UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-80118-CR-MIDDLEBROOKS/MATTHEWMAN

UNITED STATES OF AMERICA

v.

LEINER PENA INFANTE,
Defendant.

FILED BY ___ D.C.
NOV 17 2022
ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S.D. OF FLA. – W.P.B.

FACTUAL PROFFER

If this matter had gone to trial, the United States would have proven the following facts beyond a reasonable doubt, which occurred in the Southern District of Florida and elsewhere:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was a federal law enacted in or around March 2020, designed to provide emergency financial assistance to Americans who were suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was a program referred to as the Paycheck Protection Program (PPP), which authorized forgivable loans to small businesses for job retention and certain other expenses.

In order to obtain a PPP loan, a qualifying business submitted a PPP loan application, which was signed by an authorized representative of the business. The PPP loan application required the business to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the loan. In the PPP loan application, the small business was required to provide, among other things, its average monthly payroll expenses and number of employees, which were used to calculate the amount of money the small business was eligible to receive.

A PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, and the loan was 100% guaranteed by the SBA. PPP loan proceeds were required to be used by the business to pay expenses necessary to continue the operations of the business, including the payroll costs of employees, interest on mortgages, rent, and utilities. The interest and principal on the PPP loan could be entirely forgiven if the business spent the loan proceeds on these expense items within a designated period of time and used a defined portion of the loan proceeds on payroll expenses.

On or about June 27, 2020, **LEINER PENA INFANTE (PENA)** allowed the submission of a PPP loan application on behalf of his company, Penas Concrete Pumping Corp. (Penas Concrete) to lender Kabbage, Inc. Specifically, **PENA** gave his name, social security number, date of birth, mailing address, and email address, and the bank account routing number for Penas Concrete to co-defendant Yunior BARRERA ALMAGUER (BARRERA), who then had an unindicted co-conspirator use interstate wire communications to electronically view and sign a PPP Loan Application Form on behalf of Penas Concrete, which falsely represented that the company had 84 employees and an average monthly payroll of $288,344 each month. In actuality, Penas Concrete had only one employee, **PENA**.

On or about July 1, 2020, based on the false information provided in the loan application, Kabbage approved the loan and transferred $720,860 in PPP funds via interstate wire communication to Penas Concrete's account at Bank of America (BofA), for which **PENA** was the only signatory. Bank records showed that Penas Concrete's bank account at BofA had a balance of approximately $3,200 immediately prior to receipt of the PPP funds, and that there was no evidence of payroll payments to employees for Penas Concrete.

BARRERA instructed **PENA** to give him blank, pre-signed checks drawn on the BofA account so that BARRERA could access the PPP funds, which **PENA** did. **PENA** also wrote checks on the account at BARRERA's direction. Throughout July 2020, **PENA** was aware that BARRERA laundered the PPP funds, by either writing checks (or directing **PENA** to write checks) to entities or individuals who were not associated with Penas Concrete, or by making large cash withdrawals. For example, on October 7, 2020, BARRERA directed **PENA** to write checks in the amounts of $22,000 and $8,000 respectively from Penas Concrete's BofA account using monies from the PPP loan as described above, to EBO Construction, which had also received its own PPP loan in the same scheme with BARRERA, and which was controlled by BARRERA. After receiving these checks, EBO Construction deposited them in Miami-Dade County into its Wells Fargo account, followed by which EBO Construction wrote checks sending the funds to BARRERA's company, YBA Auto. **PENA** also received a portion of the unlawfully obtained PPP funds from BARRERA as payment for his role in the money laundering.

At all times relevant to the offense conduct, Bank of America and Wells Fargo were banks the deposits of which were insured by the Federal Deposit Insurance Corporation, and which were engaged in, and the activities of which affected, interstate and foreign commerce.

The parties agree that these facts, which do not include all facts known to the United States and **PENA**, are sufficient to prove the offense to which **PENA** is pleading guilty.

Respectfully submitted,

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

Date: 11-14-2022 By: ______________________
SUSAN OSBORNE
ASSISTANT UNITED STATES ATTORNEY

Date: 11-17-22 By: ______________________
ANDREW SMALLMAN
ATTORNEY FOR DEFENDANT

Date: 11-17-22 By: ______________________
LEINER PENA INFANTE
DEFENDANT