

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 21-60029-CR-WPD**

UNITED STATES OF AMERICA

vs.

ANDRE CLARK,

Defendant.

FACTUAL PROFFER

The United States and Defendant Andre Clark (“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 371 and 1343, which occurred in the Southern District of Florida and elsewhere.

From in around May 2020, through in or around at least June 2020, Defendant knowingly and willfully conspired and agreed with 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, Top Choice, LLC (“Top Choice”), that Defendant knew contained materially false and fraudulent representations. Specifically, on or about May 20, 2020, Individual 1, in coordination with Defendant and at Defendant’s request, electronically submitted to Bank 1, through Bank Processor 1, a PPP loan application package on behalf of Top Choice seeking a loan in the amount of \$488,565 (the “Top Choice Loan”). The loan application documents falsely claimed that Top Choice had 25 employees and an average monthly payroll of \$195,426. And the supporting documents, which included a purported company bank statement and IRS Forms 941 for 2019 (Employer’s Quarterly Federal Tax Return) signed with the name “Andre Clark,” were forgeries. Florida Department of Revenue records reflected that Top Choice did not report any wages to employees for 2019. IRS records showed that Top Choice did not file any Forms 941 in 2019.

As a result of the knowing and willful false and fraudulent representations made by Defendant and Individual 1 in the loan documents, Bank Processor 1 approved the Top Choice Loan, which Bank 1 funded by making an electronic wire transfer in the amount of \$488,565 to

the Top Choice bank account. Of note, Defendant opened that account the day before the loan application was submitted.

In addition to obtaining a fraudulent PPP loan for his own company, Defendant recruited a number of friends and associates who he referred to Individual 1 for the purpose of submitting additional fraudulent PPP loan applications, sometimes in exchange for kickback payments. Based on text message communications between Defendant and Individual 1, investigators identified approximately 15 fraudulent loans seeking approximately \$6,774,999 that came from Defendant's referrals.

The parties agree that the fraud scheme in this case involved the use of interstate wires, including those required to submit the fraudulent Top Choice PPP loan application.

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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 the Information beyond a reasonable doubt.

JUAN ANTONIO GONZALEZ
ACTING UNITED STATES ATTORNEY

Date: 5-14-21

By:



DAVID S. TURKEN
ASSISTANT UNITED STATES ATTORNEY

DANIEL KAHN
ACTING CHIEF, FRAUD SECTION

Date: 5-14-21

By:



FOLK PHILIP B. TROUT
TRIAL ATTORNEY

Date: 5-14-21

By:



ANDREW SMALLMAN
ATTORNEY FOR THE DEFENDANT

Date: 5-14-21

By:



ANDRE CLARK
DEFENDANT