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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: LRT
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA
Plaintiff

v

(1) MICHAEL FULLERTON
(3) TIFFANY FULLERTON
Defendants

CRIMINAL NO. 21-CR-216-RP

THIRD SUPERSEDING INDICTMENT

[Ct. 1: 18 U.S.C. § 1349 – Conspiracy to Commit Bank and Wire Fraud;
Cts. 2-3: 18 U.S.C. § 1344 – Bank Fraud;
Cts. 4-5: 18 U.S.C. § 1343 – Wire Fraud;
Ct. 6: 18 U.S.C. § 1956 – Conspiracy to Commit Money Laundering;
Cts. 7-9: 18 U.S.C. § 1957 – Engaging in Monetary Transactions in Criminally Derived Property;
Cts. 10-11: 18 U.S.C. § 1028A – Aggravated Identity Theft]

THE GRAND JURY CHARGES:

INTRODUCTION

1. Beginning in or about April 2020, and continuing until on or about February 2021, in the Western District of Texas and elsewhere, Defendants **MICHAEL FULLERTON, JOSEPH ROBLES, TIFFANY FULLERTON, and DAVID SCOTT STARKES**, together with others known and unknown, devised and executed a scheme to defraud, and attempted to defraud, one or more financial institutions and the U.S. Small Business Administration (SBA), an agency of the United States Government, in connection with stimulus and economic assistance programs created by the federal government in response to the COVID-19 pandemic.

2. Defendants used false documents and misrepresentations, including false and fraudulent loan applications and attachments thereto, to influence and attempt to influence

numerous financial institutions to approve and fund loans. When successful, these false statements and misrepresentations influenced financial institutions to issue funds that were 100% guaranteed by the SBA, and potentially forgivable. Defendants attempted to acquire in excess of $3 million in such loans.

SBA PAYROLL PROTECTION PROGRAM (PPP)

3. 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 were suffering the economic effect 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.

4. To obtain a PPP loan, a qualifying small 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 small business applicant (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligiblefor the PPP loan. In the PPP loan application, the small business applicant (through its authorized representative) was required to state, among other things, its average monthly payroll expenses and the number of its employees. These figures were used to calculate the loan amount the small business was eligible to receive under the PPP. In addition, the small business applicant was required to provide supporting documentation showing its payroll expenses.

5. A small business's PPP application was initially submitted to, and processed by a participating financial institution, then transmitted for further review to the SBA to assess the

applicant's eligibility. If the PPP loan application was approved, the participating financial institution funded the PPP loan using its own monies.

6. Under the terms of the PPP, PPP loan proceeds must be used by the small business applicant for specified permissible expenses, namely, payroll expenses, mortgage interest payments, rent payments, and utilities expenses. The PPP allows the interest and principal on the PPP loan to be entirely forgiven if the small business applicant spends the loan proceeds on the specified expenses within a particular period of time and uses a certain percentage of the PPP loan proceeds on payroll expenses.

7. When submitting an SBA PPP application, the small business applicant is explicitly warned, and must acknowledge, that making a false statement in the application, and/or submitting false or fraudulent supporting documentation, is a violation of federal law.

SCHEME

8. It was part of the scheme and artifice to defraud that Defendants **MICHAEL FULLERTON, JOSEPH ROBLES, TIFFANY FULLERTON, DAVID SCOTT STARKES,** or their coconspirators prepared and submitted false and fraudulent PPP loan applications to financial institutions and the SBA. Some of the small business applicants were businesses whose registrations with the Texas Secretary of State had expired, or were renewed shortly before an application was submitted, after being dormant for a long time. The false and fraudulent statements included, but were not limited to, the following:

a. fabricated payroll expenses for each small business applicant;

b. fabricated banking records for each small business applicant;

c. fabricated documents and records regarding the payment of state and federal taxes;

d. false and fraudulent representations regarding employees, to include falsely

stating the number of employees and using false and fraudulent identification information to identify alleged employees, most or all of whom were, in truth and fact, not employed by the small business applicant and whose identification information had been stolen or misused;

e. falsely and fraudulently stating that the loan proceeds would be used only for the specified purposes set forth in the loan applications, when, in truth and fact, Defendants applied the loan proceeds for their own personal use and benefit, to include the purchase of a "toterhome" motor vehicle, a boat, Rolex watches, a Corvette, and using the funds to start a new business in Oklahoma to develop a marijuana grow and dispensary, a bar and grill, and an automotive repair facility.

FALSE AND FRAUDULENT SBA PPP LOAN APPLICATIONS

9. Defendants **MICHAEL FULLERTON, JOSEPH ROBLES, TIFFANY FULLERTON, DAVID SCOTT STARKES,** or their coconspirators submitted the following SBA PPP loan applications for the following small business applicants and loan amounts on the dates and to the financial institutions listed below. The loan applications contained false and fraudulent statements and representations, as set forth above.

Business Entity	Application Date (on or about)	Financial Institution	Amount Requested
Fullerton Consulting Group, LLC	April 29, 2020	Celtic Bank	$259,134.00
FCG Automotive & Collision, LLC	May 14, 2020	Celtic Bank	$500,000.00
MTF Racing, LLC	May 28, 2020	Celtic Bank	$765,125.00
MTF Racing, LLC	June 9, 2020	Customers Bank	$834,200
MTF Racing, LLC	July 9, 2020	Cross River Bank	$834,292.11

MONEY LAUNDERING CONSPIRACY

10. In order to collect the fraudulent proceeds, Defendants needed bank accounts controlled by coconspirators to collect the stolen money. Defendants **MICHAEL FULLERTON, JOSEPH ROBLES, TIFFANY FULLERTON, DAVID SCOTT STARKES,** or their coconspirators controlled and opened bank accounts in the Austin, Texas area and in Oklahoma. Defendant **MICHAEL FULLERTON** directed and controlled the opening of some of these accounts and the transfers of fraud proceeds into and out of these accounts

11. When the PPP fraud scam was successful and a victim sent money to a conspirator's account, bank account records show that the conspirators acted quickly to remove fraudulent funds deposited into the accounts and move them to other accounts controlled by the conspiracy. Because some of the accounts were opened in the names of businesses that were not truly in operation or owned or controlled by the persons opening the accounts, they were from their inception designed to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the fraud

LOSS

12. As of the date of this Indictment, law enforcement has identified over $3 million in attempted losses attributable to the money laundering conspiracy. On at least one occasion, the bank did not fund the requested PPP loan. However, at least $2.4 million in actual losses have been identified.

COUNT ONE
Conspiracy to Commit Bank and Wire Fraud
[18 U.S.C. § 1349]

13. Paragraphs 1 through 12 of this Indictment are realleged and incorporated as though fully set forth herein.

14. Beginning as early as April 2020, the exact date being unknown to the Grand Jury, and continuing until on or about July 13, 2020, in the Western District of Texas and elsewhere, Defendants,

(1) MICHAEL FULLERTON and
(3) TIFFANY FULLERTON,

did knowingly and intentionally conspire and agree with one or more individuals to commit one or more offenses against the United States, namely:

a. *Bank Fraud, in violation of 18 U.S.C. § 1344*, that is knowingly executing, or attempting to execute, a scheme and artifice to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, a financial institution, by means of false and fraudulent pretenses, representations, promises, and omissions of material facts, namely, a scheme to acquire SBA PPP funds as described above, in violation of Title 18, United States Code, Section 1344; and,

b. *Wire Fraud, in violation of 18 U.S.C. § 1343*, that is, having devised and having intended to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, promises, and omissions of material facts, namely, a scheme to acquire SBA PPP funds as described above, for the purpose of executing the scheme and artifice, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate

commerce certain writings, signs, signals, pictures, and sounds.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO AND THREE
Bank Fraud
[18 U.S.C. § 1344]

15. Paragraphs 1 through 12 of this Indictment are realleged and incorporated as though fully set forth herein.

16. Beginning at least as early as April 2020, the exact date being unknown to the Grand Jury, and continuing until on or about July 13, 2020, in the Western District of Texas and elsewhere, Defendant,

(1) MICHAEL FULLERTON,

did knowingly execute and attempt to execute a scheme and artifice to defraud a financial institution, as set forth below, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, said financial institution by means of false, misleading, and fraudulent pretenses, representations, and promises, and omissions of material facts, namely, a scheme to acquire SBA PPP funds as described above:

Count	Application Date (on or about)	Financial Institution	Amount Transferred by Financial Institution
2	June 9, 2020	Customers Bank	$834,200.00
3	July 9, 2020	Cross River Bank	$834,292.11

All in violation of Title 18, United States Code, Section 1344.

COUNTS FOUR AND FIVE
Wire Fraud
[18 U.S.C. § 1343]

17. Paragraphs 1 through 12 of this Indictment are realleged and incorporated as though fully set forth herein.

18. From in or about April 2020, the exact date being unknown to the Grand Jury, andcontinuing until on or about July 13, 2020, in the Western District of Texas and elsewhere, the Defendant,

(1) MICHAEL FULLERTON,

having devised and intended to devise a scheme and artifice to defraud to obtain money and property by means of false, misleading, and fraudulent pretenses, representations, and promises, and omissions of material facts, namely, a scheme to acquire SBA PPP funds as described above, did knowingly cause to be transmitted by wire, radio, or television communication in interstate and foreign commerce, including via the internet, one or more electronic communications constituting and containing a writing, sign, signal, picture, and sound for the purpose of executing and attempting to execute said scheme and artifice:

Count	Date (on or about)	Description of Wire Transmission
4	April 29, 2020	Transmission via the internet of a SBA PPP loan application from the Western District of Texas to Celtic Bank, which is located in Salt Lake City, Utah, for a loan in the amount of $259,134.00.
5	May 14, 2020	Transmission via the internet of a SBA PPP loan application from the Western District of Texas to Celtic Bank, which is located in Salt Lake City, Utah, for a loan in the amount of $500,000.00.

All in violation of Title 18, United States Code, Section 1343.

COUNT SIX
Conspiracy to Commit Money Laundering
[18 U.S.C. § 1956]

19. Paragraphs 1 through 12 of this Indictment are realleged and incorporated as though fully set forth herein.

20. From in or about April 2020, the exact date being unknown to the Grand Jury, and continuing until on or about the date of this Indictment, in the Western District of Texas and elsewhere, Defendants,

(1) MICHAEL FULLERTON and
(3) TIFFANY FULLERTON,

did knowingly combine, conspire, and agree with one or more individuals to commit offenses against the United States in violation of Title 18, United States Code, Section 1956, namely:

a. To knowingly conduct and attempt to conduct financial transactions affecting interstate commerce and foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, Conspiracy to Commit Fraud (18 U.S.C. § 1349), Bank Fraud (18 U.S.C. § 1344), and Wire Fraud (18 U.S.C. § 1343) as described in this Indictment, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

All in violation of Title 18, United States Code, Section 1956(h).

COUNTS SEVEN, EIGHT, AND NINE
Engaging in Monetary Transactions in Criminally Derived Property
[18 U.S.C. § 1957]

21. Paragraphs 1 through 12 of this Indictment are realleged and incorporated as though fully set forth herein.

22. On or about the dates set forth below, in the Western District of Texas and elsewhere, the Defendant,

(1) MICHAEL FULLERTON,

did knowingly engage and attempt to engage in a monetary transaction in criminally derived property of a value greater than ten thousand dollars ($10,000.00), set forth below, which property was derived from specified unlawful activity, that is, Conspiracy to Commit Fraud (18 U.S.C. § 1349), Bank Fraud (18 U.S.C. § 1344), and Wire Fraud (18 U.S.C. § 1343) as described in this Indictment:

Count	Date (on or about)	Description of Monetary Transaction
7	July 30, 2020	Purchase and use of a cashier's check from MTF Racing, LLC Chase Bank account ending in 2263 in the amount of $115,000 in and affecting commerce to purchase a semi-truck motorhome from JJS Mechanical Inc. and J.S.
8	May 27, 2020	Wire transfer of funds in and affecting commerce in the amount of $20,340.18 from the Fullerton Consulting Group, LLC Radius Bank account ending in 5362 for the purchase of two Rolex watches from CME International d/b/a Bob's Watches
9	May 20, 2020	Wire transfer of funds in and affecting commerce in the amount of $21,688.00 from the Fullerton Consulting Group, LLC Radius Bank account ending in 5362 for the purchase of a 1983 Uniflite 36 foot double cabin boat named "Breakfast at Tiffany's"

All in violation of Title 18, United States Code, Section 1957.

COUNT TEN
Aggravated Identity Theft
[18 U.S.C. § 1028A]

23. Between on or about April 29, 2020 and on or about July 9, 2020, in the Western District of Texas and elsewhere, the Defendant,

MICHAEL FULLERTON (1),

did knowingly use, without lawful authority, a means of identification of another person, to wit, the name and purported signature of S.S., a certified public accountant, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit: Conspiracy to Commit Bank and Wire Fraud,, Bank Fraud, and Wire Fraud, as charged in Counts One through Five of this Indictment, knowing that the means of identification belonged to another actual person, and did aid and abet the commission of said offense.

All in violation of Title 18, United States Code, Sections 1028A(a)(l) and 2.

COUNT ELEVEN
Aggravated Identity Theft
[18 U.S.C. § 1028A]

24. Between on or about April 29, 2020 and on or about July 9, 2020, in the Western District of Texas and elsewhere, the Defendant,

MICHAEL FULLERTON (1),

did knowingly use, without lawful authority, a means of identification of another person, to wit, the names and social security numbers of employees of Georgetown Collision, EMPLOYEE 1, EMPLOYEE 2, EMPLOYEE 3, EMPLOYEE 4, EMPLOYEE 5, and EMPLOYEE 6, whose names are known to the Grand Jury, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit: Conspiracy to Commit Bank and Wire Fraud, Bank Fraud, and Wire Fraud, as charged in Counts One

through Five of this Indictment, knowing that the means of identification belonged to another actual person, and did aid and abet the commission of said offense.

All in violation of Title 18, United States Code, Sections 1028A(a)(l) and 2.

NOTICE OF UNITED STATES OF AMERICA'S DEMAND FOR FORFEITURE

[*See* FED. R. CRIM. P. 32.2]

I.
Fraud & Monetary Transaction Violations and Forfeiture Statutes
[18 U.S.C. §§ 1343, 1344, 1349, 1956, & 1957 subject to forfeiture pursuant to 18 U.S.C. §§ 982(a)(1) & (2)]

As a result of the foregoing criminal violations set forth in Counts One through Nine, the United States gives notice to the Defendants of its intent to seek the forfeiture of property, including any items listed below, upon conviction and as a part of sentence pursuant to FED. R. CRIM. P. 32.2 and 18 U.S.C. §§ 982(a)(1) & (2), which state:

> **18 U.S.C. § 982. Criminal Forfeiture**
> **(a)(1)** The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957 . . . of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.
> **(2)** The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate—
> **(A)** section . . . 1343, or 1344 of this title, affecting a financial institution . . .
> * * *
> shall order that the person forfeit to the United States any property constituting, or derived from proceeds the person obtained directly or indirectly, as the result of such violation.

II.
Money Judgment

Money Judgment: A sum of money equal to the proceeds obtained from the fraud violations and the property involved in the money laundering/transaction violations for which each defendant is liable.

III.
Substitute Property

If any proceeds from and property involved in the fraud violations and money laundering/transaction violations, as a result of any act or omission of the Defendants—

(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;

it is the intent of the United States to seek the forfeiture of any other property of each Defendant, up to the value of each money judgment, as substitute property pursuant to Title 21 U.S.C. § 853(p) and FED. R. CRIM. P. 32.2(e).

A TRUE BILL

[redacted]

JAIME ESPARZA
UNITED STATES ATTORNEY

By: Michelle E. Fernald
FOR: KEITH M. HENNEKE
ASSISTANT UNITED STATES ATTORNEY