UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CR-60186-WPD

UNITED STATES OF AMERICA

v.

DAMIAN DAVIS,

Defendant.

_______________________________________/

FACTUAL PROFFER

The United States of America and Damian Davis (the "Defendant") agree that, had this case gone to trial, the United States would have proven the following facts, among others, beyond a reasonable doubt:

In June and July of 2020, the Defendant applied for three Paycheck Protection Program ("PPP") loans in the name of his three companies, Wolf of Flagler, LLC, in the amount of $128,400, Crates Tavern, LLC $183,780, and Fifth Marketing Group, LLC $274,365, receiving a total of $586,545 in PPP funds.

Specifically, in July of 2020, a PPP loan application was submitted to Bank 2 on behalf of Fifth Marketing. The Defendant is the sole member of Fifth Marketing. The PPP loan application was prepared and submitted by a third-party tax preparer at the Defendant's direction. The Fifth Marketing loan application listed a loan amount of $274,365 and an average monthly payroll of $109,746. The application stated that Fifth Marketing had a total of 26 employees. The Defendant knew Fifth Marketing never had 26 employees. In fact, in an Economic Injury Disaster Loan ("EDIL") prepared and submitted by the Defendant, approximately two months before submission of the PPP loan, he stated that Fifth Marketing had one employee as of January 31, 2020.

Additionally, the Defendant's tax preparer prepared and submitted fraudulent IRS Forms 940 and 941 with the loan application. The Defendant signed the promissory note on behalf of Fifth Marketing.

On behalf of Fifth Marketing, the Defendant's tax preparer falsely certified that: (1) Fifth Marketing was in operation on February 15, 2020, and had employees for whom the Fifth Marketing paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC; (2) current economic uncertainty made the loan request necessary to support the ongoing operations of Fifth Marketing; (3) the funds would be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; and, (4) Fifth Marketing has not received another PPP loan. Specifically, Fifth Marketing had never filed taxes, including Forms 940 and 941. Furthermore, the Florida Department of Revenue had no records for Fifth Marketing, and the Fifth Marketing bank account ending in 5956 (the "Fifth Marketing Account") did not reflect any payroll payments. Nor did Fifth Marketing make any mortgage interest payments, rent payments, or utility payments.

Bank 2 approved the Fifth Marketing loan application and deposited, via interstate wire, $274,365 into the Fifth Marketing Account on July 29, 2020. The Fifth Marketing Account was opened July 11, 2020; the Defendant is the only signatory on the account. After receiving the PPP loan proceeds, the Defendant did not make any payroll payments. He misused the funds. For example, on August 28, 2020, the Defendant wired $31,000 to R.E.S. for the alleged purchase of "equipment." However, the Defendant did not buy equipment; he purchased a 2001 Blue BMW M3. The BMW was titled in the Defendant's name.

Lastly, during a recorded call, the Defendant admitted to an undercover IRS agent that he provided his tax preparer with the information necessary to prepare the loan application, including the number of employees, and that he reviewed the loan application before it was submitted. The Defendant further claimed that he gave his tax preparer permission to sign the loan application on his behalf.

The parties agree that these facts, which do not include all the facts known to the Government and the Defendant, are sufficient to prove beyond a reasonable doubt his guilt with respect to Counts 3 and 6 of the Indictment.

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

Date: 1/13/23 By: ______________________
BERTILA FERNANDEZ
ASSISTANT UNITED STATES ATTORNEY

Date: 1/13/23 By: ______________________
CARLOS GONZALEZ
COUNSEL FOR DEFENDANT

Date: 1/13/23 By: ______________________
DAMIAN DAVIS
DEFENDANT