

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 20-60139-CR-WPD**

UNITED STATES OF AMERICA

vs.

DAMION MCKENZIE,

Defendant.

FACTUAL PROFFER

The United States and Defendant Damion McKenzie (“Defendant”) agree that had this case proceeded to trial, the United States of America would have proven, beyond a reasonable doubt, the following facts, among others, pertaining to violations of Title 18, United States Code, Sections 1343, 1344, and 1349, which occurred in the Southern District of Florida and elsewhere.

From in around May 2020, through in or around at least July 2020, Defendant knowingly and willfully conspired and agreed with Keyaira Bostic, James Stote (referenced in the Indictment as “Individual 1”), and others to submit and cause the submission of millions of dollars’ worth of fraudulent Paycheck Protection Program (“PPP”) loan applications. PPP loans are forgivable business loans for small businesses, created as part of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, the general purpose of which was to help businesses pay their expenses during the COVID-19 Pandemic and to encourage them to retain their employees. Generally, a business could seek a PPP loan in the amount of 2.5 times its average monthly payroll.

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. While it was the participating lender that issued the PPP loan, the loan was 100% guaranteed by the Small Business Administration (“SBA”). Data from the application, including 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.

PPP loan proceeds were required to be used by the business on certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the PPP loan to 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 PPP loan proceeds on payroll expenses.

In furtherance of the conspiracy, and to accomplish its object and purpose, Defendant caused the submission of a PPP loan application on behalf of his company, Five Plus Investment Group LLC (“Five Plus”), that Defendant knew contained materially false and fraudulent representations. Specifically, on or about May 16, 2020, Stote, in coordination with Defendant and at Defendant’s request, electronically submitted a PPP loan application package to Bank 2, an FDIC-insured financial institution and approved SBA lender, through Bank Processor 1. The PPP loan application package on behalf of Five Plus sought a loan in the amount of \$235,727 (the “Five Plus Loan”). The loan application falsely claimed that Five Plus had 13 employees and an average monthly payroll of \$94,291. And the supporting documents, which included a purported company bank statement and four IRS Forms 941 for 2019 (Employer’s Quarterly Federal Tax Return) signed with the name “Damion McKenzie,” were forgeries. Florida Department of Revenue records reflected no record of employees or payroll reported by Five

Plus for 2019 or the first quarter of 2020. IRS records showed that Five Plus did not file any Forms 941 in 2018, 2019 or the first quarter of 2020.

In response to the knowing and willful false and fraudulent representations made by Defendant and Stote in the loan documents, Bank Processor 1 rejected the Five Plus Loan on behalf of Bank 2.

For the purposes of executing the scheme to defraud, Defendant transmitted and caused to be transmitted in interstate commerce

In addition to seeking a fraudulent PPP loan for his own company, Defendant recruited a number of friends and associates who he referred to Stote for the purpose of submitting additional fraudulent PPP loan applications, sometimes in exchange for kickback payments. One of those referrals was Keyaira Bostic, with whom McKenzie conspired to submit a fraudulent PPP loan application in the amount of \$84,515 on behalf of her company, I Am Liquid, Inc., in exchange for a kickback payment from the PPP loan proceeds. Based on text message communications and emails between Defendant, Stote, Bostic, and other conspirators, investigators identified approximately 12 fraudulent loans seeking approximately \$4,404,703 that came from Defendant's referrals.

The parties agree that the fraud scheme in this case involved the use of interstate wires. This includes an email transmission from Defendant to Stote attaching signed IRS Forms 941 for Five Plus for calendar year 2019 (Count 4 of the Indictment); a wire transfer in the amount of \$21,130 from the JP Morgan Chase account ending 2310, belonging to I Am Liquid, Inc., to the Citibank account ending in 6828, belonging to Stote (Count 5 of the Indictment); the deposit of a check in the amount of \$20,000 from a company referred to the scheme into the PNC account

ending 7116 belonging to Defendant (Count 7 of the Indictment); the deposit of a check in the amount of \$90,000 from a company referred to the scheme into the PNC account ending 1286 belonging to Defendant (Count 8 of the Indictment).

The above-described evidence would be established through, among other evidence, text message communications, WhatsApp messages, emails, call logs, Internet Service Provider records, bank records, PPP loan files from Bank Processor 1, records recovered from the residences of Stote and another coconspirator, as well as testimony of witnesses, including representatives of Bank 2, Bank Processor 1, the IRS, the SBA, and law enforcement.

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The information contained in this proffer is not a complete recitation of the facts and circumstances of this case, but the parties agree it is sufficient to prove Counts 1, 2, 3, 4, 5, 7, and 8 of the Indictment beyond a reasonable doubt.

JUAN ANTONIO GONZALEZ
ACTING UNITED STATES ATTORNEY

Date: 10-8-21 By: _____

DAVID S. TURKEN
ASSISTANT UNITED STATES ATTORNEY

JOSEPH S. BEEMSTERBOER
ACTING CHIEF, FRAUD SECTION

Date: 10-8-21 By: _____

PHILIP B. TROUT
TRIAL ATTORNEY

Date: 10-8-21 By: _____

MARTIN ROTH
ATTORNEY FOR THE DEFENDANT

Date: 10-8-21 By: _____

DAMION MCKENZIE
DEFENDANT