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U.S.D.C ATLANTA

Date: Jul 09 2020

JAMES N. HATTEN, Clerk

By: /s/Sonya Lee Coggins
Deputy Clerk

United States District Court

NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA

v.

DANIEL ERIC JAY

CRIMINAL COMPLAINT

Case Number: 1:20-mj-562-LTW

I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about April 24, 2020, in Gwinnett County, in the Northern District of Georgia, the Defendant did

knowingly execute and attempt to execute a scheme and artifice to defraud United Community Bank, a financial institution as defined in Title 18, United States Code, Section 20, and to obtain moneys and funds owned by and under the custody and control of United Community Bank, by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts,

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

I further state that I am a Special Agent of the Small Business Administration-Office of Inspector General, and that this complaint is based on the following facts:

PLEASE SEE ATTACHED AFFIDAVIT, WHICH IS INCORPORATED BY REFERENCE HEREIN.

Continued on the attached sheet and made a part hereof. Yes

Sara Oliver

Signature of Complainant
Sara Oliver

Based upon this complaint, this Court finds that there is probable cause to believe that an offense has been committed and that the defendant has committed it. Sworn to before me by telephone pursuant to Federal Rule of Criminal Procedure 4.1.

July 9, 2020 at Atlanta, Georgia

Date City and State

LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE

Name and Title of Judicial Officer

Linda T. Walker

Signature of Judicial Officer

AUSA Russell Phillips / 2020R00423

Issued pursuant to Federal Rule of Criminal Procedure 4.1

Affidavit

I, Sara Oliver, hereby depose and state under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am a Special Agent with the Small Business Administration, Office of Inspector General (SBA-OIG), and I have been so employed since January 2020. Before that, from 2014 to 2019, I was a Special Agent with the Department of Transportation, Office of Inspector General (DOT-OIG). I am currently assigned to the SBA-OIG Atlanta field office, where I investigate financial crimes, including wire fraud, mail fraud, and bank fraud. I am a law enforcement officer of the United States within the meaning of 18 U.S.C. § 2510(7), and I am empowered by law to conduct investigations and to make arrests for federal felony offenses.
2. This affidavit is made in support of a Criminal Complaint charging Daniel Eric Jay (Jay) with bank fraud, in violation of 18 U.S.C. § 1344.
3. This affidavit is based, in part, on my conversations with other law enforcement agents and witnesses, and my review of bank records and other documents. This affidavit does not include every fact known to the

government, but only those facts necessary to support a finding of probable cause to support the issuance of the requested arrest warrant.

Applicable Criminal Laws

4. The bank fraud statute, 18 U.S.C. § 1344, makes it a federal crime for anyone to knowingly execute or attempt to execute a scheme and artifice to defraud a financial institution, as defined in 18 U.S.C. § 20, or to obtain moneys and funds owned by and under the custody and control of a financial institution, by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts.

The Paycheck Protection Program

5. United Community Bank is a financial institution as defined in Title 18, United States Code, Section 20, and its headquarters is located in Blairsville, Georgia, which is in the Northern District of Georgia.

6. United Community Bank participated as a lender in the Paycheck Protection Program (PPP), which was established by the CARES Act and implemented by SBA to help small businesses survive the COVID–19 pandemic by providing qualifying businesses with funds to pay their payroll costs, including benefits; interest on mortgages; rent; and utilities.

7. To obtain a PPP loan, a business must submit a PPP loan application, signed by an authorized representative of the business. The application must state, among other things, the average monthly payroll expenses and the number of employees of the business. These figures are used to calculate the amount of money that the business is eligible to receive under the PPP. In addition, the business must provide documentation of its payroll expenses.

Indictment of Maurice Fayne, a/k/a Arkansas Mo

8. On June 24, 2020, a grand jury sitting in the Northern District of Georgia returned an Indictment against Maurice Fayne, a/k/a Arkansas Mo (Indictment No. 1:20-CR-288), charging him with wire fraud (18.U.S.C. § 1343); bank fraud (18.U.S.C. § 1344); making a false statement to a federally-insured financial institution (18.U.S.C. § 1014); and two different types of money laundering (18.U.S.C. §§ 1956(a)(1)(B)(i) and 1957).

9. With respect to the bank fraud charge, the Indictment alleges that, on April 15, 2020, Fayne, aided and abetted by others known and unknown to the grand jury, submitted to United Community Bank a PPP loan application in the name of Flame Trucking Inc., falsely stating that Flame Trucking Inc. had 107 employees and an average monthly payroll of $1,490,200.

10. In seeking a PPP loan in the amount of $3,725,500, Fayne certified that the loan proceeds would be used to "retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule."

11. United Community Bank's records show that Fayne did not use any of the PPP loan proceeds for lawful purposes. Instead, Fayne used the PPP loan proceeds solely for unlawful purposes. Specifically, from April 23, 2020 through May 1, 2020, Fayne used the PPP loan proceeds to pay for the following:

- $40,000 in past-due child support;
- $50,000 in restitution owed in a previous fraud case;
- $65,000 in cash withdrawals;
- $85,000 for custom-made jewelry;
- $136,000 to lease a 2019 Rolls-Royce;
- $230,000 to associates who helped him run a Ponzi scheme; and
- $907,000 to help an associate start a new business.

12. Fayne's use of the PPP loan proceeds raised red flags at United Community Bank. When United Community Bank asked Fayne to provide additional information about Flame Trucking's finances, Fayne responded,

on or about April 24, 2020, by emailing United Community Bank what he falsely represented to be October, November, and December 2019 bank statements for Flame Trucking's account at Arvest Bank. As Fayne knew, however, those bank statements were fraudulent, because Arvest Bank had shut down Flame Trucking's account in September 2019.

Jay's Involvement in the Scheme to Defraud United Community Bank

13. On May 6, 2020, when federal law enforcement agents interviewed Fayne concerning the PPP loan, Fayne stated that his accountant, C.C., who resides in Pittsburgh, had helped him prepare the PPP loan application.

14. Fayne told the agents that C.C. had failed to include in the PPP loan application the names of Flame Trucking's part-time employees and independent contractors, and that C.C. was working to correct that.

15. On May 14 and May 18, 2020, federal law enforcement agents interviewed C.C., who stated as follows:

    a. On or about April 3, 2020, Jay asked her to assist Fayne with a PPP loan application.

    b. C.C. had known Jay for over 20 years. Jay told C.C. that he worked in capital investments and wealth management, and that he was a boxing promoter. C.C. knew that Jay did not work in the trucking industry.

c. On or about April 24, 2020, Jay emailed C.C. and asked her to make certain documents that were attached to that email "look more presentable." And Jay stated: "Time is of the essence if we wanna get this submitted today."

d. One of the documents attached to Jay's email was a Business Financial Statement for Flame Trucking, for January 1 – March 31, 2020, which stated that Flame Trucking had $1,348,211 in its account at Arvest Bank. We know that this was a false representation because, as noted previously, Flame Trucking's account at Arvest Bank was closed in September 2019.

e. The other document attached to Jay's email was a "Profit & Loss Settlement [sic]" for Flame Trucking for January 1 – March 31, 2020. It stated that Flame Trucking had a total of $6,544,731 in sales/income and was spending $4,470,654 on salaries and wages. Those statements were also false.

f. After United Community Bank froze Flame Trucking's bank account (that is, account # 1408, which held the remaining PPP loan proceeds), Jay and Fayne asked C.C. to write a letter to United Community Bank requesting that the account be unfrozen. Jay and Fayne also asked C.C. to include in that the letter a list of people who they said had worked for Flame Trucking as independent contractors in 2019 and the amount of wages allegedly paid to each. Jay and Fayne sent C.C. a list of names of these alleged independent contractors and the amount that each was supposedly paid by Flame Trucking in 2019, and Jay and Fayne told C.C. to cut and paste that information into her letter to United Community Bank.

g. On May 6, 2020—right after Fayne finished speaking with federal agents—Jay emailed C.C. and instructed her to remove six names from the list described above and replace them with the following names: T.V., M.S., a second M.S., C.W., C.H., and Jay. With the exception of the second M.S., all of these individuals illegally received PPP loan proceeds from Flame Trucking's United Community Bank account # 1408. The investigation shows that none of those individuals was ever employed by Flame Trucking.

h. C.C. followed the instructions she received from Jay and Fayne and emailed the revised letter to Jay on May 7, 2020. Later that day, Fayne emailed that same letter to FBI Special Agent Paul Fike, falsely claiming that the individuals on the list compiled by C.C. had worked for Flame Trucking as independent contractors in 2019.

16. After she was interviewed by federal agents, C.C. provided federal agents with copies of text messages that she had exchanged with Jay, which are summarized as follows:

a. On or about April 1, 2020, Jay stated: "I have a client that's a trucking company [referring to Flame Trucking] they started in April of last year and hasn't filed yet. They have a huge contract and 1099 – 160 drivers. About to lose all these guys if he can't pay them. What can be done w him." Jay's statements were false. Flame Trucking did not have a "huge contract" and did not employ 160 drivers or anywhere near that number.

b. The following day, C.C. asked Jay: "Any w2s or all 1099s[?]" Jay responded: "I think all 1099 cause this entity is essentially 1 contract w one major retail company." Later, Jay added: "Ok so my trucking guy [*i.e.*, Fayne] said he did all his 1099's for 2019 but was advised to put all those guys on as W-2's in 2020 starting in January for the upcoming contract."

c. Jay sent C.C. the EIN (employer identification number) for Flame Trucking Inc.

d. Jay sent C.C. a screenshot showing that United Community Bank had received Flame Trucking's PPP loan application, and Jay told C.C. that United Community Bank "may end up calling you to verify you are a CPA or something lol[.]"

e. Jay later sent C.C. another screenshot showing that United Community Bank had approved Flame Trucking's PPP loan application.

f. Jay told C.C. that Fayne had provided United Community Bank with bank statements for the "last 3 months of 2019," *i.e.*, the fraudulent bank statements for Flame Trucking's account at Arvest Bank.

17. On May 11, 2020, federal agents searched Fayne's residence, pursuant to a search warrant issued in Case Number: 1:20-MC-833-CMS. During the search, agents seized Fayne's cellphone. Later, FBI agents examined Fayne's cellphone and found numerous text messages between Fayne and Jay, including the following:

a. On March 2, 2020, Jay stated: "I've just had some physical threats made to me from the loan shark I took money from so I was hoping to get that serious situation put to bed with that money from SunTrust. . . . Guys come to my dads [sic] house twice. I've been staying [in Pittsburgh] to avoid."

b. As mentioned previously, Fayne's Indictment includes wire fraud charges. Specifically, the Indictment alleges that Fayne, aided and abetted by a group of middlemen, including Jay, fraudulently took more than $5 million from people who invested in Fayne's trucking business. The Indictment further alleges that Fayne used most of the investor's money to pay his personal debts and expenses. On March 29, 2020, Jay stated in a text to Fayne: "I've been talking to guys all day who are familiar w SBA loans and what is possible. This is a perfect opportunity for you to take advantage of these and do the right thing by your investors. . . . 2.5 times monthly expenses. It's totally set up for you. I'm referring to the Stimulus Package just signed."

c. In other words, Jay suggested to Fayne that Fayne obtain a PPP loan under false pretenses and use the loan proceeds for an illegal purpose, namely, to make payments related to the Ponzi scheme. Fayne responded: "Send info for the SBA loan."

d. Jay later said to Fayne: "Give me a shout. Trying to figure out the documentation we will try to pass through to be able get you this loan. Basically all that are giving is 2.5x monthly payroll.....if we can somehow justify 100+ drivers on 1099 for Flame we have something[.]"

18. Jay then helped Fayne create fraudulent documents to support the PPP loan application, which Fayne signed and submitted to United Community Bank.

19. On or about April 24, 2020, Fayne wire transferred $30,000 in PPP loan proceeds from United Community Bank account #1408, held in the name of Flame Trucking Inc., to JPMorgan Chase Bank, NA account #0180, held in the name of Daniel Jay.

Conclusion

20. Based on my training and experience, and the information provided in this affidavit, I respectfully submit that there is probable cause to believe that Jay's conduct, as described above, violated the bank fraud statute, 18 U.S.C.§ 1344, and I request that the Court issue a warrant for his arrest on that charge.