UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Michael A. Hammer
	:	
v.	:	Mag. No. 22-10018
	:	
BUTHERDE DARIUS	:	**CRIMINAL COMPLAINT**

I, Special Agent Matthew T. Maltese, being duly sworn, state that the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the United States Attorney's Office, District of New Jersey, and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached pages and made a part hereof.

Special Agent Matthew T. Maltese
United States Attorney's Office
District of New Jersey

Special Agent Matthew T. Maltese attested to this Complaint by telephone pursuant to Federal Rule of Criminal Procedure 4.1(b)(2)(A) on January 25, 2022 in New Jersey.

January 25, 2022
Newark, New Jersey

signed by SA Maltese per instructions

HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE

Signature of Judicial Officer

ATTACHMENT A

Count One
(Bank Fraud)

From at least in or about April 2020 through in or about June 2020, in Somerset County, in the District of New Jersey and elsewhere, defendant

BUTHERDE DARIUS

did knowingly and intentionally execute and attempt to execute a scheme and artifice to defraud one or more financial institutions, as defined by 18 U.S.C. § 20, to wit: Lender 1, the deposits of which are insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, and credits owned by and under the control of such financial institution by means of materially false and fraudulent pretenses, representations, and promises.

Count	Approximate Date	Description
1	June 2, 2020	DARIUS submitted a fraudulent loan application for Paycheck Protection Program ("PPP") funds on behalf of Fabulous Appetizers, LLC to Lender 1 and obtained approximately $852,205.00 in PPP funds.

In violation of Title 18, United States Code, Section 1344.

Count Two
(Wire Fraud)

From at least in or about April 2020 through in or about July 2020, in Somerset County, in the District of New Jersey and elsewhere, defendant

BUTHERDE DARIUS

knowingly and intentionally devised and intended to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing and attempting to execute such scheme and artifice, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, the following writings, signs, signals, pictures, and sounds:

Count	Approximate Date	Description of Wire
2	April 3, 2020	DARIUS submitted a fraudulent loan application for Economic Injury Disaster Loan Program ("EIDL") funds to the Small Business Administration (the "SBA") on behalf of Fabulous Appetizers LLC causing the SBA to deposit approximately $10,000 in EIDL funds into the company's bank account via interstate wire transmission, through the District of New Jersey.

In violation of Title 18, United States Code, Sections 1343 and 2.

Counts Three Through Six
(Money Laundering)

On or about the dates set forth below, in the District of New Jersey and elsewhere, defendant

BUTHERDE DARIUS

did knowingly engage and attempt to engage in monetary transactions by, through, or to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a greater value than $10,000, that is, the transfer of U.S. currency from the Fabulous Appetizers LLC's account at Bank 1 to "Payroll" account at Bank 2, such property having been derived from a specified unlawful activity, that is, bank fraud, in violation of Title 18, United States Code, Section 1344 and/or wire fraud, in violation of Title 18, United States Code, Section 1343.

Count	Approximate Date	Description of Monetary Transaction
3	October 19, 2020	Transfer from the Fabulous Appetizers LLC bank account at Bank 1 in the amount of approximately $26,575.04 into "Payroll" account at Bank 2.
4	October 19, 2020	Transfer from the Fabulous Appetizers LLC bank account at Bank 1 in the amount of approximately $26,575.08 into "Payroll" account at Bank 2.
5	October 19, 2020	Transfer from the Fabulous Appetizers LLC bank account at Bank 1 in the amount of approximately $26,575.08 into "Payroll" account at Bank 2.
6	October 30, 2020	Transfer from the Fabulous Appetizers LLC bank account at Bank 1 in the amount of approximately $27,136.52 into "Payroll" account at Bank 2.

In violation of Title 18, United States Code, Section 1957.

ATTACHMENT B

I, Matthew T. Maltese, a Special Agent with the United States Attorney's Office, District of New Jersey, having conducted an investigation and having discussed this matter with other law enforcement officers who have participated in this investigation, have knowledge of the following facts. Because this Complaint is being submitted for the limited purpose of establishing probable cause, I have not included each and every fact known to me concerning this investigation. Rather, I have set forth only the facts that I believe are necessary to establish probable cause. Unless specifically indicated, all dates described in this affidavit are approximate and all statements or representations described in this affidavit are related in substance and in part.

Overview

1. From in or about April 2020 through in or about June 2020, defendant BUTHURDE DARIUS ("DARIUS") used a variety of false statements and representations to fraudulently obtain over approximately $860,000 in federal COVID-19 emergency relief funds meant for distressed small businesses. Specifically, DARIUS submitted fraudulent loan applications that fabricated employees, falsified tax records, and misclassified business revenues and other company information. DARIUS then misused the proceeds to make personal purchases.

Background

The Paycheck Protection Program

2. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act is a federal law enacted in or about 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. 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 about April 2020, Congress authorized over $300 billion in additional PPP funding. The PPP ended on May 31, 2021.

3. To obtain a PPP loan, a qualifying business was required to submit a PPP loan application, signed by an authorized representative of the business. The PPP loan application required 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. In the loan application, the small business was required state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were used to

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

4. A PPP loan application had to be processed by a participating lender. If the PPP loan application was approved, the participating lender funded the PPP loan using its own money, which was 100% guaranteed by the U.S. Small Business Administration ("SBA"). Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan.

5. PPP loan proceeds must be used by the business on certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities. The PPP allowed 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 after receiving the proceeds and uses a certain amount of the PPP loan proceeds on payroll expenses.

The Economic Injury Disaster Loan Program

6. The Economic Injury Disaster Loan Program ("EIDL") is an SBA program that provides low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters.

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

8. In order to obtain an EIDL, a qualifying business must submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDLs for COVID-19 relief, the 12-month period constituted the 12 months preceding January 31, 2020. In addition, the business entity must have existed in an operational condition on February 1, 2020.

9. The amount of the EIDL is determined based, in part, on the information the applicant provides regarding the revenue, employees, and cost of goods of the company. SBA directly issues any funds disbursed under an EIDL to the applicant company. A company may use EIDL funds for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments. If an applicant also obtained a loan under the PPP, the applicant company was prohibited from using EIDL funds for the same purpose as the PPP funds.

The Defendant and Relevant Entities

10. At all times relevant to this complaint:

a) DARIUS, was a resident of North Plainfield or Piscataway, New Jersey and controlled or was otherwise associated with Fabulous Appetizers, LLC ("Fabulous Appetizers"), a New Jersey limited liability company that purported to be in the catering and food service industry and through which DARIUS fraudulently applied for a PPP loan and an EIDL.

b) Lender-1 was a financial institution insured by the Federal Deposit Insurance Corporation ("FDIC") headquartered in Salt Lake City, Utah.

c) Bank-1 was a financial institution headquartered in San Francisco, California.

d) Bank-2 was a financial institution headquartered in McLean, Virginia.

The Scheme to Defraud

11. From on or about April 2020 to on or about June 2020 DARIUS obtained a PPP loan and one EIDL payment totaling approximately $860,000. As described below, on each application submitted, DARIUS is listed as a primary contact and owner of the entity seeking payments. The PPP loan application included false statements and false supporting documents that fabricated the number of employees for the entity and the average monthly payroll expenses for the entity. The EIDL applications included false statements that fabricated the number of employees and gross revenues for the entity. DARIUS then used the fraudulently obtained proceeds to purchase, among other things, hotel rooms, airfare, and liquor, and to make cash withdrawals of tens of thousands of dollars.

12. In connection with this fraud, DARIUS submitted or caused to be submitted the following PPP loan and EIDL loan applications to Lender-1 and the SBA:

Name of Business Applicant	Amount Disbursed	Lender	Approximate Application Date
Fabulous Appetizers	$852,205	Lender 1	June 2, 2020
Fabulous Appetizers	$0	SBA	April 3, 2020
Fabulous Appetizers	$10,000	SBA	May 11, 2020

Falsified Fabulous Appetizers PPP Application to Lender-1

13. On or about June 2, 2020, Lender-1 received a PPP application in the name of Fabulous Appetizers seeking a PPP loan in the amount of $852,205. The application was submitted in DARIUS' name and listed his Social Security Number. In addition, the application listed DARIUS as the 100 % owner of Fabulous Appetizers and included his home address in North Plainfield, New Jersey, a telephone number subscribed to DARIUS, and an email address of Fabulousapp16@gmail.com. DARIUS represented in the application that the loan proceeds would be used for payroll, lease / mortgage interest, and utilities.

14. The PPP application submitted to Lender-1 stated that Fabulous Appetizers' average monthly payroll was $340,882.10 and that the company had 46 employees. In connection with Fabulous Appetizers' payroll, the PPP application included four purported Employer's Quarterly Federal Tax Returns (IRS Form 941) for 2019 and a purported February 2020 bank statement for Fabulous Appetizers' business bank account at Bank-1 (the "Fabulous Appetizers' Bank Account").

15. Bank records show that the Fabulous Appetizers' Bank Account was opened on or about April 3, 2017. The authorized signer on the account is identified as DARIUS and includes his Social Security Number and indicates his title as "100% Sole Owner." Account opening records and bank statements list Fabulous Appetizers' address as DARIUS's home address in North Plainfield, New Jersey, and two telephone numbers subscribed to DARIUS.

16. The Fabulous Appetizers application to Lender-1 contained the following materially false and fraudulent information:

a. The purported Forms 941 claimed that Fabulous Appetizers had paid employees wages of approximately $4,090,585 for 2019 and withheld approximately $705,590 in federal income tax. Information obtained from the Social Security Administration ("SSA") revealed that Fabulous Appetizers reported no wages paid for the period between 2017 through

2019. No Forms W-3, Transmittal of Wage and Tax Statements, nor Forms W-2, Wage and Tax Statements, were received by the SSA. Likewise, a review of information obtained from the Internal Revenue Service ("IRS") revealed that no Forms 941 were filed by Fabulous Appetizers for the four purported Employer's Quarterly Federal Tax Returns of 2019.

b. The purported February 2020 bank statement for the Fabulous Appetizers' Bank Account contained falsified bank account information. The statement consisted of five pages which reflected numerous transactions including deposits and credits of approximately $28,800 and withdrawals and debits of approximately $29,400. Bank records from Bank-1, however, show that February 2020 bank statement for the Fabulous Appetizers' Bank Account consists of four pages with minimal account activity, including deposits and credits of only approximately $228 and withdrawals and debits of only approximately $320.

Falsified Fabulous Appetizers' EIDL Applications to the SBA

17. On or about April 3, 2020, the SBA received an EIDL application on behalf of Fabulous Appetizers. The contact information for the application was for DARIUS and included his Social Security Number; his home address in North Plainfield, New Jersey, which was also listed as the business address for Fabulous Appetizers; a telephone number subscribed to DARIUS; and an e-mail address of fabulousappetizers@gmail.com. The EIDL application also identified DARIUS as 100% owner of Fabulous Appetizers and indicated that the company had 20 employees as of January 31, 2020, and, for the 12-months prior to the disaster, *i.e.*, January 31, 2019 through January 31, 2020, gross revenues of $2 million and, cost of goods sold of $100,000. Although the check box requesting up to a $10,000 advance was not checked, the bank information for where to send an advance was completed on this EIDL application.

18. The Fabulous Appetizers April 3, 2020 EIDL application to SBA contained the following false and fraudulent information:

a. There is no indication that Fabulous Appetizers employed 20 employees in the 12 months prior to the disaster (January 31, 2019 through January 31, 2020). As noted above, SSA records revealed that Fabulous Appetizers reported no wages paid to employees for the period between 2017 through 2019. No Forms W-3, Transmittal of Wage and Tax Statements, nor

Forms W-2, Wage and Tax Statements, were received by the SSA. Likewise, a review of information obtained from the IRS revealed that no Forms 941 were filed by Fabulous Appetizers for the tax quarters of 2019. In addition, bank records also revealed that from January 1, 2019 through August 30, 2021, Fabulous Appetizers had total deposits of approximately $70,000, excluding the approximate $860,000 in fraudulent CARES Act funds it received. This amount of deposited funds was substantially lower than the $2 million in gross revenue that DARIUS claimed for the company on its EIDL application.

19. On or about May 11, 2020, the SBA received another EIDL application on behalf of Fabulous Appetizers. The contact information for the application was for DARIUS and included his Social Security Number; his home address in North Plainfield, New Jersey, which was also listed as the business address for Fabulous Appetizers; a telephone number subscribed to DARIUS; and an e-mail address of fabulousappetizers@gmail.com. The EIDL application also identified DARIUS as 100% owner of Fabulous Appetizers and indicated that the company had 20 employees as of January 31, 2020, and, for the 12-months prior to the disaster, *i.e.*, January 31, 2019 through January 31, 2020, gross revenues of $300,000 and cost of goods sold of $75,000. On this application, the box indicating DARIUS was seeking an advance of up to $10,000 was checked and the bank address information for where to deposit such an advance was completed.

20. The Fabulous Appetizers' May 11, 2020 EIDL application to SBA contained the following false and fraudulent information:

a. There is no indication that Fabulous Appetizers employed 20 employees in the 12 months prior to the disaster (January 31, 2019 through January 31, 2020). As noted above, SSA records revealed that Fabulous Appetizers reported no wages paid to employees for the period between 2017 through 2019. No Forms W-3, Transmittal of Wage and Tax Statements, nor Forms W-2, Wage and Tax Statements, were received by the SSA. Likewise, a review of information obtained from the IRS revealed that no Forms 941 were filed by Fabulous Appetizers for the tax quarters of 2019. In addition, bank records also revealed that from January 1, 2019 through August 30, 2021, Fabulous Appetizers had total deposits of approximately $70,000, excluding the approximate $860,000 in fraudulent CARES Act funds it received. This amount of deposited funds was substantially lower than the $300,000 in gross revenue

that DARIUS claimed for the company on this EIDL application.

21. The SBA denied the May 11, 2020 EIDL application by letter dated June 16, 2020.

Misuse of PPP and EIDL Proceeds

22. On or about June 3, 2020, the Fabulous Appetizers Bank Account received approximately $852,205 in fraudulently obtained PPP loan proceeds from Lender-1. Prior to this loan disbursement, the Fabulous Appetizers Bank Account had an account balance of less than $20.

23. On or about July 14, 2020, the Fabulous Appetizers Bank Account received an EIDL deposit of $10,000 referencing Fabulous Appetizers' April 3, 2020 EIDL application. Prior to this disbursement, the Fabulous Appetizers Bank Account did not have any other deposits during the period from June 3, 2020 to on or about July 14, 2020.

24. From July 15, 2020 through August 31, 2021, the Fabulous Appetizers Bank Account had total withdrawals of approximately $641,800 through approximately 970 transactions with the withdrawals ranging from approximately $0.10 to $63,368. These withdrawals included payments to and for an e-commerce company, hotels, nail salons, food, liquor stores, airfare, and approximately $58,000 in cash withdrawals.

25. In addition, these withdrawals during this period also included approximately $300,000 in payments for purported "payroll" payments. As set forth below, the purported "payroll" payments are consistent with an attempt to conceal the fact that Fabulous Appetizers had not been an ongoing business with actual employee payroll and was thus ineligible to receive a PPP loan in the amount of $852,205. Notably, from on or about January 1, 2019 through on or about June 3, 2020, and prior to the PPP loan deposit, the Fabulous Appetizers Bank Account records do not include any legitimate payments for any payroll expenses. In addition, as described above, the company did not report any wages to employees to the SSA for 2017 through 2019, nor did it file any Forms W-3, Transmittal of Wage and Tax Statements or Forms W-2, Wage and Tax Statements, with the SSA. And a review of information obtained from the IRS revealed that no Forms 941 were filed by Fabulous Appetizers for the tax quarters of 2019.

26. Moreover, law enforcement lawfully obtained text message communications between DARIUS and another individual ("Individual-1") in or about August 2020 related to sham payroll payments. Specifically, in these text messages exchanges, DARIUS provided identifying information to Individual-1

pertaining to three individuals who could serve as fake employees for Fabulous Appetizers. In addition, DARIUS and Individual-1 also discuss Individual-1 providing the names and information of several additional individuals to serve as fake employees to support the sham payroll scheme.

27. In furtherance of this "payroll" scheme, on or about October 19, 2020, approximately $26,575 was transferred from Fabulous Appetizers Bank Account to a sham payroll account at Bank-2 (the "Sham Payroll Account"). That same day, two additional transfers were made from the Fabulous Appetizers' account at Bank-1 to the Sham Payroll Account, both in the amount of approximately $26,575. Numerous additional transfers were made in furtherance of this scheme, including approximately $27,136 transferred on or about October 30, 2020, from the Fabulous Appetizers Bank Account to the Sham Payroll Account.