

ATTACHMENT A

Counts One and Two
(Wire Fraud)

From at least as early as in or around April 2020 through in or around August 2020, in the District of New Jersey and elsewhere, defendant

MARC C. ORIVAL,

knowingly and intentionally devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing and attempting to execute such scheme and artifice, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, the following writings, signs, signals, pictures, and sounds, each constituting a separate count of this Complaint, to wit:

Count	Approximate Date	Description
1	June 18, 2020	ORIVAL caused to be deposited approximately \$28,900 from the Small Business Administration to Sky to Sky's bank account at Bank-1, resulting in an interstate wire transmission.
2	July 20, 2020	ORIVAL caused to be deposited approximately \$45,100 from the Small Business Administration to Orival's bank account at Bank-2, resulting in an interstate wire transmission.

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

Count Three
(Money Laundering)

On or about June 18, 2020, in the District of New Jersey and elsewhere,
defendant,

MARC C. ORIVAL,

did knowingly engage and attempt to engage in a monetary transaction by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a greater value than \$10,000, that is, the transfer of approximately \$20,000 of U.S. currency from a business account at Bank-1 to a personal account at Bank-1, such property having been derived from a specified unlawful activity, that is, wire fraud, in violation of Title 18, United States Code, Section 1343.

In violation of Title 18, United States Code, Section 1957 and Section 2.

Count Four
(Money Laundering)

On or about July 31, 2020, in the District of New Jersey and elsewhere,
defendant

MARC C. ORIVAL,

did knowingly engage and attempt to engage in a monetary transaction by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a greater value than \$10,000, that is, the purchase of an approximately \$26,614 cashier's check from an account at Bank-2, such property having been derived from a specified unlawful activity, that is, wire fraud, in violation of Title 18, United States Code, Section 1343.

In violation of Title 18, United States Code, Section 1957 and Section 2.

ATTACHMENT B

I, Paul D. Bataille, am a Special Agent with the Internal Revenue Service. I have knowledge about the facts set forth below from my involvement in the investigation, my review of reports, documents, pictures, videos, witness interviews, and discussions with other law enforcement officials. Because this affidavit is submitted for the limited purpose of establishing probable cause, I have not set forth each and every fact that I know concerning this investigation. All statements described herein are relayed in substance and in part. In addition, where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

Background

THE ECONOMIC INJURY DISASTER LOANS PROGRAM

1. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act is a federal law enacted in or around March 2020 designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic.

2. The provisions of the CARES Act, in conjunction with an officially declared disaster by the United States Government, allowed for the Small Business Association ("SBA") to offer funding through the COVID-19 Economic Injury Disaster Loans ("EIDL") program to business owners negatively affected by the COVID-19 pandemic. More specifically, the EIDL program is an SBA program that provides low-interest financing and advances (or grants) to small businesses, renters, and homeowners in regions affected by declared disasters.

3. In order to obtain an EIDL, a qualifying business must submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDLs for COVID-19 relief, the 12-month period is that preceding January 31, 2020. The business entity must have existed in an operational condition on February 1, 2020.

4. Using the SBA online portal, EIDL applicants submit personal and business information in support of each EIDL application. The EIDL loans/advances process required minimal documentation and information from small businesses to process the loan/advances for approval. The application includes a paragraph in which the applicant affirms that the information submitted is true and correct under the penalty of perjury and applicable criminal statutes.

5. EIDL applications are submitted directly to the SBA and processed by the agency with support from a government contractor. The amount of the loan/advance, if the application is approved, is determined based, in part, on the information provided by the applicant about employment, revenue, and cost of goods, as described above. As a general matter, the loan amount for most businesses, other than rental businesses and non-profit and agricultural businesses, is calculated the same way: gross revenue reported, less cost of goods sold reported, divided by two. The maximum loan amount is capped at \$150,000 per entity.

6. Applicants must also make certain criminal history disclosures. More specifically, for applications prior to May 4, 2020, applicants must disclose any criminal offense, other than minor traffic violations, for which they have been convicted, pleaded guilty, pleaded nolo contendere, been placed on pretrial diversion, or been placed on any form of parole or probation. For applications filed on or after May 4, 2020, applicants must disclose whether, in the last five years, the applicant has been convicted, pleaded guilty, pleaded nolo contendere, or been placed on any form of parole or probation of/for a felony.

7. Pursuant to the provisions governing the EIDL program, loan/advance proceeds must be used by the receiving business only on certain permissible expenses. More specifically, the EIDL funding may be used by the business to pay fixed debts, payroll, accounts payable, and other bills that could have been paid had the COVID-19 disaster not occurred.

THE RELEVANT ENTITIES AND INDIVIDUALS

8. At various times relevant to the Complaint:

a. Defendant Marc. C. Orival ("Orival") resided in Pennsylvania and Georgia. Orival previously resided in New Jersey and travelled to and from New Jersey during the relevant period described in the Complaint.

b. Haitian Mark Entertainment LLC ("HME") is a company established in Freehold, New Jersey. Orival was believed to own HME.

c. Orival was believed to own Sky to Sky Trucking LLC ("Sky to Sky"), a transportation/trucking company. Law enforcement has not identified corporate filings for Sky to Sky.

d. Bank-1 was a financial institution headquartered in Charlotte, North Carolina. Orival maintained a personal account at Bank-1 (the "7096 Account"). Orival maintained a business account for Sky to Sky at Bank-1 (the "3463 Account").

e. Bank-2 was a financial institution headquartered in San Francisco, California. Orival maintained a personal account at Bank-2 (the "4221 Account"). Orival maintained a business account for HME at Bank-2 (the "2481 Account").

The Scheme to Defraud

FALSE EIDL APPLICATIONS TO SBA

Application-1 and Application-2

9. On or about April 15, 2020, Orival submitted an EIDL application ("Application-1") on behalf of "sky two sky trucking LLC" (i.e, Sky to Sky). Orival listed himself as 100% owner. Orival certified that Sky to Sky's gross revenue for the 12-month period preceding the COVID-19 pandemic was \$62,000 and that the costs of goods sold during this period as \$0. Orival further certified in Application-2 that Sky to Sky had two employees as of January 31, 2020. Finally, Orival certified that he did not have any reportable federal convictions in Application-1. Orival listed the 3463 Account as the account to which the EIDL funding should be disseminated.

10. The SBA approved Application-1. Based on the gross revenue reported by Orival, as well as the fact that Orival reported no cost of goods, Orival qualified for approximately \$28,900 and an approximately \$2,000 grant. On or about June 16, 2020, Orival electronically signed the Loan Authorization and Agreement.

11. On or about June 26, 2020, Orival submitted a second EIDL application ("Application-2") on behalf of "Sky 2 sky trucking LLC" (i.e, Sky to Sky). Despite the minor discrepancy in the entity name, Orival listed the same Federal Tax Identification Number in Application-2 as he listed in Application-1. Orival listed himself as 100% owner. In Application-2, however Orival certified that Sky to Sky's gross revenue for the 12-month period preceding the COVID-19 pandemic was \$165,415 and the costs of goods sold during this period was \$168,801. In Application-2, Orival certified that Sky to Sky had three employees as of January 31, 2020 (not two, as he did in Application-1). Finally, Orival certified that he did not have any federal convictions or guilty pleas in the last five years in Application-2. The SBA denied Application-2 as duplicative.

12. Application-1 and Application-2 contained false statements, misrepresentations, and/or material omissions. Moreover, the information Orival provided in Applications-1 and 2 is internally inconsistent.

13. First, Orival falsely certified in both applications that he had no reportable convictions. More specifically, Orival filed Application-1 before May

4, 2020. Accordingly, Orival was required to disclose all prior offenses, other than minor vehicle violations, regardless of date. Orival filed Application-2 after May 4, 2020. Therefore, for Application-2, Orival only had to disclose felony convictions within the last five years. A review of law enforcement databases revealed that Orival has felony convictions that he was required to disclose. Instead, he certified that he had no reported convictions. For instance, in 2006, Orival was convicted of manufacturing/distributing heroin, in violation of N.J.S.A § 2C:35-5B(2), for which he received a seven-year term of imprisonment; distributing a controlled dangerous substance on school grounds, in violation of N.J.S.A § 2C:35-7, and another count of manufacturing/distributing heroin, in violation of N.J.S.A § 2C:35-5B(2), for which he received another seven-year term of imprisonment; and possession of a controlled dangerous substance, in violation of N.J.S.A § 2C:35-5B(2), for which he was sentenced to a four-year term of imprisonment. Further, Orival has at least two felony convictions in the last five years, which he was required to disclose in Application-2. Specifically, on or about February 17, 2017, Orival received a 90-day term of imprisonment for criminal trespass, in violation of N.J.S.A § 2C:18-3A (a fourth-degree felony) and a 109-day term of imprisonment for resisting arrest/eluding, in violation of N.J.S.A. § 2C:29-2A(3)(B) (a third-degree felony). Orival falsely certified that he did not have these reportable convictions.

14. Second, Orival also misstated that Sky to Sky had two employees (Application-1) and three employees (Application-3). This information, of course, is internally inconsistent. Further, documentation from the New Jersey Department of Labor ("NJDOL"), Georgia Department of Labor ("GADOL"), and Pennsylvania Department of Labor ("PADOL") show that there are no records of wages paid by Sky to Sky in any of the aforementioned states. In addition, IRS records show that Orival did not pay employees in 2019, as he did not file any W-2 forms with Sky to Sky's 2019 filing. Moreover, Orival's personal 2019 IRS tax filings fail to show that Orival himself is an employee of Sky to Sky.

15. Third, Orival included differing gross revenue and cost of good information in Application-1 and Application-2. Based on Orival's 2019 tax returns for Sky to Sky, Orival reported to the IRS approximately \$165,415 in gross revenue and approximately \$168,801 in deductions, resulting in negative income (and no tax liability). In Application-1, however, which was approved, Orival reported a positive income of \$62,000. Had Orival reported a negative income for Sky to Sky in Application-1, as he did to the IRS, he would not have been entitled to EIDL funding.

16. On or about June 18, 2020 the SBA transferred approximately \$28,900 to the 3463 Account, resulting in an interstate wire. On or about June 26, 2020, the SBA transferred the approximately \$2,000 advance to the 3463 Account.

Application-3

17. On or about June 30, 2020, Orival submitted an EIDL application ("Application-3") on behalf of "Haitianmarc2016@gmail." Haitainmarc2016@gmail.com is Haitian Marc Entertainment LLC's business email address. Orival listed this same email address as HME's business email in Application-3. As part of Application-3, Orival certified that HME had \$92,359 in gross revenue for the 12-month period preceding the COVID-19 pandemic and that HME had one employee as of January 31, 2020. He reported no costs of goods sold. Orival listed HME's business address as a residence in College Park, Georgia (the "College Park Residence"). Orival listed HME's business category as "Entertainment Venue." Orival certified in Application-3 that he did not have any reportable criminal convictions. In Application-3, Orival listed the 4221 Account as the account to which the EIDL funding for HME should be disseminated.

18. The SBA approved Application-3. Based on the gross revenue reported by Orival, Orival qualified for approximately \$45,100. On or about July 17, 2020, Orival electronically signed the Loan Authorization and Agreement.

19. Application-3 contained false statements, misrepresentations, and/or material omissions.

20. First, in Application-3, Orival falsely certified that he was not convicted for a felony within the last five years from the time of application. As noted in Paragraph 13 above, Orival has had felony convictions in the last five years.

21. Orival also misstated that HME had one employee as of January 31, 2020. Documentation from the New Jersey Department of Labor ("NJLDR"), Georgia Department of Labor ("GADOL"), and Pennsylvania Department of Labor ("PADOL") show that there is no record of wages paid by HME in any of the aforementioned states. In addition, records obtained from the IRS demonstrate that Orival is not himself an employee of HME.

22. On or about July 20, 2020, the SBA transferred approximately \$45,100 to the 4221 Account, Orival's personal account, resulting in an interstate wire.

23. Of note, on or about May 21, 2020, Orival applied for unemployment benefits from the Pennsylvania Department of Labor. Since in or around June 2020, he has collected these benefits. This application, which Orival certified, contradicts Applications-1-3. Specifically, the applicant is asked whether he or she is either self-employed or a business owner. Orival certified that he was

not. He further certified that he had not been self-employed in the last 18 months.

Use of the EIDL Loan Proceeds

24. Bank records for the 3463 Account demonstrate that Orival used the EIDL funding provided to Sky to Sky for improper, non-business purposes. On June 1, 2020, the balance for the 3463 Account was approximately \$729.53 dollars. The ending balance as of June 30, 2020 was \$65.57.

25. For instance, on or about June 18, 2020, the same day the SBA transferred the EIDL funding to the 3463 Account, Orival transferred approximately \$20,000 in United States currency from the 3463 Account to his personal account at Bank-1, the 7096 Account. On or about July 18, 2020, Orival then made several cash withdrawals from the 7096 Account, including: approximately \$1,000 from a Bank-1 ATM in Wall Township, New Jersey, approximately \$8,000 from a teller at a Bank-1 branch in Wall Township, New Jersey, and approximately \$5,000 from a teller at a Bank-1 branch in King of Prussia, Pennsylvania. In addition, Orival used the EIDL funding for Sky to Sky to make various cash application transfers from the 3463 Account to himself and to pay for other personal expenses, including for groceries and fast food.

26. Bank records for the 4221 Account show that Orival used the EIDL funding provided to HME for improper, non-business purposes. The day before the 4221 Account received the SBA funding, the 4221 Account's balance was approximately \$130.53.

27. For instance, Orival used the EIDL funds issued to HME for personal expenses, including, but not limited to, cash withdrawals, cash application transfers, groceries, restaurant expenses, clothing, vacationing/airfare, and alcohol. Also, on or about July 28, 2020, Orival withdrew approximately \$7,510 from the 4221 Account. The same day, he deposited approximately \$7,500 into the 3463 Account. The following day, Orival made an approximately \$5,810 payment from the 3463 Account for a credit card debt.

28. In addition to these expenditures, on or about July 31, 2020, Orival purchased a cashier's check at a Bank-2 branch located in College Park, Georgia in the amount of approximately \$26,614 (the "Cashier's Check"), using HME's EIDL funds from the 4221 Account. The Cashier's Check was payable to a third-party limited liability company to which Orival has no known business association ("Company-1"). The remitter on the Cashier's Check was "Sky2Sky Trucking LLC". Based on travel records, the next day, Orival flew from Atlanta, Georgia to Newark, New Jersey. On or about August 3, 2020, Orival's associate ("Individual-1") deposited the Cashier's Check at a Bank-2 branch in New Milford, New Jersey.