IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA	**SUPERSEDING INDICTMENT**
v.	Case No. 3:24-cr-142
ROSS SYLVESTER ELENDU	Violations: 18 U.S.C. §§ 1343 and 2

Background and Loan Scheme

1. ROSS SYLVESTER ELENDU was a resident of the District of North Dakota at all times pertinent to this Superseding Indictment. During the COVID-19 Pandemic, ROSS SYLVESTER ELENDU devised a loan fraud scheme in which he applied for more than $1 million dollars of COVID-19 pandemic-related relief program funds for which he did not qualify.

SVOG: The Shuttered Venue Operations Grant

2. The Shuttered Venue Operations Grant (SVOG) program provided emergency assistance to eligible performing arts businesses affected by the COVID-19 pandemic. The SVOG program's mission was to support the ongoing operations of eligible live venues and operators, live venue promoters, theatrical producers, talent representatives, live performing arts organization operators, museums, and motion picture theaters during the uncertain economic conditions caused by the COVID-19 pandemic.

3. The SVOG program was established by the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act, signed into law on December 27, 2020, and amended by the American Rescue Plan Act. The program set aside $16 billion in grants

to be administered by the United States Small Business Association's (SBA) Office of Disaster Assistance.

4. Entities had to meet certain criteria to be eligible for an SVOG.

    a. The entity had to be a live venue operator or promoter, or the entity had to be in another qualifying arts business under the SVOG program;

    b. The entity had to have a place of business located in the United States and primarily operate in the United States. The entity must have made a significant contribution to the United States economy through the payment of taxes or use of American products, materials, or labor;

    c. The entity must have been in operation as of February 29, 2020.

5. Eligible entities in operation on January 1, 2019, could receive a grant in the amount of 45% of the entity's 2019 gross earned revenue, or $10 million, whichever was less. For an eligible entity that began operation after January 1, 2019, grants were in the amount of the average monthly gross earned revenue for each full month of operation during 2019 multiplied by six, up to a maximum of $10 million.

6. Applications for an SVOG required the entity to submit certain required documents and information to support the entity's eligibility for a grant, including:

    a. A good faith certification that the grant was necessary to support the ongoing operations of the entity; and

    b. A statement of assurance that the entity was fully operational on February 29, 2020.

7. The SBA invited applicants to submit the following types of information and documents in an SVOG application to support eligibility for an SVOG:

a. A copy of a photo ID of the business owner or authorized representative;
b. A business license if required by a city, county, or state law;
c. 2019 Tax Return, including all schedules;
d. Business website address, or a link to the applicant's page on a social media platform;
e. Supporting documents demonstrating social media presence;
f. Business formation documents;
g. Personnel documents showing personnel working for the entity;
h. Signed financial statements demonstrating all sources of revenue and expenditures;
i. Signed financial audits completed by a third party.

8. The SBA further identified documentation that a talent representative could provide to verify that the representative met SVOG eligibility requirements:

a. A list of performing artists they booked or managed in 2019 that includes the venues for which they were contracted to perform, the city and state of the venues, and performance dates;
b. A current roster of performing artists which they book or manage that primarily work in live venues or festivals. This roster must also either appear on the applicant's website or be published in print or online in an industry-recognized trade publication registry;

c. Fully executed contractual service agreements between the talent representative and two artists or signed statements from two artists certifying the applicant represented them for live performances in 2019 and 2020; and

d. Fully executed contracts for live performances that took place in a venue or at a festival in 2019 and 2020 for two artists the applicant managed or booked.

9. The SBA defined a talent representative as an agent or manager for whom no less than 70% of their business operations involves the representation or management of two or more artists or entertainers. These operations must involve booking or representing musicians, comedians, actors, or similar performing artists primarily at live events staged in venues or at festivals in exchange for compensation founded on the number of tickets sold or a similar basis.

10. On or about April 26, 2021, ROSS SYLVESTER ELENDU applied for an SVOG for Colossal Empire Promotions LLC ("Colossal") in the amount of $1,374,200.00 based on claimed 2019 revenue in the amount of $3,100,000.00. The application required ROSS SYLVESTER ELENDU to certify under penalty of perjury under the laws of the United States that the information submitted was true and correct, including that Colossal was in existence prior to February 29, 2020.

11. Colossal had been originally registered in the State of Minnesota on May 1, 2014, but it was not registered with the North Dakota Secretary of State until August 3, 2023. Colossal reinstated its Minnesota registration on April 21, 2021.

12. Colossal did not open bank account number XXXX832 until June 22, 2020. In response to a subpoena to Colossal, Colossal stated in writing that it "only has one business bank account and it is with Gate City Bank." That bank account closed on February 14, 2022.

13. Colossal created its website on January 22, 2021.

14. ROSS SYLVESTER ELENDU filed his United States Individual Income Tax Return for 2019 on April 8, 2020. The tax return listed his occupation as an oilfield worker, and it did not include any attachment for Schedule C: Profit or Loss From Business. The 2019 Form 1040 showed oilfield wages of $88,167 and a reforestation credit of $76,000.

15. On April 16, 2020, ROSS SYLVESTER ELENDU emailed a 2019 Form 1040 with a Schedule C for Colossal to Readycap Lending, LLC, to obtain a PPP loan for Colossal. In that 2019 1040, which was never filed with the IRS, Colossal reported gross receipts of $70,380 and expenses of $29,342.

16. On March 18, 2021, ROSS SYLVESTER ELENDU filed a 2019 1040-X, Amended U.S. Individual Income Tax Return, which added $216,325 income from Schedule C for Colossal. Schedule C showed receipts of $3,100,000 and expenses of $2,640,000, which included $2,531,000 in "artists fees" and $109,000 for "interns."

17. In the SVOG application, ROSS SYLVESTER ELENDU submitted quarterly "Income Statements" for 2019. In the first two quarters of 2019, Colossal recorded net losses of $31,244 and $32,824, respectively. Then in Q3, Colossal showed net income of $400,622, and net income of $2,448,774 in Q4.

18. In further support of the SVOG application, ROSS SYLVESTER ELENDU submitted a non-exclusive agreement between Colossal and Rolland Elendu, ROSS SYLVESTER ELENDU's brother, who performed hip hop as Roddy Banks. Rolland Elendu told investigators that he managed himself and that neither ROSS SYLVESTER ELENDU or Colossal had ever booked Rolland Elendu.

19. In further support of the SVOG application, ROSS SYLVESTER ELENDU submitted an exclusive agreement between Colossal and Roy Elendu, who performed as DJ Rash. Roy Elendu is a brother of both Rolland Elendu and ROSS SYLVESTER ELENDU.

20. In further support of the SVOG application, ROSS SYLVESTER ELENDU submitted a contract between Mark Ukejellam and Colossal, purportedly executed on September 18, 2019. The contract required Mark Ukejellam, a promoter, to pay $3,100,000 to Colossal, which was serving as an agent for an artist only identified as "Murphy" in the contract. In responses to a subpoena, ROSS SYLVESTER ELENDU stated through counsel that Colossal had not received $3.1 million of revenue because it was in "accounts receivable." An invoice from Colossal to Mark Ukejellam shows Mark Ukejellam's billing address is in Lome, Togo.

21. On August 2, 2021, the SVOG application was declined.

22. On August 3, 2021, Colossal registered with the North Dakota Secretary of State, and on August 5, 2021, Colossal appealed the declination of the SVOG.

23. On August 30, 2021, ROSS SYLVESTER ELENDU filed a 2020 Form 1040 with the IRS showing Colossal gross receipts of $105,000 and expenses of $155,216.

24. On or about October 28, 2021, Colossal's appeal was granted and an SVOG disbursement to Colossal was approved in the amount of $1,374,200.00. An electronic funds transfer was initiated to an account number XXXX832 at Gate City Bank on October 30, 2021. Gate City Bank flagged the deposit and notified the SBA, which requested that the funds be returned.

25. The only deposits in the Colossal Gate City Bank account during its existence, other than $143, came from two PPP loans and the SVOG.

26. In a letter to the SBA with respect to the SVOG, ROSS SYLVESTER ELENDU stated "My business was thriving until I was unexpectedly hit with the COVID 19 pandemic which greatly impacted my business due to no fault of my own."

PPP: The Paycheck Protection Program

27. The SBA was an executive-branch agency of the United States government that provided support to entrepreneurs and small businesses. The mission of the SBA was to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities after disasters. As part of this effort, the SBA enabled and provided for loans through banks, credit unions, and other lenders. These loans have government-backed guarantees.

28. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in March 2020 and designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. Two sources of relief provided by the CARES Act were the authorization of forgivable loans to small businesses for job retention and certain other

expenses, through a program referred to as the Paycheck Protection Program ("PPP"). The other was in the form of Economic Injury Disaster Loans ("EIDL") made available to assist small businesses and nonprofit organizations meet financial obligations and operating expenses that could have been met had the disaster not occurred.

29. To obtain a PPP loan, a qualifying 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 business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application (SBA Form 2483), the small business (through its authorized representative) was required to certify, among other things: (a) that the small business was in operation on February 15, 2020; (b) average monthly payroll expenses; and (c) number of employees. These figures were used to calculate the amount of money the small business is eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation showing their payroll expenses. Applicants must meet (and certify) certain requirements, including that the small business was in operation on February 15, 2020, had employees, and had average monthly payroll costs.

30. The PPP loan application further required the business (through its authorized representative) to certify whether the applicant or any individual owning 20 percent or more of the equity of the business was subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought.

31. 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, which were guaranteed by the SBA. Data from the application, including the information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan.

32. PPP loan proceeds were required to be used on certain permissible expenses, including payroll costs, mortgage interest, rent, and utilities. Under the applicable PPP rules and guidance, the interest and principal on the PPP loan is eligible for forgiveness if the business spent the loan proceeds on these expense items within a designated period of time and used a certain portion of the loan towards payroll expenses.

33. ROSS SYLVESTER ELENDU applied for several PPP loans for two of his businesses, including Colossal and a business called Telaroice. ROSS SYLVESTER ELENDU applied for PPP loans from at least two different lenders. ROSS SYLVESTER ELENDU first applied to Readycap Lending, LLC ("Readycap").

Telaroice PPP

34. Telaroice was registered with the North Dakota Secretary of State in 2014, but by March 2016 Telaroice was not in good standing, and the business registration was "inactive" by May 19, 2016.

35. On April 15, 2020, ROSS SYLVESTER ELENDU engaged in an email exchange with a loan officer at Readycap for a PPP loan for Telaroice. ROSS SYLVESTER ELENDU emailed his 2019 income tax return to the loan officer, who replied that she reviewed the tax return "and the only income reported is from wages, don't see any

business income." ROSS SYLVESTER ELENDU emailed that he "was operating under my social security number so that's why you see those wages reported. . . . As for the profit and loss statement can you please enlighten me on what that is." The loan officer then wrote "you[r] personal 2019 tax return reports wages and not a sch C for a business operated under your SSN."

36. On April 16, 2020, ROSS SYLVESTER ELENDU sent an email to the same loan officer stating that he attached the tax document she requested. The attachment was a Form 1040 with a new Schedule C for Telaroice showing no income but business expenses in the amount of $45,232 for a net loss. The new 1040 submitted to Readycap showed no wages and no reforestation credit.

37. The second 2019 Form 1040 that was sent to Readycap was never filed with the IRS.

38. On ROSS SYLVESTER ELENDU's amended 2019 tax return (1040-X), he provided a different Schedule C for Telaroice than the Schedule C that was emailed to Readycap. In that schedule C, ROSS SYLVESTER ELENDU reported sales in the amount of $22,678, and total expenses of $24,222.

39. The electronically signed and certified PPP loan application stated the average monthly payroll for Telaroice was $12,000, which qualified ROSS SYLVESTER ELENDU for the maximum PPP loan amount.

40. The Telaroice PPP loan from Readycap was "closed" by Readycap and/or withdrawn by ROSS SYLVESTER ELENDU.

41. On March 11, 2021, a loan officer at Aspire Bank emailed PPP information and an application to ROSS SYLVESTER ELENDU.

42. On or about March 12, 2021, ROSS SYLVESTER ELENDU signed and dated an application for a PPP loan for Telaroice.

43. On or about April 22, 2021, ROSS SYLVESTER ELENDU signed and dated a second application for a Telaroice PPP loan.

44. ROSS SYLVESTER ELENDU later obtained two PPP loan payments for Telaroice from Aspire Bank on or about March 17, 2021, and April 24, 2021. Both loans were forgiven.

<u>Colossal PPP</u>

45. ROSS SYLVESTER ELENDU did not originally file a Schedule C with his 2019 Form 1040 tax return on April 8, 2020, which claimed no business income at all. On April 16, 2020, ROSS SYLVESTER ELENDU provided a 2019 Schedule C to Readycap showing that Colossal had gross receipts of $70,380 and expenses of $29,342.

46. On April 17, 2020, ROSS SYLVESTER ELENDU submitted an application to Readycap for a PPP loan in the amount of $62,500, claiming an average monthly payroll of $25,000. The application was signed and ROSS SYLVESTER ELENDU certified that Colossal was in operation on February 15, 2020, and the “information provided in all supporting documents and forms is true and accurate in all material respects.”

47. The Colossal PPP loan was “closed” by Readycap and/or withdrawn by ROSS SYLVESTER ELENDU.

48. On June 22, 2020, Colossal opened bank account XXXX832 at Gate City Bank.

49. On January 22, 2021, Colossal created a website.

50. On March 11, 2021, a loan officer at Aspire Bank emailed PPP information and an application to ROSS SYLVESTER ELENDU.

51. On or about March 12, 2021, ROSS SYLVESTER ELENDU signed and dated an application for a PPP loan for Colossal.

52. On March 18, 2021, ROSS SYLVESTER ELENDU filed an amended tax return for 2019 showing Colossal had gross receipts of $3,100,000 and expenses of $2,990,331. Prior to this date ROSS SYLVESTER ELENDU had not submitted any schedule C to the IRS on behalf of Colossal for 2019 showing income or expenses.

53. Colossal's business registration with the Minnesota Secretary of State was reinstated on April 21, 2021.

54. On or about April 22, 2021, ROSS SYLVESTER ELENDU signed and dated a second application for a Colossal PPP loan.

55. ROSS SYLVESTER ELENDU received two PPP payments for Colossal. He received $20,800 on or about March 17, 2021, and another $20,800 on or about April 24, 2021. Both loans were forgiven.

COUNT ONE

Wire Fraud: Shuttered Venue Operations Grant

56. Between on or about December 27, 2020, and on or about December 31, 2021, in the District of North Dakota and elsewhere,

ROSS SYLVESTER ELENDU,

individually, and by aiding and abetting, counseling, commanding, inducing and procuring its commission, with intent to defraud, did voluntarily and intentionally devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and did transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice.

57. The Scheme. The United States realleges and incorporates by reference the allegations listed in the background section of this Indictment, which outline ROSS SYLVESTER ELENDU's scheme to defraud the SBA, to wit: ROSS SYLVESTER ELENDU falsely represented to the SBA, in an application for an SVOG, that Colossal earned \$3.1 million of gross revenue in 2019 when in fact it earned no revenue, and further, ROSS SYLVESTER ELENDU electronically filed a false tax return with the SBA in interstate commerce to support the fraudulent SVOG application. It was a further part of the scheme that ROSS SYLVESTER ELENDU filed a false and fraudulent amended tax return with the Internal Revenue Service for the purpose of executing the

scheme and artifice to defraud the SBA. ROSS SYLVESTER ELENDU had no legal right to the SVOG funds disbursed to his Gate City Bank account, and ROSS SYLVESTER ELENDU persisted with efforts to obtain the SVOG even after being notified that he was being criminally investigated for fraud in connection with the SVOG application.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT TWO

Wire Fraud: Telaroice PPP Loan

58. On or about March 12, 2021, in the District of North Dakota and elsewhere,

ROSS SYLVESTER ELENDU,

individually, and by aiding and abetting, counseling, commanding, inducing and procuring its commission, with intent to defraud, did voluntarily and intentionally devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and did transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice;

59. The Scheme. The United States realleges and incorporates by reference paragraphs 1 through 55 of this Superseding Indictment. ROSS SYLVESTER ELENDU filed a false and fraudulent amended tax return with the Internal Revenue Service for the purpose of executing the scheme and artifice to defraud the SBA. ROSS SYLVESTER ELENDU applied for a PPP loan for Telaroice on or about March 12, 2021, using a false tax return.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT THREE

Wire Fraud: Telaroice PPP Loan

60. On or about April 22, 2021, in the District of North Dakota and elsewhere,

ROSS SYLVESTER ELENDU,

individually, and by aiding and abetting, counseling, commanding, inducing and procuring its commission, with intent to defraud, did voluntarily and intentionally devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and did transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice;

61. The Scheme. The United States realleges and incorporates by reference paragraphs 1 through 55 of this Superseding Indictment. ROSS SYLVESTER ELENDU filed a false and fraudulent amended tax return with the Internal Revenue Service for the purpose of executing the scheme and artifice to defraud the SBA. ROSS SYLVESTER ELENDU applied for a PPP loan for Telaroice on or about April 22, 2021, using a false tax return.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT FOUR

Wire Fraud: Colossal PPP Loan

62. On or about March 12, 2021, in the District of North Dakota and elsewhere,

ROSS SYLVESTER ELENDU,

individually, and by aiding and abetting, counseling, commanding, inducing and procuring its commission, with intent to defraud, did voluntarily and intentionally devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and did transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice;

63. The Scheme. The United States realleges and incorporates by reference paragraphs 1 through 55 of this Superseding Indictment. ROSS SYLVESTER ELENDU filed a false and fraudulent amended tax return with the Internal Revenue Service for the purpose of executing the scheme and artifice to defraud the SBA. ROSS SYLVESTER ELENDU applied for a PPP loan for Colossal on or about March 12, 2021, using a false tax return.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT FIVE

Wire Fraud: Colossal PPP Loan

64. On or about April 22, 2021, in the District of North Dakota and elsewhere,

ROSS SYLVESTER ELENDU,

individually, and by aiding and abetting, counseling, commanding, inducing and procuring its commission, with intent to defraud, did voluntarily and intentionally devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and did transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice;

65. The Scheme. The United States realleges and incorporates by reference paragraphs 1 through 55 of this Superseding Indictment. ROSS SYLVESTER ELENDU filed a false and fraudulent amended tax return with the Internal Revenue Service for the purpose of executing the scheme and artifice to defraud the SBA. ROSS SYLVESTER ELENDU applied for a PPP loan for Colossal on or about April 22, 2021, using a false tax return.

In violation of Title 18, United States Code, Sections 1343 and 2.

FORFEITURE NOTICE

Upon conviction of the offenses charged in this Superseding Indictment,

ROSS SYLVESTER ELENDU

shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461(c), all of his right, title, and interest in any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1343, including but not limited to:

> A sum of United States currency in the form of a Money Judgment representing the amount of proceeds obtained as a result of the offenses.

If any of the assets described above as being subject to forfeiture, pursuant to 18 U.S.C. § 1343, as a result of any act or omission of ROSS SYLVESTER ELENDU,

a. Cannot be located upon the exercise of due diligence;

b. Has been transferred to, sold to, or deposited with, a third person;

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 subdivided without difficultly,

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of said defendants up to the value of said property described above as being subject to forfeiture.

A TRUE BILL:

/s/ Foreperson
Foreperson

/s/ Mac Schneider
MAC SCHNEIDER
United States Attorney

MDG/ak