained that Cross River Bank requested the 1065 tax return on its portal as part of the "application flow" based on the type of business and how it filed its taxes. *Id.* at 75-76, 124. According to Mr. Lord, Cross River Bank reviewed the tax return information for "the payroll amount."[11] *Id.* at 77. The supporting documentation the defendant provided was a false 2020 1065 tax return, and a false Form 940 for 2020. Govt. Exhs. 22-3, 22-4.

The 1065 tax return that the defendant submitted with the HM Management application reported false "salaries and wages" in the amount of $815,358 for tax year 2020, which was the same false figure included on the Alafaya Trails 1065 tax return submitted to ACAP/ Northeast Bank. Govt. Exh. 22-3. It also listed a false amount of $92,791 on line 19, for "Employee benefit programs," which are benefits paid to employees that would be added to the payroll calculation for the PPP loan. The wages amount reflected on the Form 940 was $713,420, which more closely matched the average monthly payroll figure the defendant provided on the loan application.[12]

[11] A partnership's payroll amount would have included any partner's net earnings reflected on the K-1 of the 1065 tax return, as indicated on the SBA Form 2483. Govt. Exh. 22-6 at p. 6. HM Management did not report any net earnings (on either the real or the falsified tax returns).

[12] The defendant argues that the 1065 tax return was neither requested nor reviewed by Cross River Bank because the 1065 tax return was not referenced on one version of the "UW" notes record, Defense Exhibit D. What the Cross River Bank notes suggest is that the salaries and wages, plus employee benefits reflected on the 1065 income tax return would have yielded a loan above $150,000 (approximately $189,197), and that the wages figure on the Form 940 more closely matched the loan amount requested on the loan application of $148,592. It does not mean that the income tax return, Form 1065, was not requested or reviewed.

The false income tax return also corroborated HM Management's claim that it was in the construction business, instead of being in the real estate business, as reflected on the real tax return prepared by Mr. Cupersmith. Tr. 12/5/23 PM, at 45-46, 60-61; Govt. Exhs. 22-3, 29-3, 22-1 (Cross River Bank portal application listing types of businesses considered ineligible for PPP loans, including businesses owned by developers and landlords, and owners of shopping centers, with defendant's acknowledgement). As noted above, in 2021, the SBA Form 2483 directed the applicant to list the business code from its income tax return. Govt. Exh. 22-6, at 6.

Not only did Mr. Lord testify that Cross River Bank requested HM Management's 1065 tax return based on the type of business and how it filed its taxes, Cross River Bank initiated a process to verify the tax return by providing the defendant an IRS Form 4506-T to execute with the other closing loan documents. Govt. Exh. 22-6. The IRS Form 4506-T granted Cross River Bank access to the defendant's IRS-filed income tax return information for HM Management. Tr. 12/5/23 PM, at 68, 116, 125-26; Govt Exh. 22-6. The defendant executed the IRS Form 4506-T that Cross River Bank provided, which was filled in to request HM Management's 1065 tax return information from the IRS for tax years 2019 and 2020. Govt Exh. 22-6, at pp 18-19. The falsified tax return the defendant submitted to Cross River Bank was for tax year 2020. IRS records indicated that, as of June 2022, the defendant had not filed HM Management's real 1065 tax return for tax year 2020, even though Mr. Cupersmith's firm prepared that tax return in December 2021. Govt Exhs. 12-4, 29-3. As for HM Management's 2019 1065 tax return, which was filed with the IRS, Mr. Cupersmith testified that his firm prepared it and he signed it, as was the case for all of the defendant's business and personal tax returns for the past 20-25 years. Tr. 12/12/23, at 63, 72; Govt. Exh. 29-2. Had Cross River Bank turned to the IRS for verification, it would have received tax return information from the HM Management 2019 tax return with Cupersmith's signature.

Similar to the evidence about Alafaya Trails' PPP application to ACAP/ Northeast Bank, the evidence at trial established that the information the defendant reported about HM Management regarding payroll and employees was false, and that the documents the defendant submitted in support of the loan application to Cross River Bank were falsified. HM Management did not have employees, or pay wages or employee benefits in 2020, the year for which the defendant reported payroll figures to Cross River Bank. Govt. Exhs. 12-4, 12-5, 12-6, 16-1, 29-3, 29-10, 29-12.[13] Mr. Cupersmith testified that his firm did not prepare and he did not sign the 2020 income tax return for HM Management that the defendant submitted to Cross River Bank. Mr. Cupersmith also testified that he did not authorize the defendant or anyone on the defendant's behalf to use his name, his PTIN or his business in this manner. Tr. 12/12/23 AM, at 90-92; Govt. Exh. 22-3.

Mr. Lord testified that had he received information that the 1065 income tax return for HM Management had false information regarding salaries and wages, and that the accountant's signature had been forged, Cross River Bank would not have approved the loan. Tr. 12/5/23 PM, at 63, 125.

B. The evidence in this case supporting the Aggravated ID Theft counts satisfies *Dubin.*

In *Dubin*, the Supreme Court reversed the Fifth Circuit's decision upholding an aggravated identity theft conviction that involved the use of a Medicaid patient's number on an inflated claim for reimbursement for psychological services. *Id.* at 115-17. The psychological services were performed on the Medicaid patient whose number was used on the claim. The claim, however, was false because the qualifications of the psychologist performing the services were misrepresented in order to justify an upcharge, and not because of anything having to do with the

[13] Business records the defendant provided to Cupersmith's firm to prepare the HM Management 2020 tax return showed wages in the amount of $2456, not $815,358. Govt. Exhs. 29-10, 29-12.

use of the Medicaid patient's identity. *Id.* at 115. The Supreme Court in Dubin held that the words "use" and "in relation to" in Section 1028A should not be construed so that the statute would "apply automatically any time a name or other means of identification happens to be part of the payment or billing method used in the commission of a long list of predicate offenses." *Id.* at 117. Instead, "using a means of identification in relation to a predicate offense requires 'a genuine nexus to the predicate offense.'" *Id.*

The Supreme Court explained that:

> On this reading, the means of identification is at the crux of what makes the predicate offense criminal, rather than merely an ancillary feature of a payment method. When the underlying crime involves fraud or deceit, as many of § 1028A's predicates do, this entails using a means of identification specifically in a fraudulent or deceitful manner.

Id. After referring to the dictionary definition of "identity theft," the Supreme Court went on to state that,

> These definitions refer to offenses built around what the defendant does with the means of identification in particular. In other words, the means of identification specifically is a key mover in the criminality.

Id. at 122-23. Finally, the Court analyzed "uses" of another person's means of identification "in relation to" predicate offenses involving "fraud or deceit crimes," and stated that "with fraud or deceit crimes like the one in this case [health care fraud], the means of identification specifically must be used in a manner that is fraudulent or deceptive. *Id.* at 131-32. *Dubin* requires, in fraud cases, a showing that there was fraud or deceit "about identity." *See Dubin*, 599 U.S. at 126.

The government has restated the language of *Dubin* here because the defendant has misstated it as requiring that the use of the means of identity be "*the* crux" of what makes the offense criminal, and "the key mover" of the criminality, instead of being "at the crux" of what makes the underlying offense criminal or being "a key mover" of the criminality. The reason

Dubin vacated the defendant's conviction is that he did not misuse the identities in a fraudulent or deceptive way. The patients got the services.

The Eleventh Circuit's opinion in *United States v. Gladden*, 78 F.4th 1232, 1244 (11th Cir. 2023) helps illustrate the point. The case involved a three-year health care fraud conspiracy with ten defendants. The Court did not ask whether Linton's misuse of several doctor's names was *the crux* of a multi-year, ten-defendant conspiracy, but rather whether her misuse was *at the crux* of what made her health care fraud conspiracy criminal. Linton misrepresented by <u>whom</u> certain prescriptions were authorized (by, among other ways, changing signed prescriptions to add additional expensive medications). Her use of the doctor's means of identification was fraudulent because she falsely represented that he had authorized additional prescriptions. That her fraud involved other misrepresentations (such as the reason why the medication was being prescribed, i.e., they were medically unnecessary) does not mean her misrepresentation about identity was ancillary to the fraud. "Linton's use of Dr. Almirol's identity was central to the deception: she used his 'means of identification itself to defraud or deceive.'" *Id.* at 1245-46.[14]

By contrast, the Eleventh Circuit held that co-defendant Gladden's aggravated identity theft conviction—for having his employee, Whitten, go to a doctor to get an unneeded prescription in her daughter's name—must be vacated because his "use of Whitten's daughter's identifying information was merely ancillary to the deception." *Gladden*, 78 F.4th at 1248. The prescriptions at issue were signed by a "buddy" doctor and were written to real people, like Whitten's daughter,

[14] Similarly in *Carter v. United States*, 2024 WL 20847 (11th Cir. Jan. 2, 2024), the Eleventh Circuit upheld the aggravated identity theft conviction for Carter, who used students' identifying information by falsifying enrollment forms to make it appear as if they were enrolled at his school (which in fact they were not) and that way, the school could continue to receive state funding. The Court found that Carter's use of the students' names and information was "at the crux" of what made the scheme fraudulent. *Id.* at *8.

so there were not any misrepresentations about identity.[15] *Id.*

In this case, contrasted with *Dubin*, the means of identification of the accountant, Neal Cupersmith, was stolen and used in the commission of the underlying scheme to defraud. The defendant argues in effect that Mr. Cupersmith's name was a superfluous addition to a false document that was neither requested nor reviewed as part of the approval process for these loans. The defendant argues that neither Mr. Toye nor Mr. Lord themselves had personal knowledge regarding what loan documents were reviewed and that their respective bank's records do not state definitively that the income tax return was in fact a document the bank relied on to approve the loan.

The bank witnesses testified about the process their respective banks had in place to review PPP loan applications, and what these banks requested as supporting documents for the loan applications. During the trial, and in his motion, the defendant simply refuses to accept the lender witnesses' testimony and records showing that the income tax return was requested, required, and reviewed in their process. For instance, Northeast Bank's guidance tool (Exh 20-3) listed the income tax return as something to be requested and reviewed. As for Cross River Bank, while the "application flow" that Mr. Lord spoke about was not preserved or produced, the Bank had the defendant execute an IRS Form 4506-T that authorized the Bank to specifically request from the IRS the applicant's 2019 and 2020 income tax return information for verification. The tax returns provided payroll information (consisting of salaries and wages, employee compensation, and net

[15] The Court suggested that its holding might have been different, however, had Gladden "forge[d] the name of the prescribing doctor on the prescription" or "misrepresent[ed] who would be receiving the filled prescription." *Id.* at 1249. In those circumstances, the deception at the heart of his conduct not only would involve obtaining medically unnecessary prescriptions, but also misrepresenting who was writing or receiving the prescriptions.

earnings of a partner), which was the driver of the loan amount for any PPP loan. They also corroborated other aspects of the business that the defendant misrepresented on the applications, such as the type of business the applicant was engaged in, which would have rendered the defendant's companies ineligible for PPP loans. And as to Alafaya Trails, the requisite 25% revenue decrease to qualify for a second draw loan. The income tax return, among the documents requested, obviously provided the most comprehensive financial picture of the business.

The defendant's use of Mr. Cupersmith's identity is not the conduct that *Dubin* held fell outside the scope of the aggravated identity theft statute. The defendant used Mr. Cupersmith's identity in a manner that was fraudulent or deceptive. The defendant stole Mr. Cupersmith's identity – his name, signature, PTIN, business name, EIN - to represent the income tax returns as documents prepared and signed by him. It was *at the crux* of what made the defendant's conduct criminal: submitting false information with false supporting documents about his businesses, particularly regarding payroll, in order to qualify for the loans. The defendant submitted to both banks false 1065 tax returns and false Forms 940 that contained annual wages/ annual payroll figures from which the average monthly payroll amount could be calculated. The income tax returns contained other false information that was important, if not disqualifying, to the application process as well: the type of business (business code) of the applicant company and, in the case of Alafaya Trails, the revenue decrease that made it eligible for a second draw from Northeast Bank. Mr. Cupersmith was not a name that was superfluous to those documents or to the fraud; because Mr. Cupersmith was listed as the preparer, the tax returns and the misrepresentations they contained supporting the loan application, were represented as Mr. Cupersmith's work product. In this way, the defendant's use of Mr. Cupersmith's identity was like Linton's use of the doctor's identity to claim the prescriptions were authorized by the doctor. *Gladden*, 78 F.4th at 1245-46.

The case of *United States v. Fullerton*, 2023 WL 6150782 (W.D. Tx. Sept. 20, 2023) is factually similar to this case. In that case, the defendant "engaged in a fraudulent scheme with other conspirators to apply for and receive Payroll Protection Program (PPP) loans during the COVID-19 pandemic." *Id.* at *1. In short, the defendant "used fraudulent documents to support the loan applications, including fraudulent lists of employees and fraudulent tax documents." *Id.* In one instance, he created fake tax records to attach to the fraudulent loan applications he submitted and forged the signature of a CPA to indicate it had been prepared by a tax preparer. *Id.*

The district court found this allegation survived *Dubin* because the defendant used the name and signature of a certified public accountant on fake tax records "to lend credibility to fraudulent loan applications." *Id.* at *4. That action, the court found, "legitimized the loan applications and increased the likelihood that they would be approved by the appropriate financial institutions." In other words, the court held, he used the identity "in a manner that is fraudulent and deceptive." "[I]t is hard to identify a clearer allegation of identity theft." *Id.*

By contrast, in *United States v. Noble*, ___ F. Supp. 3rd ___ (N.D. Ga. 2024), 2024 WL 253623 (N.D. Ga. Jan. 23, 2024), the court arrived at the opposite result in a COVID-19 loan fraud case. The case illustrates, in a loan fraud-type context, when the use of a means of identification may be covered by *Dubin* and when it is not. In *Noble*, the court held that the factual basis in the defendant's guilty plea was insufficient to sustain a conviction for aggravated identity theft, post-*Dubin*, even though the defendant and a co-conspirator submitted fraudulent COVID-19 loan applications using other people's names as the applicants. *Id.* at *1. As to the specific loan application that was the subject of the aggravated identity theft, the court found that whether the loan application was successful hinged, not on the applicant's identifying information, but on her business records. *Id.* at *4. Importantly, the court noted that Noble did not forge the applicant's name or misrepresent who the applicant was, or misrepresent whether the applicant was the person receiving the loans. *Id.* The court cited with approval this Court's *Sheppard* decision from October 31, 2023, denying Sheppard's motion to dismiss the aggravated identity theft counts. *Id.* at *5. The court noted that "*Sheppard* supports Noble's position that the other person's knowledge or consent precludes conviction for aggravated identity theft." Ultimately, the court found that the defendant could not be guilty of identity theft if he has not stolen anyone's identity. *Id.*

The defendant here stole Mr. Cupersmith's identity and used it in a deceptive manner, as *Dubin* requires. The defendant conveyed to the banks that this document they requested – the income tax return – with (false) payroll figures, revenues, business type, was the work of Neal Cupersmith, when in actuality, the figures had been falsified, Mr. Cupersmith's signature had been forged, and the tax return was the work product of the defendant. The defendant's use of Mr. Cupersmith's identity was at the crux of what made the conduct criminal: the materially false representations about his businesses. The jury had evidence from which to draw a reasonable inference that using Mr. Cupersmith's identity on the income tax returns was also important to the defendant's scheme as it conveyed to the lenders that the figures reported on the tax returns were reliable. A reasonable jury could find, and did find from the evidence, that the defendant's use of Cupersmith's identity was at the crux or a key mover in his fraud scheme to deceive the lenders and the SBA into approving and funding loans the defendant knew he was not entitled to receive.

CONCLUSION

For the reasons set forth above, the government respectfully requests that the defendant's motion for judgment of acquittal as to Counts 5, 7, 8, 9, 13, and 14 of the Superseding Indictment be denied.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 23, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/Aimee Jimenez
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Assistant United States Attorney