The Hon. John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. ERIC SHIBLEY Defendant.	NO. CR20-174-JCC **DECLARATION OF FEDERAL BUREARU OF INVESTIGATION SPECIAL AGENT KATHLEEN MORAN IN SUPPORT OF MOTION FOR ENTRY OF A PROTECTIVE ORDER RESTRAINING CERTAIN FORFEITABLE PROPERTY**

I, KATHLEEN MORAN, declare and say:

I. TRAINING AND EXPERIENCE

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI") currently assigned to the white-collar crime squad in the Seattle Field Division. I have been employed as a Special Agent of the FBI since May 2005. I have received basic federal law enforcement training, including the training at the FBI Academy, as well as other specialized federal law enforcement training. I have investigated violations of federal statutes governing various types of white collar crime, including wire fraud, mail fraud, bank fraud, securities fraud, money laundering, and theft of government and public money.

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2. The information in this declaration is based on my own investigation, my conversations with other law enforcement officers who have engaged in various aspects of this investigation, and my review of reports written by other law enforcement officers involved in this investigation. It does not, however, contain every detail known to be about the investigation.

II. PURPOSE OF DECLARATION & PROPERTY TO BE RESTRAINED

3. I make this declaration in support of a motion for entry of a protective order that would allow the United States to maintain custody of, or otherwise restrain, property seized pursuant to five forfeiture warrants pending resolution of this criminal case. Some of the property (identified in paragraphs 3D and 3E, below) was seized pursuant to dual civil and criminal forfeiture warrants, so probable cause to forfeit the property in the criminal proceeding has already been determined; for completeness, this declaration addresses all of the seized property (collectively, the "Subject Property"):

A. $49,500.86 in U.S. funds, seized on or about May 29, 2020 from Navy Federal Credit Union account #******7528, held in the name of Eric R. Shibley MD PLLC;

B. $100,000.00 in U.S. funds, seized on or about May 29, 2020 from Wells Fargo account #******2378, held in the name of ES1 LLC;

C. $804,816.63 in U.S. funds, seized on or about May 27, 2020 from Wells Fargo account #******3536, held in the name of The A Team Holdings LLC;

D. $114,440.00 in U.S. funds, seized on or about June 30, 2020 from Verity Credit Union account #***5390, held in the name of Dituri Construction LLC; and

E. $114,743.59 in U.S. funds, seized on or about June 30, 2020 from Verity Credit Union account #***5320, held in the name of SS1 LLC.

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4. On or about May 27, May 29, and June 30, 2020, the Subject Property was seized during execution of seizure warrants at banking institutions determined to have accounts owned and/or operated by Defendant ERIC SHIBLEY ("Shibley"). These warrants were issued on the grounds that there is probable cause to believe that the accounts contain proceeds of violations of 18 U.S.C. § 1343 (Wire Fraud), or property traceable to such property, and/or pursuant to 18 U.S.C. § 981(a)(1)(A) and 18 U.S.C. § 984, on the grounds that there is probable cause to believe that they are property involved in violations of 18 U.S.C. § 1957 (Money Laundering) or traceable to such property. The May 27 and May 29, 2020 civil forfeiture warrants were issued by the U.S. District Court for the District of Columbia, Case Numbers SZ20-033, SZ20-039, and SZ20-040; the assets identified in Paragraphs 3A – 3C were seized pursuant to those warrants. The June 25, 2020 dual civil and criminal forfeiture warrants were issued by the U.S. District Court for the Western District of Washington, Case Numbers MC20-052 and MC20-053; the assets identified in Paragraphs 3D – 3E were seized pursuant to those warrants.

5. On June 29, 2020, the United States filed a Complaint against Shibley for Violations of 18 U.S.C. §§ 2, 1343 (Wire Fraud) and 1344 (Bank Fraud). *See* MJ20-0385-MLP, filed in the U.S. District Court for the Western District of Washington, Dkt. No. 1.

6. After the Subject Property was seized, the FBI initiated administrative forfeiture proceedings against it pursuant to 18 U.S.C. § 983 - with the exception of the $804,816.63 in U.S. funds identified in Paragraph 3C, which was not subject to administrative forfeiture, as detailed further below. In FBI's administrative forfeiture proceedings, Shibley made two separate claims: first, to the funds in Paragraph 3B, above, which he submitted on July 28, 2020; and, second, to the funds in Paragraphs 3D - E, which he submitted on August 25, 2020. Shibley made no claim to the funds identified in Paragraph 3A, above. Shibley was not required to make a claim to the funds identified in Paragraph 3C, above, because those funds were not subject to administrative forfeiture.

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7. The determination that there is probable cause for forfeiture of the funds identified in Paragraphs 3D – E in the criminal case was made by The Honorable Michelle L. Peterson, U.S. Magistrate Judge, on June 25, 2020. *See* 20-mc-52-MLP. The Honorable G. Michael Harvey, U.S. Magistrate Judge, made determinations that there is probable cause for civil forfeiture of the funds identified in Paragraphs 3A – C; however, there has not yet been a determination that there is probable cause for forfeiture of these funds in the criminal case. Accordingly, pursuant to 18 U.S.C. § 983(a)(3), the United States is required either to file a civil judicial forfeiture action against the funds identified in Paragraphs 3A – C or to allege its forfeiture in this criminal case and take steps to maintain custody of it by October 26, 2020. The motion and this declaration submit that there is probable cause for the continued restraint of all of the Subject Property for criminal forfeiture.

8. At this time, the United States is pursuing the Subject Property's criminal forfeiture and has given notice of this intent in the Indictment. *See* Dkt. No. 31, pp. 17 – 19. This declaration is submitted to provide facts stating the requisite probable cause for the Subject Property's continued restraint for the duration of the criminal case, including the criminal ancillary forfeiture process.

9. Currently, the Subject Property is in the custody of the United States Marshals Service.

III. SUMMARY OF PROBABLE CAUSE

10. I have been involved in the investigation that led to the criminal charges in this case, and I am familiar with the relevant evidence. The charges arise from a joint investigation conducted by the FBI, the Small Business Administration ("SBA"), and other federal law enforcement partners into false and misleading pretenses Shibley made on COVID-19 relief loan applications he made in the names of his businesses – including, among others: a $100,000 loan to Eric R Shibley, MD, PLLC; loans of $563,500 and $114,900 to Dituri Construction, LLC; loans of $95,750 and $100,000 to ES1, LLC; loans of $820,000 and $114,900 to SS1, LLC; and a $960,000 loan to The A

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Team Holdings LLC. Shibley obtained such loan proceeds as a result of his material misrepresentations about monthly payroll expenses, employees, and revenues of his business entities and his personal probation status. As a result of Shibley's scheme, he was unjustly enriched. Accordingly, the Subject Property was seized from bank accounts associated with his business entities pursuant to federal forfeiture seizure warrants.

IV. FACTS ESTABLISHING PROBABLE CAUSE

11. I respectfully submit, as explained further below, there is probable cause to believe that the Subject Property is proceeds of Wire Fraud, in violation of 18 U.S.C. § 1343, and/or Bank Fraud, in violation of 18 U.S.C. § 1344, and/or is property involved in Money Laundering, in violation of 18 U.S.C. § 1957, or property traceable to such property. Therefore, the Subject Property is forfeitable under 18 U.S.C. § 981(a)(1)(C) by way of 28 U.S.C. § 2641(c), 18 U.S.C. § 982(a)(1) and 18 U.S.C. § 982(a)(2).

A. The Paycheck Protection Program

12. The Coronavirus Aid, Relief and Economic Security ("CARES") Act is a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic. Dkt. No. 1, ¶ 3. One source of relief provided by the CARES Act was the authorization of up to $349 billion in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program (PPP). In or around April 2020, Congress authorized over $300 billion in additional PPP funding. *Id.*

13. In order to obtain a PPP loan, a qualifying business must submit a PPP loan application, which is signed by an authorized representative of the business. *Id.* ¶ 4. The PPP loan application requires the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. *Id.* In the PPP loan application, the small business (through its authorized representative) must state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. *Id.* These figures are used to

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calculate the amount of money the small business is eligible to receive under the PPP. *Id.* In addition, businesses applying for a PPP loan must provide documentation showing their payroll expenses. *Id.*

14. A PPP loan application must be processed by a participating financial institution (the lender). *Id.* ¶ 5. If a PPP loan application is approved, the participating financial institution funds the PPP loan using its own monies, which are 100% guaranteed by the SBA. *Id.* Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, is transmitted by the lender to the SBA in the course of processing that loan. *Id.*

15. PPP loan proceeds must be used by the business on certain permissible expenses, payroll costs, interest on mortgages, rent and utilities. *Id.* ¶ 6. The PPP allows the interest and principal on the PPP loan to be entirely forgiven if the business spends the loan proceeds on these expense items within a designated period of time and uses at least a certain percentage of the PPP loan proceeds on payroll expenses. *Id.*

16. The PPP is overseen by the SBA, which is headquartered at 409 3rd Street SW, Washington, DC 20416, and has authority over all loans. Individual PPP loans, however, are issued by private approved lenders (most commonly, banks and credit unions), who receive and process PPP application and supporting documentation, and the make loans using the lenders' own funds. All PPP loan application packages are also sent to the SBA at its headquarters in Washington, DC. To date, over 4,900 lending institution have participated in the PPP.

B. The Economic Injury Disaster Relief Program

17. The Economic Injury Disaster Loan ("EIDL") program was an SBA program that provided low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters. Dkt. No. 31, ¶ 5.

18. The CARES Act authorized the SBA to provide EIDLs of up to $2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. *Id.* ¶ 6. In addition, the CARES Act authorized the SBA to issue

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advances of up to $10,000 to small businesses within three days of applying for an EIDL. *Id.* The amount of the advance was determined by the number of employees the applicant certified having. The advances did not have to be repaid. *Id.*

19. In order to obtain an EIDL and advance, a qualifying business had to submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. *Id.* ¶ 7. In the case of EIDLs for COVID-19 relief, the 12-month period was that preceding January 31, 2020. *Id*. The applicant also had to certify that all of the information in the application was true and correct to the best of the applicant's knowledge. *Id*.

20. EIDL applications were submitted directly to the SBA. *Id*. ¶ 8. The amount of the loan, if the application was approved, was determined based, in part, on the information provided by the applicant about employment, revenue, and cost of goods, as described above. *Id*. Any funds issued under an EIDL or advance were issued directly by the SBA. *Id*. EIDL funds could be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments. *Id*. If the applicant also obtained a loan under the PPP, the EIDL funds could not be used for the same purpose as the PPP funds. *Id*.

21. The government has obtained records relating to at least 20 EIDL and PPP loan applications submitted to the SBA and SBA-approved lenders on behalf of various Shibley Entities. In total, the loan applications sought more than $3.3 million in loan funds.

C. Eric Shibley and related entities

22. Shibley is a citizen of the United States. According to information obtained in the investigation, Shibley's office address is 4700 36th Ave. SW, Seattle, Washington. The investigation has revealed that Shibley resides at this address as well. According to public records, Shibley is a medical doctor. According to records available on the Washington State Department of Health website, the status of Shibley's license to

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practice medicine is identified as "summary suspension" due to allegations of unprofessional conduct.

23. According to records from the Anacortes Municipal Court, located in Anacortes, Washington, Shibley pled guilty to a Violation of a No Contact Order, a criminal misdemeanor under Washington State law, on December 13, 2018 and was sentenced to a jail term of 364 days, with 334 days suspended, a $5,000 fine, and two years' probation. The case number is AC17582. Shibley is currently on probation until December 13, 2020. An agent spoke with Shibley's Probation Officer on or about May 26, 2020, and she confirmed Shibley remains on probation through December 13, 2020.

V. THE SUBJECT PROPERTY

A. Subject Property A: $49,500.86 in U.S. funds, seized on or about May 29, 2020 from Navy Federal Credit Union account #******7528, held in the name of Eric R. Shibley MD PLLC.

24. Shibley is the Registered Agent for Eric R Shibley MD PLLC, which was formed in Washington State on or about December 12, 2012.

25. On April 15, 2020 and April 25, 2020, Shibley digitally signed separate applications in support of a $100,000 PPP loan for Eric R Shibley MD PLLC and submitted them to TCF National Bank, which is an SBA Approved Lender that has participated as a PPP lender to small businesses. Chemical Bank is a division of TCF National Bank. Both are FDIC-insured financial institutions.

26. On both of his applications, Shibley answered "No" to Question 5 of the application: "Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?" The application notes that "If questions (5) or (6) are answered 'Yes,' the loan will not be approved." Because Shibley is currently on probation until December 13, 2020, as provided above, there is probable cause to believe this certification was false.

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27. Shibley's two loan applications also provided EIN numbers and represented that the business had multiple employees and an average monthly payroll of $40,000. The loan applications, however, contained substantive differences:

a. The original application listed Eric R Shibley MD PLLC's EIN as 46-1599052 and with his application, Shibley provided the IRS Form 147C, EIN Verification Letter verifying the 46-1599052 EIN. However, Shibley's second application listed Eric R Shibley MD PLLC's EIN as 46-1598805.

b. To support the loan amount, Shibley's original application represented that Eric R Shibley MD PLLC had an average monthly payroll of $40,000 and 5 employees. However, the second application stated that Eric R Shibley MD PLLC had an average monthly payroll of $40,000 and 6 employees.

28. With the application, Shibley provided a voided check and asked that the loan funding be wired to Navy Federal Credit Union checking account #******9972.

29. On or about May 7, 2020, TCF National Bank approved the PPP loan file for Eric R Shibley MD PLLC and subsequently deposited $100,000 in loan funds to Navy Federal Credit Union checking account #******9972 in the name of Eric R Shibley MD PLLC. The memo for the transaction was "Chem Bank loan SACH." As noted above, Chemical Bank is a branch of TCF National Bank. The balance in the account prior to the credit was $1,231.47.

30. Based on information from Navy Federal Credit Union, that same day, on or about May 12, 2020, the entire amount, $100,000, was moved from account #******9972 to account #******7528, the account from which Subject Property A was seized. Prior to the transfer, the balance in account #******7528 was $5.86. After the transfer, the balance in the account was $100,005.86.

31. On or about May 27, 2020, an SBA-OIG agent, posing as a representative of another bank from which Shibley obtained a PPP loan, asked Shibley whether he was on any type of parole or probation for the violation of no-contact order described above. The agent also explained that, if Shibley was currently on probation, that was

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disqualifying. Shibley denied he was on probation for the violation. Based on information obtained from Shibley's Probation Officer, Shibley's representation was false.

32. According to Navy Federal Credit Union records, as of May 28, 2020, at least $49,500.86 remained in account #******7528. Navy Federal Credit Union reported that after the PPP funding was moved into this account, on or about May 28, 2020, Shibley came into the Tacoma branch and withdrew $50,000 from the account.

33. On or about May 29, 2020, law enforcement officers executed the civil forfeiture seizure warrant and seized $49,500.86, all of the funds remaining in Navy Federal Credit Union account #******7528.

34. Based on these facts, I submit there is probable cause to believe Subject Property A is forfeitable and should be restrained until the conclusion of this case, as alleged in the Indictment. *See* Dkt. No. 31 at p. 17.

B. <u>Subject Property B</u>: $100,000.00 in U.S. funds, seized on or about May 29, 2020 from Wells Fargo account #****2378, held in the name of ES1 LLC.**

35. Shibley is the Registered Agent for ES1 LLC, which was formed in Washington State on or about October 25, 2012.

36. Similar to Subject Property A, above, on or about April 15, 2020 and April 25, 2020, Shibley digitally signed separate applications in support of a $100,000 PPP loan for ES1 LLC and submitted them to TCF National Bank.

37. To support the loan amount, Shibley's original application represented that ES1 LLC had an average monthly payroll of $40,000 and 5 employees. However, the second application stated that ES1 LLC had an average monthly payroll of $40,000 and 6 employees. With the application, Shibley provided a voided check and asked that the loan funding be wired to Wells Fargo account #******9124.

38. On both applications, Shibley answered "No" to Question 5 of the application: "Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment,

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or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?" The application notes that "If questions (5) or (6) are answered 'Yes,' the loan will not be approved." As described above, evidence obtained in the investigation demonstrates that there is probable cause to believe this certification was false, as Shibley is currently on probation until December 13, 2020, as described above. This denial appears consistent with other known denials by Shibley, discussed previously.

39. According to records provided by TCF National Bank, on or about May 11, 2020, TCF National Bank approved the PPP loan file for ES1 LLC and issued the loan.

40. According to records and information provided by Wells Fargo and TCF National Bank, once approved, the $100,000 in loan funds was issued to Wells Fargo business account #******9124 in the name of ES1 LLC and deposited on or about May 15, 2020. The memo for the transaction was "Chem Bank loan S ACH." As noted above, Chemical Bank is a branch of TCF National Bank. The balance in the account prior to the credit was $2,742.50

41. Based on information obtained from Wells Fargo, on or about May 21, 2020, the entire $100,000 was moved from account #******9124 to account #******2378, which is the account from which Subject Property B was seized. Prior to the transfer, the balance in account #******2378 was $5,761.08. After the transfer, the balance in account #******2378 was $105,761.08. After the PPP funding was moved into account #******2378, $2,000.00 was transferred out of the account.

42. Wells Fargo records reflect that, as of May 26, 2020, at least $103,761.08 remained in account #******2378.

43. On or about May 29, 2020, law enforcement officers executed the civil forfeiture seizure warrant and seized $100,000 from the Wells Fargo ESI LLC account #******2378.

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44. Based on these facts, I submit there is probable cause to believe Subject Property B is forfeitable and should be restrained until the conclusion of this case, as alleged in the Indictment. *See* Dkt. No. 31 at p. 17.

C. Subject Property C: $804,816.63 in U.S. funds, seized on or about May 27, 2020 from Wells Fargo account #****3536, held in the name of The A Team Holdings LLC.**

45. The A Team Holdings LLC was formed in or about December 2018. The business address listed on the "Certificate of Formation" is the current location of Defendant Shibley's medical practice.

46. On or about April 12, 2020, Shibley digitally signed an application in support of a $960,000 PPP loan for The A Team Holdings LLC and submitted it to Ready Capital, which participated in the PPP as both a lender and a broker between borrowers and other PPP lenders. Ready Capital served as a broker for PPP loans for Customers Bank. As a broker, Ready Capital collected and provided loan applications to Customers Bank for funding once approved. On or about April 15, 2020, Shibley submitted an unsigned, amended application to Ready Capital.

47. Ready Capital provided the government both the original and amended SBA Form 2483 submitted with the package; the original bears the signature of Shibley. To support the loan amount, both applications represented that The A Team Holdings LLC had an average monthly payroll of $384,000 and 48 employees. With the application, Shibley provided a voided check and asked that the loan funding be wired to Wells Fargo account #******9116.

48. Similar to Subject Property A and B, above, Shibley answered "No" on both applications to Question 5: "Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?" The application notes that "If questions (5) or (6) are answered 'Yes,' the loan will not be approved." As

described above, evidence obtained in the investigation demonstrates that there is probable cause to believe this certification was false, as Shibley is currently on probation until December 13, 2020.

49. According to records provided by Ready Capital, on or about April 23, 2020, Ready Capital approved the PPP loan file for The A Team Holdings LLC and issued the loan note, which Shibley digitally signed. Records show that on or about April 30, 2020, Customers Bank, headquartered in Wyomissing, PA, issued a new loan note for the $960,000, which Shibley digitally signed.

50. According to records and information provided by Wells Fargo and Ready Capital, once approved, the $960,000 in loan funds was issued to Wells Fargo checking account #******9116 in the name of The A Team Holdings LLC.

51. Wells Fargo records reveal that, as of May 26, 2020, at least $804,816.63 remained in account #******3536, the account from which Subject Property C was seized.

a. On or about May 4, 2020, the $960,000 in approved PPP loan funds were deposited into Wells Fargo checking account #*****9116 in the name of The A Team Holdings LLC. The memo for the transaction was "Customers Bank PPP funds." The balance in the account prior to the credit was $378.64.

b. The same day the funds were deposited, the entire amount, $960,000, was moved by online transfer from account #*****9116 to account #******3536. Prior to the transfer, the balance in account #******3536 was $6,892.22. After the transfer, the balance in the account was $966,892.22.

c. On or about May 11, 2020, $7,648.59 was transferred from account #******3536 account back to account #******9116. Three days later, on or about May 14, 2020, the same amount was transferred by ACH withdrawal to "Fay Servicing." Based on a search of publicly available information, Fay Servicing is believed to be a mortgage servicing company. Also on or about May 14, 2020, another $4,427 was withdrawn from account #******3536 at a Wells Fargo branch.

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d. On or about May 26, 2020, Shibley withdrew $150,000 from account #******3536. According to Wells Fargo records, the memo section for the transaction states, "Teller cash to check." According to a Physical Security Officer for Wells Fargo, Shibley attempted to withdraw the entire $960,000 of PPP loan funds on May 26, 2020; however, he was informed that he would have to withdraw smaller amounts. Shibley informed the bank that he planned to return on or about May 28, 2020 to withdraw additional funds.

52. As of on or about May 26, 2020, at least $804,816.63 remained in Wells Fargo account #******3536 in the name of The A Team Holdings LLC.

53. On or about May 27, 2020 law enforcement officers executed the civil forfeiture seizure warrant and seized $804,816.63, all of the funds remaining in Wells Fargo account #******3536.

54. Based on these facts, I submit there is probable cause to believe Subject Property C is forfeitable and should be restrained until the conclusion of this case, as alleged in the Indictment. *See* Dkt. No. 31 at p. 17.

D. <u>Subject Property D:</u> $114,440.00 in U.S. funds, seized on or about June 30, 2020 from Verity Credit Union account #*5390, held in the name of Dituri Construction LLC.**

55. Dituri Construction LLC was formed in Washington State in or about January of 2020. According to the initial report filed with the Washington Secretary of State ("WA SOS") for Dituri Construction LLC, the sole governor identified for the entity was Thomas Dituri (Dituri) at the time of formation.

56. According to state records, on or about October 22, 2019, Dituri was arrested in Washington on state felony drug charges. He was arrested again on April 21, 2020, for failing to appear in the pending case that resulted from his October 2019 arrest. Because Dituri was charged with a criminal felony on or about October 22, 2019, and has pending felony charges, any companies in which he holds more than a 20 percent ownership interest are not eligible to apply for PPP loans.

57. On or about April 30, 2020 – nine days after Dituri's arrest for failure to appear – documents were filed with the WA SOS purporting to transfer ownership of Dituri Construction LLC to Defendant Shibley, who proceeded to open new bank accounts for Dituri Construction LLC at BECU Credit Union the same day.

58. According to information provided by Dituri to law enforcement officers, during the time he owned the company Dituri Construction did not have any employees, and the sole source of revenue was approximately $1,000 Dituri earned for clearing out a garage.

PPP Loan Applications for Dituri Construction LLC

59. That same day, on or about April 30, 2020, Shibley digitally signed an application package in support of a $563,500 PPP loan for Dituri Construction LLC and submitted it to Celtic Bank, which is an SBA Approved Lender that has participated as a PPP lender to small businesses and is an FDIC-insured financial institution. The application identified Shibley as a 90 percent owner of the business.

60. To support the loan amount, Shibley represented that Dituri Construction LLC had an average monthly payroll of $225,400 and 49 employees. The loan application stated that the company paid $392,000 in wages to 49 employees and withheld no federal income taxes from those wages; it also reported that Dituri Construction LLC owed $59,976 in federal taxes for the first quarter of 2020. The form purported to be signed by Shibley and is dated April 28, 2020, two days before the PPP loan application for Dituri Construction LLC was submitted to Celtic Bank.

61. Shibley answered "No" to Application Question 5: "Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?" The application notes that "If questions (5) or (6) are answered 'Yes,' the loan will not be approved." As described above, evidence obtained in the investigation demonstrates that there is probable cause to believe this certification was

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false, as Shibley is currently on probation until December 13, 2020. This denial of his probation status appears consistent with other known denials by Shibley, discussed previously.

62. Additionally, on his loan application, Shibley made several certifications also revealed to be materially false, including, but not limited to:

a. Shibley represented that Dituri Construction LLC was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors. However, as of February 2020, there is no evidence Dituri Construction LLC had employees for whom it paid state payroll taxes.

b. Shibley's loan applications also contained internal discrepancies. In one application to Ready Capital dated April 22, 2020, Shibley stated that Dituri Construction LLC paid wages and compensation totaling $784,000 in the first quarter of 2020. However, as described above, in the loan application to Celtic Bank on or about April 28, 2020, Shibley reported that Dituri Construction LLC paid approximately $392,000 in wages and compensation during that period. Based on my training and experience, these discrepancies suggest that the documents Shibley submitted with his loan applications are falsified to support specific loan amounts sought in each application and, moreover, that Shibley may have used the same business to apply for multiple PPP loans.

c. Shibley supplied the names of seven purported employees with what he claimed to be the last four digits of each individual's social security number and phone number. However, further investigation revealed that none of the individuals actually work or worked for Dituri Construction LLC. Based on my training and experience, this suggests that Shibley is not operating an active business under the name of Dituri Construction LLC and does not have employees, as Shibley represented.

63. On or about May 4, 2020, Celtic Bank approved the full loan amount of $563,500 and subsequently disbursed the loan funds to an account in the name of Dituri Construction LLC at BECU Credit Union, which Shibley had opened on or about April

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30, 2020. Shibley had provided a voided check for this purpose with the PPP loan package.

EIDL Loan for Dituri Construction LLC

64. Shibley opened accounts at Verity Credit Union in the name of Dituri Construction LLC on or about June 3, 2020, approximately four days before applying for an EIDL loan for that entity.

65. According to information provided by the SBA, on or about June 7, 2020, Shibley applied for an EIDL for Dituri Construction LLC using the EIN assigned by the IRS in January 2020. In the application, Shibley reported that Dituri Construction had 49 employees as of January 31, 2020; had $850,000 in gross revenue in the 12-month period before January 31, 2020; and, had $600,000 in cost of goods sold in the same period.

a. The government has obtained emails from Idaho Central Credit Union ("ICCU"), another financial institution at which Shibley applied for a PPP loan on behalf of Dituri Construction LLC, between a representative of ICCU and an individual identifying himself as Shibley. On or about May 4, 2020, after the ICCU representative requested 2019 and 2020 payroll records for Dituri Construction LLC, the individual identifying himself as Shibley responded that "[t]here is no 2019 document for this business, formation date is 01/02/2020." Accordingly, because Dituri Construction LLC was not purportedly formed until on or about January 2, 2020, all of the reported earnings, sales, and employment levels on the EIDL loan for Dituri Construction LLC had to have occurred in the 29 days between January 2, 2020 and January 31, 2020.

b. Based on Shibley's EIDL application, the SBA approved a relief loan to Dituri Construction of $115,000. On or about June 19, 2020, $114,900 was deposited by interstate wire, into Verity Credit Union account #****5400, held in the name of Dituri Construction LLC. Based on information obtained from Verity Credit Union, the wire transfers of the $114,900 in loan funds disbursed by the SBA to Dituri Construction LLC, to Verity Credit Union account #****5400 originated in Kansas City, Missouri. Verity Credit Union has no branches outside of Washington State. Based on

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records obtained from Verity Credit Union, the balance in the account immediately prior to the deposit was approximately $40, which had been deposited as a "New Account Deposit" on or about June 3, 2020. On or about June 19, 2020, $114,440 was transferred from that account to Verity Credit Union account #****5390, in the name of Dituri Construction LLC. Prior to the transfer, the balance in account #****5390 was approximately $5, which was deposited on or about June 3, 2020, as a "New Account Deposit."

66. According to information provided by Verity Credit Union, on or about June 22, 2020, four cashier's checks for $20,000 each were drawn on Verity Credit Union account #****5390 and made payable to Shibley. As of on or about June 23, 2020, approximately $34,445 remained in this account.

67. On or about June 24, 2020, a representative of Verity Credit Union informed the government that the bank had placed a freeze on the Dituri Construction LLC account #****5390 and had placed a stop payment order on the four cashier's checks withdrawn from the account.

68. Other evidence obtained in the investigation also shows that Shibley's assertions about Dituri Construction LLC's operations were materially false.

a. BECU has provided opening documents for Dituri Construction LLC accounts opened by Shibley on or about April 30, 2020 – the same day that he applied for a PPP loan for the entity. The opening documents identify Shibley as the 90 percent owner and sole signatory on the accounts and report that Dituri Construction LLC has "Estimated Annual Sales/Revenue" of just $100,000 to $499,000. This is inconsistent with the claim Shibley made to the SBA that Dituri Construction LLC had gross revenues of $850,000 in 29 days in January 2020.

b. Evidence obtained in the investigation reveals that Dituri Construction LLC did not have employees. This is inconsistent with the claim Shibley made to the SBA that the entity had 49 employees.

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69. On or about June 30, 2020, law enforcement officers executed a dual civil and criminal forfeiture seizure warrant and seized $114,440 from Verity Credit Union account #****5390, held in the name of Dituri Construction LLC.

70. Based on these facts, I submit there is probable cause to believe Subject Property D is forfeitable and should be restrained until the conclusion of this case, as alleged in the Indictment. *See* Dkt. No. 31 at p. 17.

E. <u>Subject Property E:</u> $114,743.59 in U.S. funds, seized on or about June 30, 2020 from Verity Credit Union account #*5320, held in the name of SS1 LLC.**

71. Shibley is the sole governor of SS1 LLC, which was formed in Washington State on or about October 3, 2017.

72. SS1 LLC was administratively dissolved on or about March 3, 2020 because the entity did not file an annual report that was due on or about October 31, 2019. On or about April 6, 2020, a Statement of Reinstatement was filed on behalf of SS1 LLC, listing Shibley's business address as the principal office and Shibley as the sole governor. The EIN for SS1 LLC is not, however, registered with the Washington Department of Revenue and does not appear to be associated with any such registered entity. Additionally, the Washington Employment Security Department, which holds records for state unemployment taxes, has no records related to SS1 LLC. This appears to suggest that SS1 LLC does not operate with employees and has never paid any state taxes.

PPP Loan for SS1 LLC

73. On or about April 20, 2020, Shibley applied for a PPP loan of $820,000 from Harvest Small Business Finance LLC – which is an SBA Approved Lender and has participated as a PPP lender to small businesses.

74. The application identified Shibley as a 100 percent owner of the business

75. Despite being made in SS1 LLC's name, the application form identified the EIN of another entity – SS1 (without the "LLC"), which is also not registered with the

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Washington Department of Revenue or the Washington Employment Security Department.

76. On or about April 21, 2020, a Statement of Correction bearing a signature in Shibley's name was filed with the WA SOS for SS1 LLC. According to the document, the operating agreement for SS1 LLC incorrectly identified Charles Henry Stewart as owning 50 percent of the entity, when, in fact, Shibley owned 100 percent.

77. To support the loan amount, Shibley represented that SS1 LLC had an average monthly payroll of $328,000 and 41 employees. He presented documentation purportedly reflecting that, between January and March 2020, SS1 LLC paid $656,000 in wages to 41 employees and withheld no federal income taxes from those wages and reported that SS1 LLC owed $83,229 in federal taxes for the first quarter of 2020. The documentation purported to be signed by Shibley and is dated April 22, 2020 – at least two days after Shibley purportedly signed the PPP loan application. Additionally, Shibley provided in his loan application documentation purported to reflect that, for 2019, SS1 LLC paid $538,000 in wages, tips, and other compensation. Similarly, the documentation was signed by Shibley on or about April 22, 2020. This suggests that these documents were fraudulently created to support the PPP loan application bearing Shibley signature and dated April 20, 2020.

78. Shibley answered "No" to Application Question 5: "Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?" The application notes that "If questions (5) or (6) are answered 'Yes,' the loan will not be approved." As described above, evidence obtained in the investigation demonstrates that there is probable cause to believe this certification was false, as Shibley is currently on probation until December 13, 2020.

79. Additionally, on his loan application, Shibley made several certifications revealed to be materially false, including, but not limited to:

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a. Shibley certified that SS1 LLC was in operation on February 15, 2020 and has employees for whom it paid salaries and payroll taxes or paid independent contractors. However, there is no evidence SS1 LLC had employees for whom it paid state payroll taxes.

b. Shibley also supplied the names of ten purported employees with what he claimed to be the last four digits of each individual's social security number and phone number. However, further investigation revealed that none of the individuals actually work for SS1 LLC. Based on my training and experience, this suggests that Shibley is not operating an active business under the name of SS1 LLC and does not have employees, as Shibley represented.

80. On or about April 27, 2020, Harvest approved the full loan amount of $820,000. Subsequently, the funds were disbursed to an account in the name of SS1 LLC at BECU Credit Union that Shibley had opened on or about April 21, 2020 – approximately one day after the signature date on the PPP loan application submitted to Harvest. Shibley provided a voided check from the account to Harvest with the loan application package.

81. Based on my training and experience, additional evidence obtained from BECU Credit Union, where Shibley directed Harvest to deposit the PPP loan proceeds, demonstrates that SS1 LLC was not operating in a manner consistent with an existing, operating business.

a. As described above, Shibley only opened accounts in SS1 LLC's name the day after the date on the application bearing his signature for a PPP loan. The accounts had little to no activity other than the receipt or withdrawal of the loan.

b. Moreover, after the PPP loan funds were deposited into a checking account in SS1 LLC's name at BECU Credit Union, the entirety of the funds was transferred to a savings accounts in SS1 LLC's name the same day. Based on my training and experience, such a transfer suggests an attempt to evade detection of the funds in the account to which Shibley directed Harvest to deposit them initially.

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EIDL Loan for SS1 LLC

82. Shibley opened accounts at Verity Credit Union in the name of SS1 LLC on or about June 3, 2020, approximately four days before applying for an EIDL loan for that business.

83. According to information provided by the SBA, on or about June 7, 2020, Shibley applied for an EIDL for SS1 LLC using the EIN assigned by the IRS on or about April 20, 2020. In the application, Shibley reported that SS1 LLC had 41 employees as of January 31, 2020; had $850,000 in gross revenue in the 12-month period before January 31, 2020; and, had $600,000 in cost of goods sold in the same period.

a. Based on Shibley's EIDL application, the SBA approved a relief loan to SS1 LLC of $115,000. On or about June 19, 2020, $114,900 was deposited by interstate wire, into Verity Credit Union account #****5330, held in the name of SS1 LLC. Based on information obtained from Verity Credit Union, the wire transfers of the $114,900 in loan funds disbursed by the SBA to SS1 LLC to Verity Credit Union account #****5330 originated in Kansas City, Missouri. Verity Credit Union has no branches outside of Washington State. Based on records obtained from Verity Credit Union, the balance in the account immediately prior to the deposit was approximately $40, which had been deposited as a "New Account Deposit" on or about June 3, 2020. On or about June 19, 2020, after a deposit of approximately $303 into the account (of a cashier's check drawn on one of SS1 LLC's BECU accounts), $114,743.59 was transferred from that account to Verity Credit Union account #****5320, in the name of SS1 LLC. Prior to the transfer, the balance in account #****5320 was approximately $5, which was deposited on or about June 3, 2020, as a "New Account Deposit."

b. According to information provided by Verity Credit Union, on or about June 22, 2020, three cashier's checks for $20,000 each were drawn on Verity Credit Union account #****5320 and made payable to Shibley. As of on or about June 23, 2020, approximately $54,742.59 remained in this account.

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c. On or about June 24, 2020, a representative of Verity Credit Union informed the government that the bank had placed a freeze on the SS1 LLC account #****5320 and had placed a stop payment order on the three cashier's checks withdrawn from the account.

d. On or about June 30, 2020, law enforcement officers executed a dual civil and criminal forfeiture seizure warrant and seized $114,743.59 from Verity Credit Union account #****5320, held in the name of SS1 LLC.

84. Based on these facts, I submit there is probable cause to believe Subject Property E is forfeitable and should be restrained until the conclusion of this case, as alleged in the Indictment. *See* Dkt. No. 31 at p. 17.

CONCLUSION

85. Based on the facts described above, there is probable cause to believe that all of the Subject Property is forfeitable as proceeds of Wire Fraud and Bank Fraud, and/or as property involved in or traceable to Money Laundering. The Subject Property should, therefore, remain in the custody of the United States pending resolution of this criminal case, to include criminal ancillary forfeiture proceedings.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 26th day of October, 2020

Kathleen Moran

KATHLEEN MORAN
FBI Special Agent

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