EXHIBIT A

U.S. SMALL BUSINESS ADMINISTRATION

WASHINGTON, DC 20416

December 19, 2023

United States Attorney's Office
ATTN: AUSA Christopher R. Arthur
Southern District of West Virginia
300 Virginia Street East, Suite 4000
Charleston, West Virginia 25301

RE: Petition for Remission – SBA-DOJ2023-000066: United States v. $168,849.42 Seized from First Community Bank, Account Number XX2781, et al.; Civil Case No. 5:23-cv-00393

Dear Sir/Madam,

Please find enclosed the Small Business Administration's Petition for Remission together with Exhibit "A" and Wiring Instructions. The SBA is a Cabinet Level Federal Agency and is charged by Congress to administer Covid Relief funds. Your Agency has identified SBA as the victim of fraud resulting in the seizures designated in your notice. SBA has carefully reviewed its records and has matched your Agency's seizure number with the SBA loan or grant and the amount of money SBA has paid on the loan or grant to date. Enclosed is SBA's certified petition which proves that it is owed these funds. Please return the seized assets to SBA for the SBA to properly account for the funds returned for each loan and/or grant as soon as possible. SBA must properly account for the amounts collected for each loan or grant. SBA's Wiring Instructions are included.

Also, please find enclosed with the Petition, SBA's Exhibit B – Certified Statements of Account (CSOAs) and Proof of Payment supporting SBA's claim as the victim and providing the total indebtedness for the PPP loan, EIDL loan, and EIDL grant advance in this matter.

Type	Loan No.	Principal Forgiveness	Interest Forgiveness	PPP Admin. Fee	**Total Indebtedness**
PPP	7702977206	$188,000.00	$1,653.37	$9,400.00	**$199,053.37**

Type	Loan No.	Loan Amount	Accrued Interest*	Application No.	Grant Advance Amount	**Total Indebtedness**
EIDL	6296888002	$2,000,000.00	$148,017.11 as of 12/6/23	3306574670	$10,000.00	**$2,158,017.11**

*Interest is accruing at rate of 3.750% with a daily rate of $205.48 per day, as provided on the corresponding CSOA.

Should you have any questions regarding SBA's Petition for Remission, please email me at the address below and "cc" Shantal Phillips at Shantal.Phillips@sba.gov.

Best Regards,

Anthony Parham

Anthony Parham
Trial Attorney
U.S. Small Business Administration
Washington, DC

Enclosures
Petition for Remission
Exhibit A Table of loans and seizures
Exhibit B CSOAs & Proof of Payment
Exhibit C Wiring instructions

U.S. SMALL BUSINESS ADMINISTRATION

WASHINGTON, DC 20416

IN RE SEIZED PROPERTY

U.S. SMALL BUSINESS ADMINISTRATION'S PETITION FOR REMISSION OF SEIZED PROPERTY

The United States Small Business Administration files this petition for remission in response to the notice from your Agency based upon your Agency's investigation. The seized funds must be returned to SBA as the victim of fraud as was determined by your Agency. SBA as a Federal Agency is not required to execute a "hold harmless agreement." In addition, SBA as a Federal Agency should not be charged any fees by your Agency. All the funds should be returned to SBA so that the funds can be properly accounted for against the loan/or grant. For each seizure identified in Exhibit A, the SBA has searched its Federal Records and determined that the amount seized is due to be returned to SBA. SBA requests that these funds be returned without any delay and as soon as possible.

****

PLEASE SEE WIRING INSTRUCTIONS ATTACHED HERETO ON THE LAST PAGE, EXHIBIT C, for transmitting funds to SBA. PLEASE provide the loan numbers with the wire so that the funds can be properly accounted for. Please send Ms. Shantal Phillips an email when the funds are transmitted. Shantal.Phillips@sba.gov

****

Respectfully submitted,

Eric S. Benderson
Associate General Counsel for Litigation

Anthony Parham

BY: Anthony Parham
Trial Attorney
U.S. Small Business Administration
Office of General Counsel
409 3rd Street, SW, Ste.7200
Washington, DC 20416
Anthony.Parham@sba.gov

JURAT

Pursuant to 17 U.S. Code § 1746, I, Anthony Parham, an Attorney for the Small Business Administration (the Agency), hereby certify that I have the authority to make this Certification and that the official financial records of the U.S. Small Business Administration (SBA) have been reviewed by SBA and each of the seizure(s) listed in Exhibit "A" contain funds which were disbursed by the SBA in the amount shown for each seizure number for the corresponding Loan and/or Grant.

Your Agency notified SBA that it is a victim of fraud based upon its investigation. Consequently, all seized funds should be returned to SBA by sending the funds via the wiring instructions included with this petition. It is essential for SBA to know for each seizure number the amount awarded, the seizure number and the loan number for the seized funds to be properly accounted for by SBA.

I attest and declare under penalty of perjury that the U.S. Small Business Administration's (SBA's) claims to this property are not frivolous, and that the information contained in this Certification and Exhibit "A" in support of the SBA's claim(s) is true and correct.

Signed December 19, 2023

Anthony Parham

Anthony Parham
Trial Attorney
U.S. Small Business Administration
Office of General Counsel
409 3rd Street, SW, Ste.7200
Washington, DC 20416
Anthony.Parham@sba.gov

Petition for Remission
Exhibit A
Dated: 12/19/2023

SEIZURE NUMBER	SBA FILE/LOAN NUMBER	BANK ACCOUNT NUMBER	SEIZURE AMOUNT	SBA LOAN AMOUNT
United States v. $168,849.42 Seized from First Community Bank, Account Number XX2781, et al.; Civil Case No. 5:23-cv-00393		First Community Bank / 8602781 (23-NAS-000006)	$168,849.42	
United States v. $168,849.42 Seized from First Community Bank, Account Number XX2781, et al.; Civil Case No. 5:23-cv-00393		First Community Bank / 9572600 (23-NAS-000007)	$299,604.40	
United States v. $168,849.42 Seized from First Community Bank, Account Number XX2781, et al.; Civil Case No. 5:23-cv-00393		Cash Frozen from Ally Invest Securities, LLC Account Number 643-56295-11 RR A34 (23-NAS-000008)	$2,333,832.28	
United States v. $168,849.42 Seized from First Community Bank, Account Number XX2781, et al.; Civil Case No. 5:23-cv-00393		Securities Frozen from Ally Invest Securities LLC Account Number 643-56295-11-RR-A34 (23-NAS-000009)	$45,000.00	

SEIZURE NUMBER	SBA FILE/LOAN NUMBER	BANK ACCOUNT NUMBER	SEIZURE AMOUNT	SBA LOAN AMOUNT
United States v. $168,849.42 Seized from First Community Bank, Account Number XX2781, et al.; Civil Case No. 5:23-cv-00393	7702977206 (PPP)			$188,000.00
United States v. $168,849.42 Seized from First Community Bank, Account Number XX2781, et al.; Civil Case No. 5:23-cv-00393	6296888002 (EIDL)			$2,009,900.00

Multiple lines per seizure number appear where multiple loans were deposited to the same account. Claim is per loan number subject to seizure amount.

SMALL BUSINESS ADMINISTRATION
Office of Performance, Planning, and the Chief Financial Officer
Program Accounting Division
Loan Accounting Branch
Denver, CO 80259

CERTIFIED STATEMENT OF ACCOUNT

As of 12/15/2023

Loan Number:	7702977206
Lender Name:	First Community Bank
Borrower Name:	R & R Delivery, Inc.
Borrower Address:	144 Arbor Lane Cool Ridge, WV 25825 US

Total Amount Disbursed by Lender to Borrower:

Loan	$188,000.00	
Less: Principal Payments	$0.00	
Less: Principal Forgiveness	$188,000.00	
Lender Principal Balance		$0.00

Total Amount Disbursed by SBA to Lender:

Principal Forgiveness	$188,000.00	
Add: Interest Forgiveness	$1,653.37	
Add: PPP Processing Fee	$9,400.00	
SBA Charges Outstanding		$199,053.37
Total Indebtedness		$199,053.37

Last 1502 Report Date	Interest Paid Through
03/31/2021	03/22/2021

Certified to be a true and accurate statement as reflected by the official accounting records of the Small Business Administration

Vikki Matamoros

Vikki Matamoros, Lead Accountant
Authorized Signature and Title
SBA FORM 596 B (8-81)

12/15/2023
Date

Exhibit B

SMALL BUSINESS ADMINISTRATION
Office of Performance, Planning, and the Chief Financial Officer
Program Accounting Division
Loan Accounting Branch
Denver, CO 80259

CERTIFIED STATEMENT OF ACCOUNT

As of 12/06/2023

(Interest accrued on unpaid balance through above date)

Loan Number:	6296888002
Borrower Name:	R & R Delivery, Inc.
Borrower Address:	144 Arbor Lane COOL RIDGE, WV 25825-9488 US

Total Amount Disbursed:

Loan	$2,000,000.00	
Care and Preservation of Collateral	$0.00	
Recoverable Expenses	$0.00	
Total Amount Disbursed		$2,000,000.00
Less: Repayments		$0.00
Current Balance		$2,000,000.00
Add: Accrued Interest		$148,017.11
Total Charges Outstanding		$2,148,017.11
Less: Escrow Balance		$0.00
Total Indebtedness		$2,148,017.11

Interest rate on loan is 3.750%. Interest calculated thru 12/06/2023 Daily interest rate is currently accruing at a rate of $205.48 per day.

Date of Last Transaction	Interest Paid Through
11/16/2023	07/08/2020

Certified to be a true and accurate statement as reflected by the official accounting records of the Small Business Administration

Luma Jasim, Lead Accountant
Authorized Signature and Title
SBA FORM 596 B (8-81)

12/06/2023
Date

Welcome to the Treasury Check Information System (TCIS)

Payee ID:	EIDG:3306574670\	**TRACE NUMBER:**	06302020101036153380394
Payee Name:	R & R Delivery, Inc.	**ALC:**	73000001
Payment Date:	06/30/2020		
Payment Amount:	$10,000.00	**TAS:**	07320202021 0500000
Schedule Number:	000000SG062901	**BETC:**	DISB
Payment Status:	PAYMENT HAS BEEN PROCESSED		
Payee's FI C/S DAN:	C 0009572660		
FI RTN:	051501299		
FI Name:	FIRST COMMUNITY BANK		
FI Address:	P O BOX 989		
	ONE COMMUNITY PLACE		
	BLUEFIELD, VA 24605	**FI Phone:**	(304) 323-6300
Cancellation Date:			
Reason For Return:		**Orig Return Reason Code:**	

Exhibit C

IMPORTANT

****

INSTRUCTIONS FOR REMITTING FUNDS TO SBA

For Payment of Restitution, Seized or Forfeited Funds:

- ✓ Ensure each payment is separated out when returning
- ✓ Remitting payment via IPAC is preferred
- ✓ Agency Location Code (ALC): 73000001
- ✓ Treasury Account Symbol (TAS): 073 F 3875 000
- ✓ Business Event Type Code (BETC): COLLBCA
- ✓ EIN/TIN: 53-0215587
- ✓ In the "miscellaneous" section, include the petition number, the forfeiture or seizure number, or the loan or application number

For questions about IPAC transfers of funds, please contact Steve Frost at (303) 844-7992, Steve.Frost@sba.gov or Michael Ordija at (630) 712-3653, Michael.Ordija@sba.gov.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY

UNITED STATES OF AMERICA,

Plaintiff.

v. Civil Action No.: 5:23-cv-393

$168,849.42 SEIZED FROM FIRST COMMUNITY BANK, ACCOUNT NUMBER XX:2781;
$299,604.40 SEIZED FROM FIRST COMMUNITY BANK, ACCOUNT NUMBER XX:2660;
$2,333,832.28 CASH FROZEN FROM ALLY INVEST SECURITIES, LLC, ACCOUNT NUMBERXXX-X6295-11 RRA34;
$45,000.00 SECURITIES FROZEN FROM ALLY INVEST SECURITIES, LLC, ACCOUNT NUMBERXXX-X6295-11 RRA34;

Defendants *in rem.*

VERIFIED COMPLAINT FOR FORFEITURE IN REM

COMES NOW, Plaintiff, United States of America (the "United States"), by and through the undersigned Assistant United States Attorney, and alleges as follows:

I. INTRODUCTION

1. This is a civil action for forfeiture in rem, pursuant to 18 U.S.C. § 981(a)(l)(A), (1)(C), the procedures set forth in Rule G of the Supplemental Rules for Admiralty or Maritime Case Claims and Asset Forfeiture Actions, the Federal Rules of Civil Procedure, and 18 U.S.C. § 985, to forfeit assets that theft of government funds, theft of stolen funds across state lines, wire fraud, and money laundering in violation of 18 U.S.C. §§ 287, 641, 1343, 1956, and/or property traceable to such property (the "Defendant Assets"). The Defendant Assets also are involved in monetary transactions in violation of 18 U.S.C. § 1957, laundering of monetary instruments exceeding $10,000.

2. The Defendant Assets, which include 4 Defendant Accounts totaling approximately $2,847,286.10 in value are more particularly described as:

"Defendant Assets"

(i) $168,849.42 seized from First Community Bank account number XX2781 ("personal account 2781");

(ii) $299,604.40 seized from First Community Bank account number XX2660 ("R&R account 2660");

(iii) $2,333,832.28 cash frozen from Ally Invest Securities, LLC, account number XXX-X6295-11 RR A34 ("Ally XXX-X6295-11"); and

(iv) $45,000.00 securities frozen from Ally Invest Securities, LLC, account number XXX-X6295-11 RR A34 ("Ally XXX-X6295-11").

3. This action seeks forfeiture of all rights, title and interest in the above-captioned Defendant Assets because the properties constitute or are derived from proceeds of theft of government funds, theft of stolen funds across state lines, wire fraud, and money laundering in violation of 18 U.S.C. §§ 287, 641, 1343, and 1956. The Defendant Assets also are involved in monetary transactions in violation of 18 U.S.C. § 1957, laundering of monetary instruments exceeding $10,000.

4. In March 2020, in response to the COVID-19 pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act""). *See CARES ACT* § 1102, 134 Stat. at 286 (codified as amended at 15 U.S.C. § 636(a)(36)). The CARES Act authorized the Small Business Administration ("SBA") to provide low-interest loans to small businesses, also known as the Economic Injury Disaster Loan ("EIDL"). SBA's EIDL program provides small businesses with working capital loans of up to $2 million to help overcome the temporary loss of revenue.

II. JURISDICTION AND VENUE

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 3 of 18 PageID #: 3

5. This Court has jurisdiction over the subject matter. See 28 U.S.C. §§ 1345, 1355(a).

6. This Court has in rem jurisdiction over the Defendant Assets. See 28 U.S.C. §§ 1345, 1355(a).

7. The Defendant Assets have been seized and are in the custody of the United States, except Ally XXX-X6295-11 which is currently restrained by the United States.

8. Venue for this action is proper in the Southern District of West Virginia because acts or omissions giving rise to the forfeiture occurred in this District. See 28 U.S.C. § 1355(b)(1).

III. FACTUAL ALLEGATIONS

9. Ross Bailey ("Bailey") obtained thousands of dollars in proceeds in the Defendant Assets, captioned above, and engaged in theft of government proceeds, and engaged in transactions in violation of the money laundering laws, including transactions that promoted his illicit activities, namely his wire fraud. Bailey also used the accounts to attempt to conceal the fraud.

10. Bailey violated 18 U.S.C § 641 (theft of government funds), 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 666 (theft or bribery concerning programs receiving Federal funds), 18 U.S.C. § 1956 (laundering of monetary instruments), and 18 U.S.C. § 1957 (laundering in monetary transactions in property derived from specified unlawful activity exceeding $10,000).

11. Bailey resides within the Southern District of West Virginia, Cool Ridge, Raleigh County, West Virginia.

12. Bailey is a 100% Shareholder, of R&R Delivery Inc. ("R&R"), an S Corporation.

13. R&R is a West Virginia corporation incorporated in 2005 at the West Virginia Secretary of State's Office and the principal place of business is in Raleigh County, West Virginia, which is in the Southern District of West Virginia.

<u>THE ECONOMIC INJURY DISASTER LOAN PROGRAM</u>

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 4 of 18 PageID #: 4

14. The Economic Injury Disaster Loan Program ("EIDL") is a United States Small Business Administration ("SBA") program that provided low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters.

15. The CARES Act authorized the SBA to provide EIDL loans of up to $2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic.

16. To obtain an EIDL loan, a qualifying business is required to submit an application to the SBA and to provide information about the business's operations, such as the number of employees, and revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDL loans for COVID-19 relief, the 12-month period was the 12-month period from January 31, 2019 to January 31, 2020. The applicant was also required to certify that the information in the application was true and correct to the best of the applicant's knowledge.

17. EIDL loan applications were submitted directly to the SBA and processed by the agency with support from a government contractor. 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 sold. Any funds issued under an EIDL loan were issued directly by the SBA.

18. EIDL loan funds could be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments. If the applicant also obtained a loan under the PPP, the EIDL loan funds could not be used for the same purpose as the PPP loan funds.

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 5 of 18 PageID #: 5

19. SBA's Amended Loan Authorization and Agreement includes the following language regarding any potential civil and/or criminal penalties:

> Whoever wrongfully misapplies the proceeds of an SBA disaster loan shall be civilly liable to the Administrator in an amount equal to one-and-one half times the original principal amount of the loan under 15 U.S.C. 636(b). In addition, any false statement or misrepresentation to SBA may result in criminal, civil or administrative sanctions including, but not limited to: 1) fines, imprisonment or both, under 15 U.S.C. 645, 18 U.S.C. 1001, 18 U.S.C. 1014, 18 U.S.C. 1040, 18 U.S.C. 3571, and any other applicable laws; 2) treble damages and civil penalties under the False Claims Act, 31 U.S.C. 3729; 3) double damages and civil penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. 3802; and 4) suspension and/or debarment from all Federal procurement and non-procurement transactions. Statutory fines may increase if amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

RELEVANT LENDING INSTITUTIONS

20. Lender A and Bank 1 (First Community Bank) were financial institutions insured by the Federal Deposit Insurance Company ("FDIC") and Bank 1 was an approved SBA lender of PPP loans.

21. Lender B is the United States Small Business Administration.

BANK ACCOUNTS CONTROLLED BY ROSS BAILEY

22. Bailey maintained the following bank accounts:

(a) named as authorized signer on R&R account XX2660 in the name of R&R whose headquarters is in Man, West Virginia;

(b) named as authorized signer on personal account XX2781;

(c) named as authorized signer on personal account XX3137;

(d) named as authorized signer on personal brokerage account number XXX-X6295-11 RR A34 maintained at Ally Invest Securities, LLC whose headquarters is in Charlotte, North Carolina.

(e) named as authorized signer on an account carried by APEX Clearing whose headquarters is in Dallas, TX.

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 6 of 18 PageID #: 6

FIRST EIDL LOAN for $150,000.00

23. On or about June 25, 2020, Bailey on behalf of R&R electronically applied for an EIDL loan for $150,000.00 with SBA. SBA approved the loan application.

24. On or about July 8, 2020, the SBA sent $150,000.00 in EIDL loan proceeds via an ACH transfer to R&R account XX2660. On or about June 30, 2020, Bailey electronically signed a Loan Authorization and Agreement. Bailey also signed the note to the SBA as the owner of R&R and uploaded the DocuSign Loan Document to SBA.

25. Bailey represented in the Loan Authorization and Agreement that he would use the proceeds of the EIDL Loan solely as working capital to alleviate COVID related economic injury.

26. These EIDL loan proceeds are not being considered as part of this forfeiture action.

SECOND EIDL LOAN OF $350,000.00 (First Modification)

27. On or about August 9, 2021, Bailey on behalf of R&R electronically applied for an EIDL loan modification for $350,000.00 with SBA. SBA approved the First Modification of the EIDL loan, increasing the amount from $150,000.00 to $500,000.00.

28. On or about August 31, 2021, Bailey electronically signed an Amended Loan Authorization and Agreement. Bailey also signed the note to the SBA as the owner of R&R and uploaded the DocuSign Loan Document to SBA. On or about

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 7 of 18 PageID #: 7

September 9, 2021, the SBA sent $350,000.00 in EIDL loan proceeds via an ACH transfer to R&R's account XX2660.

29. Bailey represented in the Amended Loan Authorization and Agreement that he would use the proceeds of the EIDL Loan solely as working capital to alleviate COVID related economic injury.

30. These EIDL loan proceeds are not being considered as part of this forfeiture action.

<u>THIRD EIDL LOAN OF $1,500,000.00 (Second Modification)</u>

31. On or about February 22, 2022, Bailey on behalf of R&R electronically applied for a second modification to the EIDL loan with the SBA, increasing the loan amount by an additional $1,500,000.00.

32. Bailey did not have to submit an additional EIDL Loan Application for the first or second modification due to SBA applying the information contained in the initial EIDL Loan Application.

33. SBA approved the Second Modification of the EIDL loan, increasing the amount from $500,000.00 to $2,000,000.00.

34. On or about February 25, 2022, Bailey electronically signed an Amended Loan Authorization and Agreement for Application Number 3306574670.

35. On or about February 25, 2022, the SBA approved the requested EIDL loan modification. The SBA Loan # is #6296888002.

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 8 of 18 PageID #: 8

36. Bailey signed the note to the SBA as the owner of R&R and uploaded the DocuSign Loan Document to SBA.

37. On or about March 1, 2022, SBA sent $1,500,000.00 in EIDL loan proceeds via an ACH transfer to R&R account XX2660.

38. Bailey represented in the Amended Loan Authorization and Agreement that he would use the proceeds of the EIDL Loan solely as working capital to alleviate economic injury.

39. Instead of using the EIDL funds for permissible purposes, Bailey used the EIDL funds to personally enrich himself by transferring these funds to his personal bank accounts and/or to personal investment accounts.

IMPROPER USE OF EIDL LOAN PROCEEDS

40. On or about 3/8/2022, Bailey transferred $700,000.00 from the R&R account XX2660 to his personal account XX2781.

41. On or about 3/9/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

42. On or about 3/11/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

43. On or about 3/14/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

44. On or about 3/15/2022, Bailey transferred $30,000.00 out of his personal

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 9 of 18 PageID #: 9

account XX2781 to Ally XXX-X6295-11.

45. On or about 3/17/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

46. On or about 3/18/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

47. On or about 3/23/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

48. On or about 3/24/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

49. On or about 3/25/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

50. On or about 3/29/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

51. On or about 3/29/2022, Bailey wire transferred $700,000.00 out of R&R account XX2660 to APEX Clearing.

52. On or about 3/30/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

53. On or about 3/30/2022, Bailey authorized APEX Clearing to wire transfer $699,970.00 to R&R account XX2660.

54. On or about 3/31/2022, Bailey wire transferred $700,000.00 out of R&R

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 10 of 18 PageID #: 10

account XX2660 to APEX Clearing.

55. On or about 4/1/2022, Bailey authorized APEX Clearing to wire transfer $699,970.00 to R&R account XX2660.

56. On or about 4/1/2022, Bailey transferred $700,000.00 from R&R account XX2660 to his personal account XX2781.

57. On or about 4/5/2022, Bailey wire transferred $700,000.00 out his personal account XX2781 to Apex Clearing.

58. On or about 4/22/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

59. On or about 4/27/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

60. On or about 4/29/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

61. On or about 5/6/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

62. On or about 5/10/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

63. On or about 5/13/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

64. On or about 5/18/2022, Bailey transferred $30,000.00 out of his personal

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 11 of 18 PageID #: 11

account XX2781 to Ally XXX-X6295-11.

65. On or about 5/19/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

66. On or about 5/24/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

67. On or about 5/27/2022, Bailey transferred $30,000.00 out of his personal account, XX2781 to Ally XXX-X6295-11.

68. On or about 5/31/2022, Bailey transferred $30,000.00 out of his personal account XX2781 to Ally XXX-X6295-11.

CONCEALMENT BY TRANSFERRING FUNDS AT END OF TAX YEAR

69. On or about 12/30/2022, Bailey authorized APEX Clearing to wire transfer $1,600,000.00 to his personal account XX2781.

70. On or about 12/30/2022, Bailey then transferred $1,600,000.00 out of his personal account XX2781 to R&R account XX2660.

71. On or about 01/06/2023, Bailey transferred $1,500,000.00 out of R&R account XX2660 and back to his personal account XX2781.

72. On or about 01/10/2023, Bailey also transferred $600,000.00 out of R&R account XX2660 to his personal account XX2781.

73. On or about 01/11/2023, Bailey also transferred $200,000.00 out of R&R account XX2660 to his personal account XX2781.

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 12 of 18 PageID #: 12

74. On or about 01/11/2023, Bailey then transferred $2,000,000.00 out of his personal account XX2781 to Apex Clearing.

IV. BASIS FOR FORFEITURE

Count One—Engaging in False, fictitious or fraudulent claims

75. The United States incorporates by reference paragraphs 1 through 74 above as if fully set forth herein.

76. Pursuant to 18 U.S.C. § 287, it is a federal crime to "make[] or present[] to any person or . . . to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent. . ."

77. As set forth above, Bailey knowingly made false, fictitious or fraudulent claims to the United States, and the Defendant Assets were involved in transactions or attempted transactions in violation of 18 U.S.C. § 287, false, fictitious or fraudulent claims, and/or constitute property traceable to such property.

78. Pursuant to 18 U.S.C. § 981(a)(1)(A), "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of [18 U.S.C. §§ 1956 and 1957], or any property traceable to such property" is subject to forfeiture to the United States.

79. Pursuant to 18 U.S.C. § 981(a)(1)(C), "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to any violation of . . . any offense constituting 'specified unlawful activity' . . . , or a conspiracy to commit such offense" is subject to forfeiture to the United States.

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 13 of 18 PageID #: 13

80. Accordingly, the Defendant Assets and all property traceable thereto are subject to condemnation and to forfeiture to the United States, in accordance with 18 U.S.C. §§ 981(a)(1)(A) and 981(a)(1)(C).

Count Two—Public money, property, or records

81. The United States incorporates by reference paragraphs 1 through 80 above as if fully set forth herein.

82. Pursuant to 18 U.S.C. § 641, it is a federal crime to "embezzle[], steal[], purloin[], or knowingly convert[] to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof[.]"

83. As set forth above, Bailey knowingly stole or knowingly converted to his use or use of another without authority money of the United States made or being made under contract for the United States in violation of 18 U.S.C. § 641, public money, property or records.

84. Pursuant to 18 U.S.C. § 981(a)(1)(A), "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of [18 U.S.C. §§ 1956 and 1957], or any property traceable to such property" is subject to forfeiture to the United States.

85. Pursuant to 18 U.S.C. § 981(a)(1)(C), "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to any violation of . . . any offense constituting 'specified unlawful activity' . . . , or a conspiracy to commit such offense" is subject to forfeiture to the United States.

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 14 of 18 PageID #: 14

86. Accordingly, the Defendant Assets and all property traceable thereto are subject to condemnation and to forfeiture to the United States, in accordance with 18 U.S.C. §§ 981(a)(1)(A) and 981(a)(1)(C).

Count Three—Fraud by wire, radio, or television

87. The United States incorporates by reference paragraphs 1 through 86 above as if fully set forth herein.

88. Pursuant to 18 U.S.C. § 1343, it is a federal crime to "devise[], or intend[] to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire. . .in interstate or foreign commerce. . .for the purpose of executing such scheme or artifice. . ."

89. As set forth above, Bailey devised or intended to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire for the purpose of executing such scheme or artifice in violation of 18 U.S.C. § 1343, fraud by wire, radio, or television.

90. Pursuant to 18 U.S.C. § 981(a)(1)(A), "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of [18 U.S.C. §§ 1956 and 1957], or any property traceable to such property" is subject to forfeiture to the United States.

91. Pursuant to 18 U.S.C. § 981(a)(1)(C), "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to any violation of . . . any offense constituting 'specified unlawful activity' . . . , or a conspiracy to commit such offense" is subject to forfeiture to the United States.

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 15 of 18 PageID #: 15

92. Accordingly, the Defendant Assets and all property traceable thereto are subject to condemnation and to forfeiture to the United States, in accordance with 18 U.S.C. §§ 981(a)(1)(A) and 981(a)(1)(C).

<u>Count Four—Laundering of monetary instruments</u>

93. The United States incorporates by reference paragraphs 1 through 92 above as if fully set forth herein.

94. Pursuant to 18 U.S.C. § 1956, it is a federal crime "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—(a)(i) with the intent to promote the carrying on of specified unlawful activity; or . . .(B) knowing that the transaction is designed in whole or in part—(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity."

95. As set forth above, Bailey knew the Defendant Assets represented the proceeds of unlawful activity and knew that the transactions were designed in whole or in part to conceal or disguise the nature, location, the source, the ownership, or the control of the Defendant Assets of specified unlawful activity in violation of 18 U.S.C. § 1956, laundering of monetary transactions.

96. Pursuant to 18 U.S.C. § 981(a)(1)(A), "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of [18 U.S.C. §§ 1956 and 1957], or any property traceable to such property" is subject to forfeiture to the United States.

97. Pursuant to 18 U.S.C. § 981(a)(1)(C), "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to any violation of . . . any offense constituting

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 16 of 18 PageID #: 16

'specified unlawful activity' . . . , or a conspiracy to commit such offense" is subject to forfeiture to the United States.

98. Accordingly, the Defendant Assets and all property traceable thereto are subject to condemnation and to forfeiture to the United States, in accordance with 18 U.S.C. §§ 981(a)(1)(A) and 981(a)(1)(C).

Count Five—Engaging in monetary transactions in property derived from specified unlawful activity

99. The United States incorporates by reference paragraphs 1 through 98 above as if fully set forth herein.

100. Pursuant to 18 U.S.C. § 1957, it is a federal crime to "knowingly engage[] or attempt[] to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified activity."

101. As set forth above, Bailey knowingly engaged or attempted to engage in a monetary transaction in criminally derived property of a value greater than $10,000.00 and was derived from specified unlawful activity in violation of 18 U.S.C. § 1957, engaging in monetary transactions in property derived from specified unlawful activity.

102. Pursuant to 18 U.S.C. § 981(a)(1)(A), "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of [18 U.S.C. §§ 1956 and 1957], or any property traceable to such property" is subject to forfeiture to the United States.

103. Pursuant to 18 U.S.C. § 981(a)(1)(C), "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to any violation of . . . any offense constituting 'specified unlawful activity' . . . , or a conspiracy to commit such offense" is subject to forfeiture to the United States.

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 17 of 18 PageID #: 17

104. Accordingly, the Defendant Assets and all property traceable thereto are subject to condemnation and to forfeiture to the United States, in accordance with 18 U.S.C. §§ 981(a)(1)(A) and 981(a)(1)(C).

V. CONCLUSION

105. By virtue of the foregoing and pursuant to 18 U.S.C. $ 981(f), all right, title and interest in the Defendant Assets vested in the United States at the time of the commission of the unlawful acts giving rise to forfeiture has become and is forfeitable to the United States.

WHEREFORE, Plaintiff, the United States of America requests that: the Clerk of the Court issue warrants for arrest of Defendant Assets ($168,849.42 seized from First Community Bank, account number XX2781; and $299,604.40 seized from First Community Bank, account number XX2660; except for $2,333,832.28 cash frozen from Ally Invest Securities, LLC, account number XXX-X6295-11; and $45,000.00 securities frozen from Ally Invest Securities, LLC, XXX-X6295-11 that this Honorable Court issue a warrant for the arrest of Ally Invest Securities, LLC, account XXX-X6295-11; that notice of this action be provided to persons known or thought to have an interest in or right against the Defendant Assets; that the Defendant Assets be forfeited and condemned to the United States; and such other and further relief as it deems proper and just.

Respectfully submitted,

WILLIAM S. THOMPSON
United States Attorney

By: /s/Christopher R. Arthur
CHRISTOPHER R. ARTHUR (W.Va. Bar # 9192)
Assistant United States Attorney
300 Virginia Street, East, Room 4000
Charleston, WV 25301
Telephone: 304-345-2200
E-mail: chris.arthur@usdoj.gov

Case 5:23-cv-00393 Document 1 Filed 05/17/23 Page 18 of 18 PageID #: 18

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, TO-WIT:

I, Timothy C. Butler, financial forensics investigator from the Office of the West Virginia State Auditor's Financial Forensics Team—Public Integrity and Fraud Unit, detailed to the Office of the United States Attorney in the Southern District of West Virginia, declare under penalty of perjury as provided by 28 U.S.C. § 1746, the following:

That the foregoing Complaint for Forfeiture in rem is based upon reports and information I have gathered and which have been provided to me by various law enforcement personnel, and that everything contained therein is true and correct to the best of my knowledge and belief, except where stated to be upon information and belief, in which case I believe it to be true.

Executed on May 17, 2023.

Timothy C. Butler

Taken, subscribed and sworn to before me this 17th day of May, 2023.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Evaline Bennett Cooper
1690 Carey Place, Charleston, WV 25314
My Commission Expires April 30, 2026

Evaline Bennett Cooper
Notary Public

My commission expires on april 30, 2026.

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS

$168,849.42 SEIZED FROM FIRST COMMUNITY BANK, ACCOUNT NUMBER XX2781;

County of Residence of First Listed Defendant Raleigh

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
❒ 110 Insurance	**PERSONAL INJURY**	**PERSONAL INJURY**	❒ 625 Drug Related Seizure of Property 21 USC 881	❒ 422 Appeal 28 USC 158	❒ 375 False Claims Act
❒ 120 Marine	❒ 310 Airplane	❒ 365 Personal Injury - Product Liability	☒ 690 Other	❒ 423 Withdrawal 28 USC 157	❒ 376 Qui Tam (31 USC 3729(a))
❒ 130 Miller Act	❒ 315 Airplane Product Liability	❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		**PROPERTY RIGHTS**	❒ 400 State Reapportionment
❒ 140 Negotiable Instrument	❒ 320 Assault, Libel & Slander	❒ 368 Asbestos Personal Injury Product Liability		❒ 820 Copyrights	❒ 410 Antitrust
❒ 150 Recovery of Overpayment & Enforcement of Judgment	❒ 330 Federal Employers' Liability	**PERSONAL PROPERTY**		❒ 830 Patent	❒ 430 Banks and Banking
❒ 151 Medicare Act	❒ 340 Marine	❒ 370 Other Fraud		❒ 835 Patent - Abbreviated New Drug Application	❒ 450 Commerce
❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	❒ 345 Marine Product Liability	❒ 371 Truth in Lending		❒ 840 Trademark	❒ 460 Deportation
❒ 153 Recovery of Overpayment of Veteran's Benefits	❒ 350 Motor Vehicle	❒ 380 Other Personal Property Damage	**LABOR**	**SOCIAL SECURITY**	❒ 470 Racketeer Influenced and Corrupt Organizations
❒ 160 Stockholders' Suits	❒ 355 Motor Vehicle Product Liability	❒ 385 Property Damage Product Liability	❒ 710 Fair Labor Standards Act	❒ 861 HIA (1395ff)	❒ 480 Consumer Credit
❒ 190 Other Contract	❒ 360 Other Personal Injury		❒ 720 Labor/Management Relations	❒ 862 Black Lung (923)	❒ 490 Cable/Sat TV
❒ 195 Contract Product Liability	❒ 362 Personal Injury - Medical Malpractice		❒ 740 Railway Labor Act	❒ 863 DIWC/DIWW (405(g))	❒ 850 Securities/Commodities/ Exchange
❒ 196 Franchise			❒ 751 Family and Medical Leave Act	❒ 864 SSID Title XVI	❒ 890 Other Statutory Actions
			❒ 790 Other Labor Litigation	❒ 865 RSI (405(g))	❒ 891 Agricultural Acts
			❒ 791 Employee Retirement Income Security Act		❒ 893 Environmental Matters
REAL PROPERTY	**CIVIL RIGHTS**	**PRISONER PETITIONS**		**FEDERAL TAX SUITS**	❒ 895 Freedom of Information Act
❒ 210 Land Condemnation	❒ 440 Other Civil Rights	**Habeas Corpus:**		❒ 870 Taxes (U.S. Plaintiff or Defendant)	❒ 896 Arbitration
❒ 220 Foreclosure	❒ 441 Voting	❒ 463 Alien Detainee		❒ 871 IRS—Third Party 26 USC 7609	❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
❒ 230 Rent Lease & Ejectment	❒ 442 Employment	❒ 510 Motions to Vacate Sentence			❒ 950 Constitutionality of State Statutes
❒ 240 Torts to Land	❒ 443 Housing/ Accommodations	❒ 530 General	**IMMIGRATION**		
❒ 245 Tort Product Liability	❒ 445 Amer. w/Disabilities - Employment	❒ 535 Death Penalty	❒ 462 Naturalization Application		
❒ 290 All Other Real Property	❒ 446 Amer. w/Disabilities - Other	**Other:**	❒ 465 Other Immigration Actions		
	❒ 448 Education	❒ 540 Mandamus & Other			
		❒ 550 Civil Rights			
		❒ 555 Prison Condition			
		❒ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
18 U.S.C. §§ 287, 641, 1343, 1956 and 1957

Brief description of cause:
Fraud

VII. REQUESTED IN COMPLAINT: ❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P. **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ❒ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE John T. Copenhaver, Jr. DOCKET NUMBER 2:20-cr-00173

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE