UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-80157-AHS

UNITED STATES OF AMERICA

vs.

DEREK JAMES ACREE,

Defendant.
______________________________/

STIPULATED FACTUAL BASIS

The United States Attorney's Office for the Southern District of Florida and the Defendant, **DEREK JAMES ACREE**, stipulate to the following facts, and stipulate that such facts, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure, provide a sufficient factual basis for the plea of guilty to Count 1 of the Information which charge the defendant with conspiracy to commit wire fraud, in Title 18, United States Code, Section 1349.

I, DEREK JAMES ACREE, hereby acknowledges that the Government could prove the following facts beyond a reasonable doubt:

1. National Financial Holdings, Inc., formerly National Financial Holdings LLC, was a Delaware corporation with a registered address in Wilmington, Delaware and a principal address in Palm Beach Gardens, Florida. DEREK JAMES ACREE was the Chief Operating Officer of National Financial Holdings, INC.

2. NFH Florida LLC was a Delaware limited liability company with a registered address in Wilmington, Delaware. DEREK JAMES ACREE was the Managing Member of NFH Florida LLC.

3. National Financial Holdings Technology LLC, was a Delaware limited liability company with a registered address in Wilmington, Delaware. DEREK JAMES ACREE was the Chief Operating Officer of National Financial Holdings Technology LLC.

4. During the period of March 2020 and continuing through in or around August 2020, DEREK JAMES ACREE and a co-conspirator 1 submitted and caused to be submitted several loan applications under the Economic Injury Disaster Loan (EIDL) Program and the Paycheck Protection Program were developed under the CARES Act. EIDL program was a U.S. Small Business Administration (SBA) program that existed before the COVID-19 pandemic to provide low-interest financing to eligible small business, renters, and homeowners in regions affected by declared disasters. The CARES Act authorized forgivable loans to qualified businesses and other organizations for job retention and certain other expenses, through the Paycheck Protection Program (PPP). Such businesses were required to use PPP loan proceeds on payroll costs, interest on mortgages, rent, and utilities.

5. On March 31, 2020, DEREK JAMES ACREE and a co-conspirator 1 submitted and caused to be submitted via wire an EIDL application on behalf of National Financial Holdings, Inc., with a listed address of 4521 PGA Blvd., Suite 226, Palm Beach Gardens, FL, and sought approximately $509,900 in EIDL funds. The initial application was submitted from an IP address which originated in Palm Beach Gardens. DEREK JAMES ACREE and the co-conspirator 1 executed the loan agreement as guarantors and falsely represented the gross revenues and number of employees of National Financial Holding Inc., during the 12-month period prior to the dated of the COVID disaster. The application was approved and funded by SBA. The government would offer documentary and testimonial evidence, to include witness statements and the entity's bank account, proving that the stated gross revenue and the number of employees were false.

6. Further, the approved EIDL funds were deposited into a BB&T (now Truist) account ending in 5893, which was held in the name of an entity other than National Financial Holding, Inc. The account holder for the BB&T (now Truist) account ending in 5893 was NFH Florida LLC, dba Finova Financial LLC. After the EIDL proceeds were deposited into the BB&T (now Truist) account ending in 5893, between April 22, 2020 and August 5, 2020, funds were distributed and transferred in nine separate wires totaling $396,000 to personal and unrelated business accounts belonging to DEREK JAMES ACREE and the co-conspirator 1. EIDL application submitted through August 8, 2020 were serviced through Virginia. BB&T's (now Truist) servers are located in North Carolina.

7. On April 3, 2020, DEREK JAMES ACREE submitted and caused to be submitted via wire a PPP loan application on behalf of National Financial Holding, Inc., with a listed address of 4521 PGA Blvd., Suite 226, Palm Beach Gardens, FL. This application sought approximately $376,356.03 in PPP funds based on purported average month payroll of $150,542.41 and represented that the entity employed 20 employees. The certificate of completion of the application was submitted from an IP address which originated in Palm Beach Gardens. DEREK JAMES ACREE executed the loan agreement as guarantor. The application was approved and funded by First Home Bank. Among the documents provided by DEREK JAMES ACREE in support of the PPP loan were BB&T (now Truist) bank statements for account ending in 5368, which were falsified, in that, the provided bank statements listed National Financial Holdings, Inc, as the account holder, when in truth and in fact, the account holder was NFH Florida LLC dba Finova LLC. Further, the bank provided statements reflect different payroll line amounts and totals significantly less than the inflated payroll line amounts and totals reflected the bank statements provided by DEREK JAMES ACREE. BB&T's (now Truist) servers are located in

North Carolina. First Home Bank is Headquartered in St. Petersburg, Florida, however, it's deposits to customer FHB DDA are serviced through Honolulu, Hi. Further, the loan documents were docusigned (with an IP Address originating in Palm Beach Gardens and Docusign is headquartered in San Francisco, CA, with data centers outside of Florida.

8. The approved PPP funds of $376,300 were deposited into a Silicon Valley Bank account ending in 0470 and held by National Financial Holdings Inc. for which DEREK JAMES ACREE is a signatory. After the PPP proceeds were deposited into SVB account ending in 0470, between May 1, 2020 and December 7, 2020, funds, which included a wire transfer of $195,000 of EIDL proceeds from BB&T account ending in 5893, funds were distributed and transferred in a number of wires to various unrelated entities' accounts, including wires in an aggregate amount of approximately $223,600 to co-conspirator 1's unrelated business account; approximately $54,795 an unrelated business account, controlled by DEREK JAMES ACREE and co-conspirator 1; approximately $114,000 to DEREK JAMES ACREE's unrelated business accounts; and to Salles Jewelers for the purchase of jewelry.

9. On April 17, 2020, DEREK JAMES ACREE submitted and caused to be submitted via wire a PPP loan application on behalf of NFH Florida LLC, with a listed address of 4521 PGA Blvd., Suite 226, Palm Beach Gardens, FL. This application sought approximately $376,400 in PPP funds based on purported average monthly income of $150,560 and claim of 20 active employees. Among the documents provided by DEREK JAMES ACREE in support of the application were a borrower's worksheet which reported a total payroll cost of $1,806,508 for the 12-month period prior to the disaster and an IRS Form 940 (Schedule R) purportedly prepared by Insperity PEO Services, LP for Tax Year 2019. The application was approved and funded by Truist Bank, formerly BB&T, whose servers are located in North Carolina. Documentation from

Insperity revealed that they did not prepare payroll for TY 2018 or TY 2019; however, Insperity was paid $80,983 during the period of April 2020-June 2020.

10. After the PPP funds were deposited, approximately $374,000 was moved through nine separate wires and 21 bank account transfers. Eight of the wires were traced to unrelated business accounts in which DEREK JAMES ACREE and the co-conspirator 1 were authorized signatories.

11. On April 20, 2020, DEREK JAMES ACREE submitted and caused to be submitted via wire a PPP loan application on behalf of National Financial Holdings Technology LLC., with a listed address of 1400 Centrepark Blvd., Suite 800, West Palm Beach, FL. This application sought approximately $349,955 in PPP funds based on a purported monthly payroll of $139,982 and listed 18 active employees. DEREK JAMES ACREE submitted the PPP application as General Counsel. The application was approved and funded by Flagler Bank. Among the documents provided in support of the application was a PPP checklist signed by DEREK JAMES ACREE, as Officer, attesting to the company's payroll payment for TY 2019 as $257,374.21 and IRS Forms 940 and 941 (Schedule R) purportedly prepared by Insperity. Insperity found no record for Forms 940 or 941 had ever been prepared for National Financial Holdings Technology LLC. Or any of the related entities.

12. On April 24, 2020, a Flagler Bank account was opened with $100 and the bank account agreements listed DEREK JAMES ACREE and the co-conspirator 1 as signatories. The account was funded on July 27, 2020, however, the proceeds were pulled back on July 29, 2020. Flagler Bank is Headquartered in West Palm Beach, FL. All PPP applications submitted through August 8, 2020 were received through SBA E-Tran with servers located in Virginia.

13. As indicated above, DEREK JAMES ACREE and co-conspirator 1 received approximately $1,612,555 in EIDL and PPP loan funds as a result of the false claims and representations in their EIDL and PPP loan applications. Of the EIDL and PPP proceeds received, DEREK JAMES ACREE retained approximately $869,682.83 for his personal use, to include American Express credit card payments, USSA credit card payments for maintenance of an Audi, $11,000 payment to Trump National Golf Club, monthly payments of child school tuition, marine services for a vessel, Salles Jewelers in the amount of $67,900, XO Global in the amount of $54,795 for private jet services, and $46,000 down payment for a home located at 13058 Flamingo Terr., Palm Beach Gardens, FL.

14. I, DEREK JAMES ACREE, am entering a plea of guilty to the Information, which charges me conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349. I understand and acknowledge that the elements of this offense are as follows:

> (1) Two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit wire fraud; and
> (2) The defendant knew the unlawful purpose of the plan and willfully joined in it.
>
> The elements of wire fraud are:
> (1) The defendant knowingly devised or participated in a scheme to defraud, or to obtain money or property by using false pretenses, representations, or promises;
> (2) The false pretenses, representations or promises were about a material fact;
> (3) The defendant acted with the intent to defraud; and
> (4) The defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

I, DEREK JAMES ACREE, admit that the statements contained in this factual proffer are true and correct. I further acknowledge that I have reviewed this factual proffer with my attorneys Chris Haddad and David Roth, and I am satisfied with the representation of my attorneys in this matter.

Date: 10/10/2022 By: ______________________
DEREK JAMES ACREE
DEFENDANT

Date: 10/10/2022 ______________________
DAVID ROTH
ATTORNEY FOR DEFENDANT

Date: 10/10/2022 ______________________
CHRIS HADDAD
ATTORNEY FOR DEFENDANT

ACCEPTED:

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

Date: 10/11/2022 By: ______________________
ROBIN WAUGH
ASSISTANT UNITED STATES ATTORNEY