UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-20001-CR-COOKE/O'SULLIVAN
18 U.S.C. § 371
18 U.S.C. § 982

UNITED STATES OF AMERICA

vs.

DIAMOND BLUE SMITH,

Defendant.
_______________________________________/

INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times material to this Information:

The Paycheck Protection Program

1. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was 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. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP").

2. In order to obtain a PPP loan, a qualifying business submitted a PPP loan application, which was 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 PPP

loan application (Small Business Administration ("SBA") Form 2483), the small business (through its authorized representative) was required to provide, 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 were required to provide documentation confirming their payroll expenses.

3. A PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies. While it was the participating lender that issued the PPP loan, the loan was 100% guaranteed by the 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.

4. PPP loan proceeds were required to 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 spent the loan proceeds on these expense items within a designated period of time and used a defined portion of the PPP loan proceeds on payroll expenses.

The Defendant, Related Entities and Individuals

5. Throwbackjerseys.com, LLC ("Throwbackjerseys.com") was a Florida corporation with its listed principal address at 7958 Pines Blvd, PMB 453, Pembroke Pines, FL 33024.

6. Blue Star Records, LLC ("Blue Star Records") was a Florida corporation with its listed principal address at 4011 N.W. 194th Street, Miami Gardens, FL 33056.

7. Defendant **DIAMOND BLUE SMITH** was a resident of Broward County, Florida, and was the manager and registered agent of Throwbackjerseys.com and Blue Star Records.

8. Bank 1 was a financial institution based in Salt Lake City, Utah, that was insured by the Federal Deposit Insurance Corporation ("FDIC"). Bank 1 was an approved SBA lender of PPP loans.

9. Bank Processor 1 was a third-party company processor, based in Redwood City, California, that processed PPP loan applications for Bank 1.

10. Individual 1 was a resident of Broward County, Florida.

11. Individual 2 was a resident of Broward County, Florida.

Conspiracy to Commit Wire Fraud
(18 U.S.C. § 371)

From in or around May 2020, through in or around August 2020, in Miami-Dade and Broward Counties, in the Southern District of Florida, and elsewhere, the defendant,

DIAMOND BLUE SMITH,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate, and agree with Individual 1 and with others known and unknown to the United States Attorney, to knowingly, and with the intent to defraud, devise, and intend 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, knowing that the pretenses, representations, and promises were false and fraudulent when made, and, for the purpose of executing the scheme and artifice, did knowingly transmit and cause to be transmitted, by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

12. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission

of false and fraudulent applications for loans and grants made available through the SBA to provide relief for the economic effects caused by the COVID-19 pandemic, including PPP loans; (b) offering, paying, and receiving kickbacks in return for referring other individuals for the submission of false and fraudulent loan applications; and (c) diverting fraud proceeds for the defendant's and co-conspirators' personal use, the use and benefit of others, and to further the conspiracy.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and his co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

13. **DIAMOND BLUE SMITH**, Individual 1, and other co-conspirators submitted and caused the submission of fraudulent PPP loan applications for Throwbackjerseys.com, Blue Star Records and other entities, via interstate wire communications.

14. The PPP loan applications submitted by **DIAMOND BLUE SMITH**, Individual 1 and other co-conspirators for Throwbackjerseys.com, Blue Star Records, and other entities included falsified bank statements and payroll tax forms, among other things, and falsely and fraudulently represented the borrowing entities' number of employees and amount of monthly payroll.

15. **DIAMOND BLUE SMITH**, Individual 1, and other co-conspirators recruited co-conspirators to submit additional fraudulent PPP loan applications, often in exchange for kickbacks from the fraudulently obtained PPP loans.

16. As a result of such false and fraudulent PPP loan applications, Bank 1 and other participating banks disbursed millions of dollars' in PPP loan proceeds, which were transferred to **DIAMOND BLUE SMITH**, Individual 1, and other co-conspirators via interstate wire

transmissions.

OVERT ACTS

In furtherance of the conspiracy, and to accomplish its object and purpose, at least one of the co-conspirators committed and caused to be committed, in the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

1. On or about May 17, 2020, Individual 1 sent **DIAMOND BLUE SMITH** a text message that stated: "Hi please call me working on your sba file."

2. On or about May 18, 2020, **DIAMOND BLUE SMITH** sent Individual 1 a text message confirming that he had been able to "log in."

3. On or about May 18, 2020, Individual 1 electronically submitted false and fraudulent documents on behalf of Throwbackjerseys.com to Bank 1 through Bank Processor 1, including false payroll tax forms falsely stating that Throwbackjerseys.com had a quarterly payroll of more than $500,000, for 20 employees.

4. On or about May 18, 2020, **DIAMOND BLUE SMITH** electronically signed the PPP loan application form for Throwbackjerseys.com using his initials "DBS." The application form requested a loan amount of $426,717, based on the false representations that the company had 21 employees and an average monthly payroll of $170,687.

5. On or about May 18, 2020, **DIAMOND BLUE SMITH** sent Individual 1 a text message with a screenshot of a message from Bank Processor 1 stating, "Thank you for accepting your offer for the Paycheck Protection Program. We've initiated an ACH deposit into the bank account you provided in your application."

6. On or about May 18, 2020, **DIAMOND BLUE SMITH** sent text messages to Individual 1 that contained information for Blue Star Records, including bank name, account

number, routing number, bank address, EIN tax ID number, business address, and the name "SMITH, DIAMOND," as the individual associated with the business.

7. On or about May 20, 2020, **DIAMOND BLUE SMITH** sent a wire transfer payment of $90,000 from the Throwbackjerseys.com bank account to Individual 1's bank account.

8. On or about May 21, 2020, **DIAMOND BLUE SMITH** sent a text message to Individual 1 with information regarding the referral of an individual into the scheme. This text message included the business name, date of incorporation, EIN tax ID number, business address, bank account number, the name of the individual associated with the business, email address, and phone number.

9. On or about May 21, 2020, **DIAMOND BLUE SMITH** sent a text message to Individual 1 asking what information was "needed for bluestar" and confirmed to Individual 1 that Blue Star Records was his company.

10. On or about May 21, 2020, Individual 1 electronically submitted false and fraudulent documents on behalf of Blue Star Records to Bank 1 through Bank Processor 1, including false payroll tax forms that falsely and fraudulently stated that Blue Star Records had a quarterly payroll of more than $800,000, for 35 employees, and that falsely and fraudulently represented Individual 2 as the owner of Blue Star Records. The PPP loan application form requested a loan amount of $708,065 for Blue Star Records.

11. On or about May 26, 2020, after receiving a PPP loan of $708,065 for Blue Star Records, **DIAMOND BLUE SMITH** sent a wire transfer payment of $50,000 from the Blue Star Records bank account to the bank account belonging to Individual 1.

12. On or about June 4, 2020, **DIAMOND BLUE SMITH** sent Individual 1 a text message with a second referral of an individual into the scheme, referencing "another client." The

message attached a hand-written note with the individual's name, address, cell phone number, social security number, date of birth, email address, banking information, name and address of the business.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATIONS

1. The allegations contained in this Information are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of certain property in which the defendant, **DIAMOND BLUE SMITH**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 371, as alleged in this Information, the defendant shall forfeit to the United States any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as the result of such violation pursuant to Title 18, United States Code, Section 982(a)(2)(A).

3. The property subject to forfeiture includes, but is not limited to, a 2010 black Ferrari 458 Italia, bearing vehicle identification number ZFF67NFA0A0175340.

4. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to the forfeiture of substitute property under the provisions of

Title 21, United States Code, Section 853(p).

All pursuant to Title 18, United States Code, Section 982(a)(2)(A), and the procedures set forth in Title 21, United States Code, Section 853, as incorporated by Title 18, United States Code, Section 982(b)(1).

for ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

AUSA, for DANIEL S. KAHN
ACTING CHIEF, FRAUD SECTION

AIMEE C. JIMENEZ
ASSISTANT UNITED STATES ATTORNEY

AUSA for PHILIP B. TROUT
TRIAL ATTORNEY, FRAUD SECTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v.

Diamond Blue Smith,

Defendant. /

CASE NO.________________________

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division: (Select One)
✓ Miami __ Key West
__ FTL __ WPB __ FTP

New defendant(s) Yes ____ No ____
Number of new defendants ____
Total number of counts ____

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect ____________

4. This case will take 0 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

	(Check only one)		(Check only one)	
I	0 to 5 days	✓	Petty	
II	6 to 10 days		Minor	
III	11 to 20 days		Misdem.	
IV	21 to 60 days		Felony	✓
V	61 days and over			

6. Has this case previously been filed in this District Court? (Yes or No) No
If yes: Judge Case No. ____________
(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) Yes
If yes: Magistrate Case No. 20-mj-03723-EGT
Related miscellaneous numbers: ____________
Defendant(s) in federal custody as of Arrested on October 5, 2020 - not in custody
Defendant(s) in state custody as of ____________
Rule 20 from the District of ____________

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to August 9, 2013 (Mag. Judge Alicia O. Valle)? Yes ____ No ✓

8. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard)? Yes ____ No ✓

9. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss)? Yes ____ No ✓

for:

AIMEE C. JIMENEZ
ASSISTANT UNITED STATES ATTORNEY
Court No. A5500795

*Penalty Sheet(s) attached

REV 6/5/2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: DIAMOND BLUE SMITH

Case No:

Count #: 1

Conspiracy to Commit an Offense against the United States, i.e., Wire Fraud

Title 18, United States Code, Section 371

* **Max. Penalty**: Five (5) years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America
v.
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Defendant

Case No.

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: 01/05/2021

/s/ Diamond Blue Smith
Defendant's signature

/s/ Adriana Collado-Hudak
Signature of defendant's attorney

Adriana Collado-Hudak
Printed name of defendant's attorney

Judge's signature

Judge's printed name and title