

JOHN W. HUBER, United States Attorney (#7226)
KEVIN L. SUNDWALL, Assistant United States Attorney (#6341)
JAMIE Z. THOMAS, Assistant United States Attorney (#9420)
CY H. CASTLE, Assistant United States Attorney (#4808)
Attorneys for the United States of America
111 South Main Street, Ste. 1800 • Salt Lake City, Utah 84111
Telephone: (801) 325-3285

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HUBERT IVAN UGARTE and LISA
BRADSHAW ROWBERRY,
Defendants.

Case No. 2:20mj452 JCB

UNDER SEAL

FELONY COMPLAINT

Vio. 18 U.S.C. § 371, Conspiracy
(Count 1); 18 U.S.C. § 2232, Removal of
Property to Prevent Seizure (Count 2); 18
U.S.C. § 1014, Loan Application Fraud
(Count 3); 18 U.S.C. § 1343, Wire Fraud
(Count 4); Money Laundering (Count 5)

Before United States Magistrate Judge Jared C. Bennett in the U.S. District Court for the
District of Utah, appeared the undersigned, who, on oath deposes and says:

COUNT 1
18 U.S.C. § 371
(Conspiracy)

1. On or about April 23 through May 18, 2020, in the Central Division of the
District of Utah and elsewhere,

HUBERT IVAN UGARTE and
LISA BRADSHAW ROWBERRY

defendants herein, and others known or unknown, did knowingly combine, conspire,

confederate, and agree together to commit one or more of the following offenses against the United States, that is:

- A. Violations of 18 U.S.C. § 2232 (Removal of Property to Prevent Seizure);
- B. Violations of 18 U.S.C. § 1014 (Loan Application Fraud); and
- C. Violations of 18 U.S.C. § 1343 (Wire Fraud).

All in violation of 18 U.S.C. § 371.

COUNT 2
18 U.S.C. § 2232
(Removal of Property to Prevent Seizure)

2. On or about November of 2019 through present, in the Central Division of the District of Utah and elsewhere,

HUBERT IVAN UGARTE and
LISA BRADSHAW ROWBERRY,

defendants herein, before seizure of property by Trent E. Pedersen, Special Agent, Federal Bureau of Investigation, a person authorized to make seizures, knowingly wasted, disposed of, transferred and otherwise took action, that is, deposited an insurance check from Protective Insurance Company in the amount of \$60,857.82 made payable to Frisbu Trucking, Inc. (FRISBU) into an America First Credit Union account ending in 674-9, which is subject to forfeiture in the case of *United States v. Hubert Ivan Ugarte, et al.*, Case No. 2:19cr393, and held in the name of FRISBU, for the purpose of preventing or impairing the Government's lawful authority to take such property into its custody and control; all in violation of 18 U.S.C. §§ 2232(a) and 2.

COUNT 3
18 U.S.C. § 1014

(Loan Application Fraud)

3. On or about April 23 through May 18, 2020, in the Central Division of the District of Utah and elsewhere,

**HUBERT IVAN UGARTE and
LISA BRADSHAW ROWBERRY,**

defendants herein, made and caused others to make false statements in a loan application to Transportation Alliance Bank (TAB), a federally insured financial institution in Ogden, Utah, for the purpose of influencing TAB to lend FRISBU \$210,000 (loan number 5177077405) in Payment Protection Program (PPP) funds to cover payroll, rent, mortgage interest and utilities, in which the defendants falsely stated that UGARTE was not under indictment and had not entered into to a felony drug possession pretrial diversion agreement, when in truth and fact he was under indictment and had entered into a felony drug possession pretrial diversion agreement; all in violation of 18 U.S.C. §§ 1014 and 2.

**COUNT 4
18 U.S.C. § 1343
(Wire Fraud)**

4. On or about May 14, 2020, in the Central Division of the District of Utah and elsewhere,

**HUBERT IVAN UGARTE and
LISA BRADSHAW ROWBERRY,**

defendants herein, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and for the purpose of executing the scheme and artifice to defraud, did cause to be transmitted in interstate commerce by means of wire communication certain writings, signs

and signals; to wit: a \$210,000 wire transfer from TAB to FRISBU's AFCU bank account ending in 674-9, of fraudulent loan proceeds; all in violation of 18 U.S.C. §§ 1343 and 2.

COUNT 5
18 U.S.C. § 1957
(Spending Money Laundering)

5. On or about May 18, 2020, in the Central Division of the District of Utah and elsewhere,

HUBERT IVAN UGARTE and
LISA BRADSHAW ROWBERRY,

defendants herein, did knowingly engage and attempt to engage in a monetary transaction, that is, the payment of \$126,965.27 to Kenworth Sales, in criminally derived proceeds of a value greater than \$10,000 and was derived from specified unlawful activity, that is, conspiracy to commit Loan Application Fraud in violation of 18 U.S.C. § 1014 and Wire Fraud in violation of 18 U.S.C. § 1343; all in violation of 18 U.S.C. §§ 1957 and 2(a) and 2(b).

NOTICE OF INTENT TO SEEK FORFEITURE

Pursuant to 18 U.S.C. § 982(a)(2)(A), upon conviction of any offense violating 18 U.S.C. §§ 1014 and/or 1343, the defendant(s) shall forfeit to the United States of America any property constituting, or derived from, proceeds obtained directly or indirectly, as a result of the scheme to defraud. The property to be forfeited includes, but is not limited to:

- \$210,000.

- A money judgment equal to the value of any property not available for forfeiture as a result of any act or omission of the defendant(s) for one or more of the reasons listed in 21 U.S.C. § 853(p).
- Substitute property as allowed by 18 U.S.C. § 982(b) and 21 U.S.C. § 853(p).

Pursuant to 18 U.S.C. § 982(a)(1), upon conviction of any offense in violation of 18 U.S.C. § 1957, the defendants shall forfeit to the United States of America any property, real or personal, involved in the money laundering conspiracy, and any property traceable to such property. The property to be forfeited includes, but is not limited to:

- \$210,000
- A money judgment equal to the value of all property not available for forfeiture as a result of any act or omission of the defendant(s) for one or more of the reasons listed in 21 U.S.C. § 853(p); and
- Substitute property as allowed by 18 U.S.C. § 982(b) and 21 U.S.C. § 853(p).

AFFIDAVIT

I, Trent E. Pedersen, the undersigned complainant/affiant, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

INTRODUCTION

1. I am a Special Agent with the Federal Bureau of Investigation (FBI), and have been so employed as a federal law enforcement officer for over 23 years. I have worked a variety of criminal and national security investigations to include investigations pertaining to wire fraud, mail fraud, health care fraud, financial institution crimes, violent crimes, domestic

terrorism, international terrorism, counterintelligence and espionage. I am a licensed attorney in both California and Utah though I am currently on inactive status in both states. I previously served as a Supervisory Special Agent and the Chief Division Counsel for the Salt Lake City Field Office for approximately 3 ½ years providing legal advice, legal training and ethics guidance to FBI employees in Utah, Idaho and Montana.

2. The information in this affidavit is based upon my training and experience, personal knowledge of this investigation, and information conveyed to me by other agents and law enforcement officers who have assisted in this investigation. Because this affidavit is submitted for the sole purpose of seeking issuance of a criminal complaint, it does not include every fact known to me concerning the investigation. Instead, I have included only those facts that I believe are needed to establish the requisite probable cause to support the criminal complaint.

FACTS SUPPORTING PROBABLE CAUSE

3. On October 24, 2019, a federal grand jury in the District of Utah returned an Indictment against UGARTE and others, charging UGARTE with four counts of wire fraud and six counts of money laundering in the case of *United States v. Hubert Ivan Ugarte, et. al.*, Case No. 2:19cr393, as a result of a multi-year wire fraud and bribery scheme investigation in which UGARTE bribed employees of the Salt Lake Hub of FedEx Ground to obtain preferential treatment for his trucking companies.

4. On November 14, 2019, former Chief Magistrate Judge Warner issued a seizure warrant authorizing the United States to seize forty-one of UGARTE's semi-tractors. One

specific semi-tractor the seizure warrant authorized to seize was a 2016 Freightliner Cascadia, VIN: 3AKJGLD51GSGZ9235 (hereinafter "2016 Freightliner").

Protective Insurance Check

5. On May 13, 2020, affiant received a text message from M,M, the former General Manager of FRISBU, stating he had some information that might help my investigation. On May 14, 2020, Affiant telephonically interviewed M.M. During the interview, he told Affiant that he had left UGARTE's employment approximately a week prior to May 14th and was concerned about how UGARTE and ROWBERRY had handled an insurance payment for a semi-tractor that was subject to a seizure warrant served on UGARTE. One of UGARTE's trucking companies had a wrecked tractor that was sitting in Nevada. He explained that ROWBERRY had filed an insurance claim with Protective Insurance and the insurance check was supposed to be turned over to the FBI.

6. He further stated that approximately four weeks ago, UGARTE and ROWBERRY received a check for approximately \$62,000 from Protective Insurance for a semi-tractor totaled in an accident. He explained that UGARTE was hurting for money and rather than pay the FBI, ROWBERRY deposited the check into one of UGARTE's accounts in approximately mid-April.

7. After the seizure warrant was authorized, agents were unable to find a few of the semi-tractors, including the 2016 Freightliner. Subsequent investigation found that the 2016 Freightliner had been involved in a traffic accident in Nevada in October 2019 and was stored somewhere in Nevada.

8. On February 11, 2020, affiant sent by email to counsel for UGARTE and ROWBERRY, the controller for UGARTE's trucking companies, a copy of the accident report from Nevada Highway Patrol Police Report for the 2016 Freightliner. Later that same day, ROWBERRY emailed affiant, and copied counsel for UGARTE, stating she had sent the information about the 2016 Freightliner to Protective Insurance, UGARTE's insurance carrier, and any insurance claim paid for this truck would be turned over to the FBI.

9. On February 25, 2020, affiant emailed counsel for UGARTE and copied ROWBERRY and the US Attorney's Office, stating to counsel for UGARTE that ROWBERRY had previously advised affiant she had filed a claim with Protective Insurance for the 2016 Freightliner and agreed to provide the FBI with the insurance proceeds from this tractor in the event there was any money left after paying for storage fees for the wrecked semi-tractor.

10. A review of FRISBU's AFCU bank account ending in 674-9 shows a deposit of a check from Protective Insurance for \$60,857.82 at the West Valley AFCU Branch on April 16, 2020.

PPP Loan Application

11. After affiant's interview with M.M. on May 14, 2020, he sent affiant the following text message:

Lisa completed SBA loan applications and PPP program applications for money for the business. Knowingly submitted these when they ask if the owner is under federal indictment. I asked her how she submitted this knowing the requirements. Her response is it's ok and will work. Not sure their plan for that money if they get it. Which if they do was done fraudulently.

12. Affiant contacted Special Agent Sean Gomez of the SBA Office of Inspector General (SBA-OIG) in Denver, Colorado to determine if UGARTE and/or FRISBU had

submitted a loan application to the SBA to obtain a PPP loan. Gomez confirmed that UGARTE had submitted an SBA PPP loan application and had obtained a loan of \$210,000 on or about May 11, 2020.

13. The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), signed into law on Friday March 27, 2020, introduced the Paycheck Protection Program (the “PPP”) with an initial \$349 billion in funding with the goal of preventing job loss and small businesses failure due to losses caused by the COVID-19 pandemic. In general, the PPP is a loan designed to provide a direct incentive for small businesses to keep their workers on the payroll. The Small Business Administration (“SBA”) has oversight over the PPP and will forgive loans if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities. Applicants for a PPP loan apply through any SBA (7)(a) lender or through any FDIC insured deposit institution.¹

14. Individuals who have been convicted of a felony in the past five years, any applicant or any individual owning 20% or more of the equity of the applicant, who are currently subject to an indictment, criminal information, arraignment, or other formal criminal charges are specifically precluded from obtaining loans under the PPP.

15. Affiant received from SBA-OIG copies of the (1) Borrower Application Form; (2) Legal Entity Beneficial Certification Form; (3) Borrower Certification Paycheck Protection Program Form; (4) Eligibility Questionnaire; (5) Promissory Note; and (6) the wire transfer

¹ Question 5 of the PPP Borrower Application Form specifically asks the PPP loan applicant to mark a box responding yes or no as to whether the applicant or any 20% equity owner of the Applicant is currently subject to an indictment or other criminal charges. The application specifically states that if an Applicant answers “yes” to question 5 the loan will not be approved.

documentation associated with FRISBU's PPP loan proceeds.

16. Question 5 of the Borrower Application Form asks if "the Applicant or any individual owning 20% or more of the equity of the Applicant, is subject to indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction or presently incarcerated, or on probation or parole?" UGARTE's response to this question was "No". His answer was false because he was under indictment on April 27, 2020 when he signed the Borrower Application Form as the 100% owner of FRISBU as stated in the Borrower Application Form.

17. The first question asked in the Eligibility Questionnaire is: "Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction?" UGARTE's response to this question was "No" by selecting the circle "No" on the Eligibility Questionnaire. His answer was false because he was under indictment on April 23, 2020 when he completed the Eligibility Questionnaire.

18. The third question asked in the Eligibility Questionnaire is "For any criminal offense - other than a minor vehicle violation - have you ever: 1) been convicted; 2) plead guilty; 3) plead nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?" UGARTE selected the circle "No" to this question on the Eligibility Questionnaire as well. His answer was false because in 1988, he entered into a two-year pretrial diversion agreement to a felony drug possession charge.

19. Pursuant to Section D(c) of the Borrower Certification for the PPP loan, UGARTE on behalf of FRISBU, specifically agreed that at least 75% of the \$210,000 would be used for "Payroll Costs."

20. The wire transfer information SBA-OIG provided to Affiant shows that the AFCU bank account of FRISBU, ending in 674-9, received \$210,000 from Transportation Alliance Bank (TAB) on May 14, 2020 located in Ogden, Utah.² On May 28, 2020, Affiant conducted a search of FDIC insured banks and confirmed that TAB is currently insured by the FDIC with an FDIC Number of 34781.

21. On June 2, 2020, affiant interviewed M.M. for a second time to obtain additional details about his text message that ROWBERRY and UGARTE were attempting to fraudulently obtain a PPP loan. M.M. stated that ROWBERRY had told him that she had previously advised UGARTE that their original PPP loan application had been declined or rejected by Chase Bank and Key Bank because they had discovered UGARTE was under indictment. In response, ROWBERRY stated she was going to go with a friend she knew in the banking industry to re-apply for a PPP loan.

22. During the interview, M.M. stated that at the time UGARTE AND ROWBERRY submitted the PPP loan application, FRISBU was struggling financially and he had talked to both UGARTE and ROWBERRY about the need for more money to continue to operate FRISBU and pay overdue obligations. M.M. further stated that FRISBU had bounced payroll checks five different times in the past ninety days and he had continued to receive telephone calls from creditors since leaving FRISBU, including from Kenworth, asking for payments from FRISBU.

23. On May 18, 2020, just four days after receipt of the above fraudulent wire transfer, FRISBU's AFCU account ending in 674-9 shows an automatic withdrawal to Kenworth

² Before the \$210,000 was deposited into the FRISBU bank account, the \$210,000 went from TAB through the San Francisco Federal Reserve in San Francisco, California, and then to the FRISBU AFCU account in Utah.

Sales in the amount of \$126,965.27. M.M. advised affiant during his interview that FRISBU owed approximately \$66,000 a month for lease/purchase payments to Kenworth for thirteen tractors and any payments for approximately \$126,000 to Kenworth would have been for the two months of past due truck payments.

24. Affiant's review of records from Kenworth received on June 8, 2020 shows the \$126,965.27 payment to Kenworth was for truck payments with a small remainder for various truck parts.

25. Based upon this information, UGARTE used \$126,000, or 60 %, of the PPP loan proceeds of \$210,000 to pay Kenworth for past due truck payments, leaving only 40% to pay for Payroll Costs.

CONCLUSION

Based on the foregoing, there is probable cause to believe that defendants UGARTE and ROWBERRY have committed the offenses of Conspiracy in violation of 18 U.S.C. § 371 to commit Removal of Property to Prevent Seizure in violation of 18 U.S.C. §2232; Loan Application Fraud in violation of 18 U.S.C. § 1014; Wire Fraud in violation of 18 U.S.C. § 1343; and Removal of Property to Prevent Seizure in violation of 18 U.S.C. §2232; Loan Application

/

/

/

/

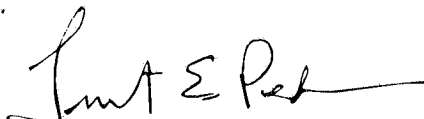
/

/

/

Fraud in violation of 18 U.S.C. § 1014; Wire Fraud in violation of 18 U.S.C. § 1343 and
Spending Money Laundering in violation of 18 U.S.C. § 1957.

DATED this 11th day of June, 2020.



Trent E. Pedersen
Special Agent
Federal Bureau of Investigation

SUBSCRIBED AND SWORN TO before me this 11th day of June, 2020.



JARED C. BENNETT
United States Magistrate Judge