AF Approval TLK for JAM   Chief Approval

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.   CASE NO. 2:23-cr-88-SPC-KCD

DIOP MCKENZIE

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Roger B. Handberg, United States Attorney for the Middle District of Florida, and the defendant, Diop McKenzie, and the attorney for the defendant, Russell K. Rosenthal, mutually agree as follows:

A. Particularized Terms

1. Counts Pleading To

The defendant shall enter a plea of guilty to Counts One, Four and Five of the Indictment. Count One charges the defendant with bank fraud, in violation of 18 U.S.C. §§ 1344 and 2. Count Four charges the defendant with wire fraud, in violation of 18 U.S.C. §§ 1343 and 2. Count Five charged the defendant with aggravated identity theft, 18 U.S.C. § 1028A(a)(1) and 2.

2. <u>Maximum Penalties</u>

Count One carries a maximum sentence of thirty (30) years of imprisonment, a fine of $1,000,000, or twice the gross gain caused by the offense, or twice the gross loss caused by the offense, whichever is greater, a term of supervised release of not more than five years, and a special assessment of $100. Count Four carries a maximum sentence of thirty (30) years imprisonment, a fine of $1,000,000, or twice the gross gain caused by the offense, or twice the gross loss caused by the offense, whichever is greater, a term of supervised release of not more than five years, and a special assessment of $100. Count Five carries mandatory term of two (2) years of imprisonment, which will be consecutive to any other sentence imposed, a fine of up to $250,000, a term of supervised release of not more than one year, and a special assessment of $100.

With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offenses, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offenses, or to the community, as set forth below.

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offenses with which defendant has been charged and to which defendant is pleading guilty.

The elements of Count One, which charges bank fraud, in violation of 18 U.S.C. § 1344, are as follows:

First:	The Defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution, or to get money, assets, or other property from a financial institution, by using false or fraudulent pretenses, representations, or promises about a material fact;
Second:	The false or fraudulent pretenses, representations, or promises were material;
Third:	The Defendant intended to defraud the financial institution or someone; and
Fourth:	The financial institution was federally insured or chartered.

The elements of Count Four, which charges wire fraud, in violation of 18 U.S.C. § 1343, are as follows:

First:	The Defendant knowingly devised or participated in a scheme to defraud some by using false or fraudulent pretenses, representations, or promises;
Second:	The false pretenses, representations, or promises were about a material fact;

Third: The Defendant acted with the intent to defraud; and

Fourth: The Defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

The elements of Five, which charges aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1), are as follows:

First: The Defendant knowingly transferred, possessed, or used another person's means of identification or identification documents;

Second: Without lawful authority; and

Third: During and in relation to wire fraud, as alleged in the indictment.

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts Two and Three, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the

United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. § 3663A(a) and (b), defendant agrees to make full restitution to the Small Business Administration (SBA) and Celtic Bank Bluevine. While this amount will be determined and set by the Court, the defendant agrees that restitution should be ordered for approximately $133,339.84 which he admits he obtained from the scheme.

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG § 3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG § 3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG § 3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Low End

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will not oppose the defendant's request to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

10. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant, or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, the following:

a. $117,832.00 in proceeds the defendant admits he obtained, as the result of the commission of the offenses to which the defendant is pleading guilty;

b. Approximately $91,906.91 seized from Fidelity Investments account number ending in 7068, held in the name of K.G.

and D.J.;

c. Approximately $8,000.62 seized from Fidelity Investments account number ending in 3064, held in the name of K.G.; and

d. Approximately $10,074.44 seized from BMO Harris Bank account number ending in 4303, held in the name of M.D.

The amounts in paragraphs "b", "c", and "d" above represent proceeds of the offenses to which the defendant is to plead guilty.

The net proceeds from the forfeiture and sale of any specific assets will be credited to and reduce the amount the United States shall be entitled to forfeit as substitute assets pursuant to 21 U.S.C. § 853(p).

The defendant acknowledges and agrees that (1) the defendant obtained $117,832.00 as a result of the commission of the offenses and (2) as a result of the acts and omissions of the defendant, the proceeds not recovered by the United States through the forfeiture of the directly traceable assets listed herein have been transferred to third parties and cannot be located by the United States upon the exercise of due diligence. Therefore, the defendant agrees that, pursuant to 21 U.S.C. § 853(p), the United States is entitled to forfeit any other property of the defendant (substitute assets), up to the amount of proceeds the defendant obtained, as the result of the offenses of conviction and, further, the defendant consents to, and agrees not to oppose, any motion for substitute assets filed by the United States up to the amount of proceeds obtained from commission of the offenses and consents to the entry of the forfeiture order into the Treasury Offset Program.

The defendant additionally agrees that since the criminal proceeds have been transferred to third parties and cannot be located by the United States upon the exercise of due diligence, the preliminary and final orders of forfeiture should authorize the United States Attorney's Office to conduct discovery (including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas), pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, to help identify, locate, and forfeit substitute assets.

The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence and the United States shall not be limited to the forfeiture of the substitute assets, if any, specifically listed in this plea agreement.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, judicial or administrative forfeiture action. The defendant also agrees to waive all constitutional, statutory and procedural challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees to take all steps necessary to identify and locate all property subject to forfeiture (including substitute assets) and to transfer custody of such property to the United States before the defendant's sentencing. To that end, the defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control, including all assets held by nominees, to execute any documents requested by the United States to obtain from any other parties by lawful means any records of assets owned by the defendant, and to consent to the release of the defendant's tax returns for the previous five years. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct.. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Federal Rule of Criminal Procedure 11 and USSG § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of the defendant's cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete information about forfeitable assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture, including the forfeiture of any substitute assets, is final.

B. <u>Standard Terms and Conditions</u>

1. <u>Restitution, Special Assessment and Fine</u>

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, <u>shall</u> order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (28 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. The special assessment is due on the date of sentencing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offenses to which the defendant is pleading provide for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the counts to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

FACTS

Background on PPP

In March of 2020, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was enacted as a federal law, designed to provide emergency financial assistance to the millions of Americans who were 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).

To obtain a PPP loan, a qualifying business was required to submit 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 (SBA Form 2483), the small business (through its authorized representative) was required to 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. Individuals who operated under a sole proprietorship or as an independent contractor or eligible self-employment individual were also eligible to apply for a PPP loan.

PPP loan applications were processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were 100% guaranteed by the SBA. Data from the application, including information from 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. PPP loan proceeds were required to be used for certain permissible expenses, including payroll costs, mortgage interest, rent, and utilities. Under the applicable PPP rules and guidance, the interest and principal on the PPP loan was eligible for forgiveness if the business spent the loan proceeds on these expense items within a designated period of time and used a certain portion of the loan towards payroll expenses.

Background on EIDL

Another source of relief provided through the CARES Act was the Economic Injury Disaster Loan ("EIDL") Program, which was a SBA program that provided low interest financing to small businesses, renters, and homeowners in regions affected by declared disasters. 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. In addition, the CARES Act authorized the SBA to issue advances of up to $10,000 to small businesses within three days of applying for an EIDL loan. The amount of the advance was determined by the number of employees the applicant certified having, and the advances did not have to be repaid.

For one to obtain an EIDL loan and advance, a qualifying business had to submit an application to the SBA and provide information about its operation, 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. In the case of EIDL loans for COVID-19 relief, the 12-month period was that preceding January 31, 2020. The applicant also had to certify that all the information in the application was true and correct to the best of the applicant's knowledge.

EIDL applications were submitted directly to the SBA. 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. Any funds issued under an EIDL or advance were issued directly by the SBA. EIDL funds could be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rents, and mortgage payments. 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.

<u>Investigation</u>

The investigation revealed the defendant, Diop McKenzie, applied for and had PPP and EIDL loans funded. The loan applications used fraudulent personal identifying information of other individuals without their knowledge, falsely claimed the amount of gross income, and failed to report additional loans. Bank records do not reflect that the funds from the PPP and EIDL loans were used for business related purposes; instead, McKenzie used those funds on personal expenses.

Bank Fraud

PPP Loan (Count One)

In or around May 5, 2020, and continuing through September 2020, the defendant, a resident of the Middle District of Florida, submitted a fraudulent PPP application to a financial institution federally insured by the Federal Deposit Insurance Corporation ("FDIC").

More specifically, on May 5, 2020, the defendant submitted a fraudulent PPP loan application, in the name of K.V., to Celtic Bank Bluevine seeking a PPP loan through the SBA in the amount of $20,832.00. Celtic Bank Bluevine was a federally-insured financial institution based in Salt Lake City, Utah. This financial institution participated in the SBA's PPP as a lender and was authorized to lend funds to eligible borrowers under the terms of the PPP. The defendant falsely represented in the PPP loan application that the business was located at 316 Cultural Park Boulevard, Cape Coral, Florida 33990. Further, the defendant falsely represented that the date that the business was established was January 2, 2019, and the average monthly payroll was listed as $8333.00. The use of the proceeds provision of the application falsely represented $15,624.00 for payroll costs and $5,208.00 for rent for the business. With the Direct Deposit Enrollment Form, McKenzie included a voided check from Chime Bank, account number ending 3742, which is the bank account that the PPP loan proceeds were funded to. The Chime account was in the name K.V. with an address of 2545 Liberty Park Drive, Apartment 5103, Cape Coral, Florida 33909, which was McKenzie's address at the time of the loan application. In addition, a fictitious 2019 Individual Income Tax Return for K.V., with the individual's Social Security Number, was provided during the loan process.

On May 21, 2020, Chime Bank account number ending in 3742 received a deposit from Celtic Bank Bluevine in the amount of $20,832.00, which are the PPP loan proceeds. Shortly after the PPP loan proceeds were deposited, the funds were used to pay multiple merchants in the Cape Coral and Fort Myers area. The PPP funds were not used for business related purposes. Instead, the defendant used the PPP funds for unauthorized purposed and for his own personal benefit.

EIDL Loan (Count Four)

During this investigation, law enforcement obtained and reviewed the EIDL loan application that was submitted by McKenzie and funded. As part of the application, McKenzie was required to make a number of representations, authorizations, and certifications. McKenzie certified, among other things, that the loan application was true, correct and complete, and he signed and submitted the application electronically.

On July 2, 2020, McKenzie submitted an EIDL loan application for a $97,000.00 loan, in the name M.D. The defendant used the name and Social Security number of another individual to fraudulently apply of the loan. Further in the application, the defendant falsely represented that the revenue for the business for the twelve months prior to the date of the disaster, January 31, 2020, was $380,000, and falsely represented that the cost of goods sold for the twelve months prior to the date of the disaster was $61,000. The loan was fraudulently applied for using the IP address that was assigned to McKenzie's Comcast account.

On July 6, 2020, BMO Harris Bank account number ending in 4303 was opened in the name of M.D., with a mailing address of 2545 Liberty Park Drive apartment 5103, Cape Coral, Florida 33909, which is McKenzie's previous address. On the bank statement dated July 16, 2020, to August 15, 2020, the purported account holder changed the mailing address to 404 Cultural Park Boulevard, Cape Coral, Florida 33990, which was McKenzie's then address.

On July 24, 2020, the EIDL loan number was funded in the amount of $96,900.00, minus a $100 filing fee, to BMO Harris Bank account number ending 4303, held in the name M.D.

Aggravated Identity Theft (Count Five)

In or around June 2020, and continuing through September 2020, the defendant did knowingly use, without lawful authority, a means of identification of another person, M.D. More specifically, the defendant used M.D.'s name, social security number, and date of birth in a fraudulent EIDL application that was sent via an electronic transmission from the Middle District of Florida to the SBA's servers located outside the State of Florida.

Additionally, on September 14, 2020, an Officer with the Cape Coral Police Department conducted a traffic stop as Diop McKenzie was driving while his license was suspended. McKenzie consented to a search his person, which lead to the discovery of two debit cards, BMO Harris Bank N.A. and Acorns – Lincoln Savings Bank, embossed with the name M.D. The last four numbers of the Acorns card were 0948 and the last four numbers of the BMO Harris card were 4411. When McKenzie was found in possession of the debit cards in another individual's name, he told the officer that M.D. was his stepfather and the cards were given to him for personal use. The BMO Harris card ending in the last four numbers 4411 was linked to BMO Harris Bank account number ending in 4303 held in the name M.D. The Acorns- Lincoln Savings Bank card ending in the last four numbers 0948 is linked to an Acorns Spend account number ending 7941 in the name M.D., with a mailing address of 404 Cultural Park Boulevard, Cape Coral, Florida 33990, which is McKenzie's address.

Subsequently, law enforcement located and contacted the real M.D. residing in Iowa, who confirmed that he had no knowledge of McKenzie and that M.D. had never applied for any cards from the issuing banks. Further investigation revealed that M.D. had not applied for EIDL loan fraudulently submitted in his name, nor had he received any funds from the loan.

Furthermore, the bank records reveal that account number ending in 4303 held a balance of $0 from the time that it was opened on July 6, 2020, until funds from an EIDL loan from the SBA was deposited on July 27, 2020. The EIDL loan was in the amount of $96,900. Bank statements for the period of August 16, 2020, to September 15, 2020, show 59 withdrawals totaling approximately $60,264.85. As of September 15, 2020, BMO Harris account ending in 4303 had a balance of $17,626.92.

Forfeiture – Seizure Warrants

During the course of this investigation, agents located the following bank and investment accounts which were funded with proceeds from PPP and EIDL loans that the defendant fraudulently obtained:

BMO Harris Bank account number ending 4303
Fidelity Investments account number ending 7068
Fidelity Investments account number ending 3064

The bank records revealed that Fidelity Investments accounts were held in the names of others, and the accounts had been funded from the SBA loan proceeds. As of November 30, 2020, the remaining balance of Fidelity Investments account number ending 7068 was $91,903.86 and of Fidelity Investments account number ending 3064 was $8,000.35.

BMO Harris Bank account number ending 4303, held in the name M.D., received a total of $96,900.00 in SBA loan proceeds. As of January 15, 2021, the remaining balance of BMO Harris Bank account number ending 4303 was $10,074.44.

On March 25, 2021, USSS obtained three seizure warrants for the accounts held at BMO Harris Bank and Fidelity Investments.

Approximately $109,000 in total was seized from three accounts, and all of the cashier checks were sent to the Asset Forfeiture Division.

12. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

13. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this ______ day of ________, 2024.

ROGER B. HANDBERG
United States Attorney

Diop McKenzie
Defendant

Yolande G. Viacava
Assistant United States Attorney

Russell K. Rosenthal
Attorney for Defendant

Jesus M. Casas
Assistant United States Attorney
Chief, Fort Myers Division