UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 1:20-MJ-03236-BECERRA

UNITED STATES OF AMERICA

v.

DENNIS NOBBE,

Defendant.
_____/

CRIMINAL COVER SHEET

1. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to August 9, 2013 (Mag. Judge Alicia Valle)? ___ Yes X No

2. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard)? ___ Yes X No

3. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss)? ___ Yes X No

Respectfully submitted,

ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

ROB ZINK
CHIEF
CRIMINAL DIVISION, FRAUD SECTION

BY: _____

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AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America
v.
DENNIS NOBBE,

Case No. 1:20-MJ-03236-BECERRA

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 2017-July 2020 in the county of Miami-Dade in the Southern District of Florida, the defendant(s) violated:

Code Section	*Offense Description*
18 U.S.C. § 1349	Conspiracy to Commit Health Care Fraud and Wire Fraud
18 U.S.C. § 1347	Health Care Fraud
18 U.S.C. § 1343	Wire Fraud
18 U.S.C. § 1014	Making False Statements to a Financial Institution and SBA
18 U.S.C. § 1956(a)(1)(B)(1)	Money Laundering
18 U.S.C. § 1956(h)	Conspiracy to Commit Money Laundering

This criminal complaint is based on these facts:

See attached affidavit.

☑ Continued on the attached sheet.

Complainant's signature

Lynnette Alvarez-Karnes, Special Agent, FBI

Printed name and title

Sworn to before me and signed in my presence.

Date: 7.23.20

Judge's signature

City and state: Miami, Florida

Jacqueline Becerra, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Lynnette Alvarez-Karnes, being duly sworn, hereby depose and state as follows:

1. I am a Special Agent with the FBI, where I have been employed for over nineteen years. I am presently assigned to the Health Care Fraud Strike Force in Miami, Florida. My current duties include the investigation of financial crimes including bank fraud, wire fraud, and health care fraud. During the course of my career with FBI, I have investigated numerous financial crimes involving bank fraud, wire fraud, health care fraud, kickback schemes, and money laundering.

2. Throughout the course of my career, I have conducted an array of criminal investigations involving money laundering, bank fraud, public corruption, organized crime, and many other illegal schemes impacting financial institutions. I have experience conducting search, seizure and arrest warrant operations. Recently, I have been assigned to work with the U.S. Department of Justice and other law enforcement partners to investigate possible fraud associated with the stimulus and economic assistance programs created by the federal government in response to the COVID-19 pandemic.

3. This affidavit is submitted in support of a criminal complaint charging DENNIS NOBBE ("NOBBE") with 18 U.S.C. § 1349 (Conspiracy Commit Health Care Fraud and Wire Fraud), 18 U.S.C. § 1347 (Health Care Fraud); 18 U.S.C. § 1343 (Wire Fraud); 18 U.S.C. § 1014 (False Statements to a Financial Institution); 18 U.S.C. § 1956(a)(1)(B)(1) (Money Laundering); and 18 U.S.C. § 1956(h) (Conspiracy to Commit Money Laundering).

4. This affidavit is based on my personal knowledge and investigation by others, including federal and local law enforcement officials whom I know to be reliable and trustworthy. The facts contained herein have been obtained by interviewing witnesses and examining

documents obtained in the course of the investigation as well as through other means. This affidavit does not include every fact known to me about this investigation, but rather only those facts sufficient to establish probable cause.

FACTS ESTABLISHING PROBABLE CAUSE

5. Investigation has revealed that NOBBE, a chiropractor, devised and participated in multiple conspiracies and fraud schemes, through which he and others defrauded patients, government programs, and health care benefit programs.

6. NOBBE's first scheme involved CareCredit, a credit card program offered by an FDIC insured bank, Financial Institution 1, to finance out-of-pocket health care expenses. In or around 2010, Financial Institution 1 terminated NOBBE from the CareCredit program because of the "risky" nature of his business. Because NOBBE could not participate in CareCredit himself, NOBBE paid bribes and kickbacks to two physicians, Physician 1 and Physician 2, to enroll in and open accounts through CareCredit, so that NOBBE could profit off of his patients through CareCredit despite his termination from the program.

7. Specifically, NOBBE and his staff encouraged the patients at his chiropractic business, many of whom were low-income and did not speak English, to use CareCredit to pay for thousands of dollars for services that would purportedly be provided in the future, but that often were not rendered at all. NOBBE not only failed to inform his patients regarding the high interest rates associated with CareCredit charges, but also, did not disclose that NOBBE could not offer or participate in the CareCredit program himself.

8. Upon NOBBE placing a charge on a patient's CareCredit credit card account, Financial Institution 1 would deposit the value of the charge, less a transaction fee, into a bank account controlled by Physician 1 or Physician 2. Physician 1 and Physician 2 would keep a

portion of the deposited funds from CareCredit as a kickback and wire the remainder to NOBBE. To conceal the purpose of the large wire transfer payments from Physician 1 to NOBBE, NOBBE executed sham management service and lease contracts with Physician 1. In a consensual recording made by Physician 1, NOBBE explained that he did this to "cover" for the "illegal" payments that Physician 1 made to NOBBE. NOBBE and conspirators laundered the proceeds of this scheme through a number bank accounts.

9. NOBBE's second scheme involved paying bribes and kickbacks to Physician 1 to submit fraudulent claims to Medicare on NOBBE's behalf, using billing codes for which NOBBE could not have received payment from Medicare if NOBBE submitted them himself, because Medicare would not pay for such services if rendered by a chiropractor. Physician 1 and NOBBE concealed NOBBE's role in the claims from Medicare.

10. Finally, the investigation also revealed that, in or around May 2020, after the emergence of the COVID-19 pandemic, NOBBE made false and fraudulent representations in a Paycheck Protection Program ("PPP") loan application and in an Economic Injury Disaster Loan Emergency ("EIDL") loan application, both of which NOBBE submitted for the purported benefit of his chiropractic business. Through these applications, NOBBE fraudulently obtained more than $200,000 in funds from federal programs intended to provide COVID-19 disaster relief.

I. The CareCredit and Medicare Fraud Schemes

The CareCredit Program

11. Financial Institution 1 offered to the public CareCredit, a health care credit card that could be used to pay for out-of-pocket medical expenses not covered by medical insurance, and provided by a pre-approved network of health care providers who were enrolled with CareCredit. Health care providers who applied to participate in the CareCredit network and were

approved by Financial Institution 1 could offer CareCredit cards to their patients. Providers who enrolled in CareCredit agreed to abide by, among others, the following terms, each of which was material to Financial Institution 1:

a. Patients' CareCredit accounts could only be charged for costs incurred or services actually rendered within thirty days of a charge;

b. CareCredit providers could only process charges for the sale of goods or care rendered by the provider enrolled with the CareCredit program; and

c. CareCredit providers or a member of the provider's staff were required to inform CareCredit cardholders (i.e., the patients receiving the services) that the deferred interest program for CareCredit cards carried an annual percentage rate of 26.99.

The Medicare Program

12. The Medicare Program ("Medicare") was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services ("HHS"), through its agency, the Centers for Medicare and Medicaid Services ("CMS"), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

13. Medicare was a "health care benefit program" as defined by Title 18, United States Code, Section 24(b).

14. Medicare programs covering different types of benefits were separated into different program "parts." Part B of the Medicare Program was a medical insurance program that

covered, among other things, certain physician and outpatient services, and other health care benefits, items and services.

15. For Florida beneficiaries, Medicare Part B's insurance coverage for physician and outpatient services and related health care benefits, items, and services was administered by First Coast Service Options, Inc. ("First Coast") pursuant to a contract with HHS.

16. Physicians, clinics, and other health care providers that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries. A Medicare claim was required to set forth, among other things, the beneficiary's name and Medicare identification number, the services that were performed for the beneficiary, the date that the services were provided, the cost of the services, and the name and provider number of the physician or other health care provider who ordered or performed the services.

17. The Medicare Part B program generally would pay a substantial portion of the cost of the physician or outpatient services or related health care benefits, items, and services that were medically necessary and ordered by licensed doctors or other licensed, qualified health care providers.

18. Payments under Medicare Part B were often made directly to the health care provider rather than to the beneficiary. For this to occur, the beneficiary would assign the right of payment to the health care provider. Once such an assignment took place, the health care provider would assume the responsibility for submitting claims to, and receiving payments from, Medicare.

19. Under Medicare's rules and regulations, physician and outpatient services and related health care benefits, items, or services must be medically necessary and ordered by a licensed doctor or other licensed, qualified health care provider in order to be reimbursed by Medicare.

20. Manual spinal manipulation was a health care service that may have been eligible for reimbursement by Medicare under Part B. Medicare would reimburse for manual spinal manipulation services only when certain conditions were met, such as when the services were provided by a chiropractor or other qualified provider. Medicare Part B did not cover any other services or tests provided or ordered by a chiropractor.

Dennis Nobbe and Dynamic Medical Services

21. NOBBE was a resident of Miami-Dade County, a chiropractic medical doctor, and the president of Dynamic Medical Services.

22. Dynamic Medical Services was a Florida corporation with a principal place of business located at 1490 West 49th Place, Suite 203, Hialeah, Florida, in Miami-Dade County.

23. Physician 1 was a resident of Broward County and a clinical neurologist medical doctor ("M.D."). Physician 1 was enrolled as a Medicare provider and a CareCredit provider.

24. Physician 2 was a resident of Palm Beach County and a doctor of osteopathic medicine ("D.O."). Physician 2 was enrolled as a Medicare provider and a CareCredit provider.

25. In or around August 2012, NOBBE was subject to a disciplinary action by the Florida Department of Health, which filed an administrative complaint charging NOBBE with "exploiting a patient for financial gain." The Florida Department of Health action against NOBBE, which is publicly available through the Florida Department of Health Website, alleges that NOBBE offered pre-payment plans to his patients through which patients could purchase one or

more treatments in advance. According to the complaint, among other things, NOBBE violated Florida law and exploited patients for financial gain by offering the plans without documenting sufficient medical necessity justifying the care and treatments included in the plans. *See* https://appsmqa.doh.state.fl.us/MQASearchServices/HealthcareProviders/LicenseVerification?LicInd=2310&Procde=501&org=%20 (last visited July 14, 2020). NOBBE signed a settlement agreement to resolve the matter, in which NOBBE neither confirmed nor denied the allegations in the complaint, but agreed to sanctions, including undergoing ethics training.

Operation of the CareCredit and Medicare Fraud Schemes based upon statements made by Physician 1 and Physician 2, Bank Records, and Medicare Claims Data

26. Physician 1 and Physician 2 are cooperating with the government in this investigation. Physician 1 has agreed to plead guilty to conspiracy to commit bank fraud, wire fraud, and health care fraud. Physician 2 has agreed to plead guilty to conspiracy to commit bank fraud and wire fraud. It is presumed that Physician 1 and Physician 2 are cooperating in the hopes of obtaining a future potential sentence reduction in their respective cases.

27. The investigation revealed that after NOBBE was disciplined by the Florida Department of Health, NOBBE continued to offer patients pre-payment plans through the CareCredit program by soliciting Physician 1 and Physician 2 to open CareCredit accounts in their names on NOBBE's behalf. According to statements Physician 1 and Physician 2 provided to law enforcement agents, NOBBE instructed Physician 1 and Physician 2 to conceal NOBBE's relationship to Physician 1 and Physician 2 on the CareCredit applications.

28. On or about June 22, 2017, at NOBBE's direction, Physician 1 successfully applied to the CareCredit program, concealing that the true owner of the CareCredit account was NOBBE and that NOBBE, rather than Physician 1, would charge patients through Physician 1's account

and would render the services purportedly provided to patients that NOBBE charged through Physician 1's account.

29. Using Physician 1's CareCredit account, NOBBE induced his patients to apply to be CareCredit cardholders. NOBBE or members of NOBBE's staff then charged the cardholder's accounts for services that Physician 1 purportedly would provide within the next thirty days, consistent with CareCredit's terms and conditions. In reality, services were rendered by NOBBE, rather than Physician 1. In addition, NOBBE generally did not render services within thirty days, and often did not render all of the services for which the cardholders were charged. Unaware of NOBBE's failure to perform the services, Financial Institution 1 deposited amounts equal to the value NOBBE or NOBBE's staff charged to the cardholders, less transaction fees, into bank accounts held by Physician 1. Physician 1 wired the funds s/he received from Financial Institution 1, less a kickback s/he retained for him/herself, to NOBBE. Financial Institution 1 also billed the cardholders directly for the amount charged to their cards, plus interest if interest accrued.

30. Additionally, NOBBE paid kickbacks to Physician 1 for use of Physician 1's unique Medicare provider number to submit, via interstate wire communication, false and fraudulent claims to Medicare. Medicare data reflects that between approximately September 2017 and November 2019, Physician's 1 provider number was used to submit approximately $1,780,229 in claims for NOBBE's patients, including claims to Medicare that NOBBE could not submit himself as a chiropractic physician, and/or which falsely and fraudulently represented that Physician 1 had provided certain services to Medicare beneficiaries. Medicare paid approximately $515,251 on these claims. As described below, and as confirmed by Physician 1, in reality, the services were not provided by Physician 1, were not provided as represented, and/or were not otherwise eligible for Medicare reimbursement.

31. Between in or around August 2017 and in or around May 2018, bank records reflect that Financial Institution 1 deposited approximately $1,315,560 via interstate wire into an account held by Physician 1 for CareCredit card charges caused by NOBBE. Pursuant to an agreement with NOBBE, and at NOBBE's instruction, between approximately December 2017 and June 2018, Physician 1 wired approximately $1,091,080 of the funds received from Financial Institution 1 and Medicare to NOBBE via interstate wire. Physician 1 wired these funds to accounts under NOBBE's control including, but not limited to, an account in the name of Creative Chiropractic ending in 2701.

32. To conceal the nature of the payments from Physician 1 to NOBBE, NOBBE and Physician 1 executed three sham agreements, which Physician 1 provided to law enforcement, which falsely stated, among other things, that Physician 1 had engaged NOBBE to provide various management, marketing, and merchandising services.

33. On or about June 4, 2018, following numerous patient complaints for services not rendered, Financial Institution 1 terminated Physician 1 from the CareCredit program.

34. Following Physician 1's termination from the CareCredit program, NOBBE then recruited a second physician, Physician 2, to open a CareCredit account.

35. Physician 2 provided law enforcement with text messages and emails that reflect that NOBBE explicitly instructed Physician 2 to conceal NOBBE's relationship to Physician 2, including by using a false address and an email account that NOBBE created for Physician 2. For example, on or about June 29, 2018, NOBBE sent a text message to Physician 2 reminding, "Remember keep Dr. Nobbe or Dynamic Medical or addresses you'll be at out of the conversation!"

36. On or about July 26, 2018, Physician 2 successfully applied to the CareCredit program, concealing the fact that the true owner of the CareCredit account was NOBBE and that NOBBE, rather than Physician 2, would charge patients and render the services purportedly provided to patients that NOBBE charged through Physician 2's account.

37. In direct contravention and violation of Financial Institution 1's terms for the CareCredit program, NOBBE routinely charged patients for services that purportedly would be rendered months in the future, but that were often not provided at all. Patients regularly complained that they had been charged for services not rendered. According to Physician 2, Physician 2 provided copies of written complaints to NOBBE, who drafted responses for Physician 2 to submit to CareCredit personnel, including false invoices that misrepresented that patients had been treated by Physician 2.

38. Between in or around August 2018 and in or around September 2019, Financial Institution 1 deposited approximately $713,876 via interstate wire into a bank account held by Physician 2 for CareCredit charges caused by NOBBE. Pursuant to an agreement with NOBBE, and at NOBBE's instruction, between in or around June 2018 and in or around September 2019, Physician 2 wired approximately $678,448 of the funds received from Financial Institution 1 to NOBBE via interstate wire.

39. Following numerous patient complaints, Financial Institution 1 terminated Physician 2 from the CareCredit program in or around September 2019.

Recorded Conversation between NOBBE and Physician 1

40. Physician 1 informed law enforcement that, beginning in or around June 2017, s/he agreed with NOBBE to open a CareCredit account in Physician 1's name to intentionally disguise that NOBBE, rather than Physician 1, would receive funds obtained from Financial Institution 1

as a result of CareCredit charges placed through Physician 1's account. The agreement was that NOBBE would retain 80 percent of the funds obtained through their schemes and Physician 1 would retain 20 percent of the funds.

41. In or around October and November 2019, at the direction of law enforcement agents, Physician 1 covertly recorded conversations with NOBBE, in which Physician 1 relayed to NOBBE that Physician 1 had received a subpoena for documents from federal investigators concerning a potential bank fraud investigation. In the conversation, NOBBE and Physician 1 can be heard discussing the "80/20 split," referring to the verbal agreement for Physician 1 to keep approximately 20% of payments received from NOBBE's CareCredit charges and to remit the remaining 80% to NOBBE. The recordings also captured NOBBE and Physician 1 discussing the Management and Lease agreement executed by NOBBE and Physician 1 to conceal the true nature of the payments from Physician 1 to NOBBE.

42. At one point in the recorded conversation, Physician 1 asked if NOBBE ever put the 80/20 split agreement in writing. NOBBE responded, "I said we couldn't say that in writing because that's illegal to say that."

43. Later, when Physician 1 referenced the 80/20 percent split, NOBBE admonished: "If you say that, it's illegal. Throw that out of your universe, okay? The only way this is legal is basically an agreement where you lease my office, my staff, you pay me a management agreement, and you leased the equipment. It's in that contract. We had this discussion before, but the heat's on, and that's why you need to get your story correct. . . . Your story basically has to be this is a signed contract we did long before anybody was paid. . . . Our stories need to be on the same page here. . . . You need to kind of think is the only way we can stay legal on this is by using that contract, that's the only way this is going to work. Because the percent thing is illegal."

44. The recording also captured NOBBE stating to Physician 1, "What are you gonna do? Nobody knows except you and I. That's why I'm saying our stories need to be together on this lease that we have because you cannot tell them it's a percentage thing. We just get our stories together. . . . I want you to stay out of jail and I want to stay out of jail. So, again, there's nothing we did 'wrong' as long as it's on the premise of these lease payments for Nobbe's management, Nobbe's staff."

Corroborating Information Provided by Dynamic Medical Services Patients

45. Investigators spoke to several patients of Dynamic Medical Services who were charged via CareCredit. Patients generally told investigators that they were charged thousands of dollars via their CareCredit cards for services that were not provided by the CareCredit provider on whose behalf charges were submitted (Physician 1 or Physician 2) and/or that were not provided at all. Although many patients were able to successfully dispute their charges through CareCredit, many experienced financial distress as a result of charges placed on their CareCredit accounts by NOBBE.

46. For example, Patient E.H. became a patient of Dynamic Medical Services in or around December 2017. E.H. was offered a CareCredit card, which Dynamic Medical Services staff informed him/her would be charged $4,000 for approximately thirty treatments; however, E.H.'s card was actually charged approximately $7,000. Although E.H. was charged through Physician 1's CareCredit account for services that purportedly would be rendered by Physician 1, E.H. told law enforcement agents s/he never received treatment from Physician 1. E.H. was upset and unable to pay the additional CareCredit charges. In February 2018, E.H. filed a dispute with CareCredit for non-receipt of services.

47. Patient M.G.S. told investigators that s/he visited Dynamic Medical Services three times for pain in his/her back. On the first visit, M.G.S. was offered a CareCredit card, which was charged $6,000 for approximately 20 treatments. Although M.G.S. was charged through Physician 2's CareCredit account for services that purportedly would be rendered by Physician 2, M.G.S told law enforcement agents that s/he never received treatment from Physician 2. M.G.S. attempted to dispute the CareCredit charge, but was required to pay a balance of approximately $1,947.

48. Investigators also spoke to four patients on behalf of whom Physician 1's Medicare provider number was used to submit claims to Medicare. None of those four patients recognized Physician 1 or recalled receiving any treatment from Physician 1.

49. For example, Patient R.R. went to Dynamic Medical Services for pain in his/her knee and spine after seeing a commercial on Telemundo. R.R. informed investigators that, during visits at Dynamic Medical Services, R.R. received treatments from NOBBE, which lasted approximately two minutes. Dynamic Medical Services staff informed R.R. that Medicare would cover these treatments. R.R. stopped going to Dynamic Medial Services because the treatments were ineffective. Medicare claims data reflect that Physician 1's Medicare provider number was used to submit approximately $1,471 in claims on behalf of patient R.R. for services including lidocaine injections, physical therapy, application of ultrasound, application of electrical stimulation; and X-rays. Medicare paid approximately $727 on these claims.

50. Similarly, Patient I.R. informed investigators that s/he went to Dynamic Medical Services for pain after seeing a commercial on television. During visits at Dynamic Medical Services, I.R. received X-Rays, electrical therapy, physical therapy, and chiropractic treatment. Dynamic Medical Services staff informed I.R. that Medicare would cover these treatments. Medicare claims data obtained during the investigation reflects that Physician 1's Medicare

provider number was used to submit approximately $2,927 in claims on behalf of patient I.R. for services including occupational therapy; application of ultrasound; application of electrical stimulation; and X-rays. Medicare paid approximately $1,512 on these claims. None of the claims submitted on behalf of patients R.R. or I.R. were eligible for reimbursement from Medicare, because they were not, in fact, provided by Physician 1. Moreover, according to Medicare rules and regulations, these services are not eligible for reimbursement from Medicare if they are provided by a chiropractic physician. As a chiropractic physician, NOBBE would not have been eligible for reimbursement on any of these claims.

II. The Fraudulent Disaster Relief Loan Applications (PPP and EIDL)

The Paycheck Protection Program

51. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act is a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to $349 billion in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program (defined previously as "PPP"). In or around April 2020, over $300 billion in additional PPP funding was authorized by Congress.

52. In order to obtain a PPP loan, a qualifying business must submit a PPP loan application, which is signed by an authorized representative of the business. The PPP loan application requires 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, the small business (through its authorized representative) must state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees.

These figures are 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 must provide documentation showing their payroll expenses.

53. A PPP loan application must be processed by a participating financial institution (the lender). If a PPP loan application is approved, the participating financial institution funds the PPP loan using its own monies, which are 100% guaranteed by 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, is transmitted by the lender to the SBA in the course of processing the loan.

54. PPP loan proceeds must be used by the business on certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities. The PPP allows the interest and principal on the PPP loan to be entirely forgiven if the business spends the loan proceeds on these expense items within a designated period of time after receiving the proceeds and uses a certain amount of the PPP loan proceeds on payroll expenses.

Dynamic Medical Services' SBA Loan Application to Financial Institution 2

55. On or about May 21, 2020, NOBBE signed an application for a PPP loan in the amount of $53,800 behalf of Dynamic Medical Services. Through the loan application, NOBBE certified, among other things, that:

a. All SBA loan proceeds would be used only for business-related purposes, which NOBBE stated would be payroll, lease/mortgage, or utilities expenses;

b. NOBBE was not engaged in any activity that was illegal under federal, state, or local law;

c. All of the information provided in the application, and in all supporting documents, was true and accurate, and NOBBE understood that knowingly making a false statement to obtain a guaranteed loan from the SBA was punishable under the law.

56. Based on the application submitted by NOBBE to Financial Institution 2, the $53,800 PPP loan was approved by Financial Institution 2, which disbursed the loan proceeds on or about May 22, 2020 into an account ending in x0239 at Financial Institution 2 in the name of Dynamic Medical Services, over which NOBBE had sole signatory authority.

57. Based upon, among other evidence, the recordings of NOBBE made by Physician 1 that are described in paragraphs 40-42 above, there is probable cause to believe that, at the time NOBBE submitted the PPP application for Dynamic Medical Services, NOBBE knowingly misrepresented to Financial Institution 2 that he was not engaged in any activity that was illegal under federal, state, or local law.

Bank Records Analysis

58. Banking records reflect that, following the receipt of PPP funds, while NOBBE disbursed approximately $26,000 for payroll, NOBBE also disbursed portions of the PPP funds into other accounts under his control. For example:

a. Approximately $1,200 was transferred to an account ending x3193 in the name of Miami IBIS. NOBBE had sole signatory authority over the x3193 account. Based on my training and experience, as well as a review of bank records for the account, Miami IBIS appears to be a shell company. Based on my review of bank records for the account, after transferring the $1,200 in PPP funds to the Miami IBIS account, NOBBE then used the PPP funds to make personal purchases including payments to Netflix, a carwash, and Spotify.

b. NOBBE transferred another $2,200 into a second account in the name of Miami IBIS, ending in x9753, over which NOBBE also had signatory authority.

c. NOBBE transferred approximately $3,000 into an account ending in x9559 in the name of Palmetto Lakes Surgical Center LLC, over which NOBBE had signatory authority. Based on my training and experience, as well as a review of bank records for the account, Palmetto Lakes Surgical Center LLC appears to be a shell company.

d. NOBBE transferred approximately $1,000 of the PPP funds to pay a personal credit card in NOBBE's name that was used for personal expenses including airfare, a vacation resort, Netflix, and a gym membership.

The Economic Injury Disaster Relief Program

59. The Economic Injury Disaster Loan (defined previously as "EIDL") program is an SBA program that provides low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters.

60. One source of relief provided by the CARES Act was the authorization for the SBA to provide EIDLs of up to $2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. In addition, the CARES Act authorized the SBA to issue advances of up to $10,000 to small businesses within three days of applying for an EIDL. The amount of the advance is determined by the number of employees the applicant certifies having. The advances do not have to be repaid.

61. In order to obtain an EIDL and advance, 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 was that preceding January 31, 2020. The applicant must also certify that all of the information in the application is true and correct to the best of the applicant's knowledge.

62. EIDL applications are submitted directly to the SBA and processed by the agency with support from a government contractor, Rapid Finance. The amount of the loan, if the application is approved, is determined based, in part, on the information provided by the application about employment, revenue, and cost of goods, as described above. Any funds issued under an EIDL or advance are issued directly by the SBA. EIDL funds can be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments. If the applicant also obtains a loan under the PPP, the EIDL funds cannot be used for the same purpose as the PPP funds.

Dynamic Medical Services' EIDL Loan Application

63. On or about June 16, 2020, NOBBE signed an application for an EIDL loan in the amount of $150,000 behalf of Dynamic Medical Services. Through the loan application, NOBBE certified, among other things, that:

a. NOBBE was not engaged in any activity that was illegal under federal, state, or local law;

b. NOBBE would not, without the prior written consent of SBA, make any distribution of Borrower's assets, or give any preferential treatment, make any advance, directly or indirectly, to any owner or partner, or to any company directly or indirectly controlling or affiliated with or controlled by NOBBE;

c. NOBBE would not use the EIDL funds for the same purpose as any PPP funds he may have received; and

d. All of the information provided in the application was true and accurate, and NOBBE understood that making a false statement to obtain a loan from the SBA was punishable under 18 U.S.C. § 1014 and other laws.

64. Based on the application submitted by NOBBE to the SBA, the $150,000 EIDL loan was approved by the SBA and $149,900 (the value of the loan less a $100 transaction fee) was disbursed on or about June 17, 2020 into an account ending in x0239 in the name of Dynamic Medical Services, over which NOBBE had sole signatory authority.

65. Bank records reflect that EIDL funds arrived into the Dynamic Medical Services account ending in x0239 on or about June 18, 2020. Following receipt of the funds, NOBBE disbursed funds into other accounts under his control, and to pay personal expenses. For example:

a. In direct contravention of his promise not to, without the prior written consent of SBA, make any distribution of this money to any owner or partner, or to any company directly or indirectly controlling or affiliated with or controlled by NOBBE, NOBBE immediately transferred approximately $100,000 into an account ending in x2701 in the name of Creative Chiropractic, over which NOBBE had signatory authority. Based on my training and experience, as well as a review of bank records for the account, Creative Chiropractic appears to be a shell company. Notably, this account was used to carry out the CareCredit scheme described above. Specifically, between approximately June 2017 and September 2019, Physicians 1 and 2 wired approximately $979,850 into this account as part of that scheme.

b. NOBBE transferred approximately $7,999 of the EIDL funds to pay a personal credit card in NOBBE's name that was used for personal expenses including airfare, a vacation resort, Netflix, and a gym membership.

CONCLUSION

66. Based on my training and experience, and the information provided in this affidavit, I respectfully submit that there is probable cause to believe that beginning from at least in or around September 2017, and continuing until the present, within the Southern District of Florida, and elsewhere, NOBBE committed violations of 18 U.S.C. § 1349 (Conspiracy Commit Health Care Fraud and Wire Fraud Fraud), 18 U.S.C. § 1347 (Health Care Fraud); 18 U.S.C. § 1343 (Wire Fraud); 18 U.S.C. § 1014 (False Statements to a Financial Institution); 18 U.S.C. § 1956(a)(1)(B)(1) (Money Laundering); and 18 U.S.C. § 1956(h) (Conspiracy to Commit Money Laundering). I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge and belief.

FURTHER YOUR AFFIANT SAYETH NAUGHT

/s/ Lynnette Alvarez Karnes
Special Agent Lynnette Alvarez-Karnes
FBI

Sworn to and subscribed before me
telephonically this 23 day of July, 2020.

THE HONORABLE JACQUELINE BECERRA
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:20-MJ-03236

UNITED STATES OF AMERICA

v.

DENNIS NOBBE,

Defendant.
_____/

GOVERNMENT'S MOTION TO APPEAL ORDER DENYING REVOCATION OF BOND

The United States of America, by and through the undersigned attorney, hereby files this appeal of the Magistrate Court's Order denying the Government's Motion to revoke the Defendant's bond. On multiple occasions, the Defendant was instructed by the Court, the undersigned prosecutor, and the Probation Office that he could not contact five specific witnesses, including M.Z. and A.G., as a condition of his release on bond. Defendant intentionally and repeatedly violated that condition of release by contacting M.Z. and A.G. through two cell phone numbers, one of which appears to be a "burner" phone. Witness M.Z. told law enforcement that, through contacts the Defendant made with him while the Defendant was on release, M.Z. believed the Defendant was trying to influence M.Z.'s cooperation, and that Defendant was trying to persuade him to continue to engage in the same "scheme" in which the Defendant and M.Z. had previously engaged—a fraud scheme for which the Defendant was charged by criminal complaint in this case. (*See* D.E. 1). Witness A.G. told law enforcement that, through contacts the Defendant made with her while the Defendant was on release, she believed the Defendant was

trying to "pressure" and "blackmail" her. At a revocation of bond hearing on August 27, the magistrate judge improperly weighed this evidence and incorrectly concluded she could not rely on hearsay evidence to revoke the Defendant's bond. This Court's review of that decision is *de novo*. Because the Defendant is a danger to the judicial process and to the community, bond should be revoked immediately.

BACKGROUND

On July 23, 2020, the Defendant was charged by criminal complaint with conspiracy to commit health care fraud and wire fraud in violation of 18 U.S.C. § 1349; health care fraud in violation of 18 U.S.C. § 1347; wire fraud in violation of 18 U.S.C. § 1343; making false statements to a financial institution and the Small Business Administration in violation of 18 U.S.C. § 1014; money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(1); and conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). As set forth in the affidavit accompanying the criminal complaint, the Defendant is alleged to have bribed physicians to open credit card provider accounts that the Defendant—who was unable to open his own credit card provider accounts due to his prior misconduct—could use to charge patients thousands of dollars for chiropractic services. The Defendant similarly bribed physicians for use of the physicians' Medicare numbers to submit claims that the Defendant, as a chiropractic physician, was ineligible to submit to Medicare himself. The Defendant disguised payments between himself and physicians through the use of shell companies, sham contracts, and sham "medical directorship" positions.

At the Defendant's initial appearance on July 29, 2020, the Court released the Defendant on a $200,000 Personal Surety Bond, co-signed by two individuals. As a condition of release, the undersigned requested, and the Court imposed, a condition that prohibited the Defendant from contacting any potential victims or witnesses to this case. (D.E. 4 at 2) (requiring the Defendant

to "avoid all contact with victims or witnesses to the crimes charged, except through counsel"). To underscore the importance of this condition, the undersigned took the time to identify and spell, on the record, the names of five witnesses who the Defendant was expressly prohibited from contacting, including witnesses M.Z. and A.G. (D.E. 13 at 9:11-10:24; D.E. 4 at 2) (naming the witnesses). Immediately following the hearing, the undersigned sent an email to then-counsel for the Defendant, *again* identifying the list of witnesses who the Defendant could not contact, including witnesses M.Z. and A.G. (Government's Bond Revocation Hearing Exhibit A).

Following the Defendant's initial appearance, the Government learned that the Defendant used a new phone number, which appears to be attached to a "burner" phone, to make contact with witness M.Z., in clear violation of his conditions of bond, in a blatant effort to (1) continue in the very fraud scheme for which the Defendant was charged; and (2) inappropriately influence M.Z.'s potential cooperation in this investigation. Based on this information, the Government filed a motion to revoke the Defendant's bond on August 24, 2020. (D.E. 5). After filing that motion, the Government learned that the Defendant had repeatedly used the burner phone to contact a *second* witness, A.G., in one instance immediately after the Defendant met with Probation to affirm, in writing, that he would not contact M.Z. or A.G.

The Government presented evidence of Defendant's impermissible contacts with witnesses M.Z. and A.G. in a revocation of bond hearing held before the magistrate court on August 27. In pertinent part, the Government introduced five exhibits corroborating the contacts, including call logs and screenshots of text messages from the Defendant to witnesses M.Z. and A.G.[1] A federal agent testified that he had interviewed witnesses M.Z. and A.G., and that each stated that the

1 Because these exhibits contain personal identifying information of Government witnesses and the Defendant, the Government submitted these exhibits under seal.

Defendant was attempting to influence their potential cooperation in this case. In particular, M.Z. stated he believed he was being offered a bribe by the Defendant. A.G. expressly stated that she believed she was being "blackmailed" by the Defendant and that she felt manipulated by him. The Government's evidence established the following timeline of events:

- At some point, the Defendant provided M.Z. with Defendant's phone number beginning with area code 786 (identified in full in the Government's Hearing Exhibits, filed under seal, referred to herein as "the 786 Number"). The evidence reflects that the Defendant appears to have acquired the 786 number as a "burner" number that could be used to contact witnesses without being traced to him. (*See*, *e.g.*, Government's Hearing Exhibit F (text to A.G. describing the 786 Number as a "special number" that would change after August 31)). M.Z. believed this was the Defendant's "personal" phone number. M.Z. saved the 786 Number in M.Z.'s cell phone under the contact name "No" for "Nobbe."
- Defendant made his initial appearance on July 29, at which the Court imposed conditions of bond that prohibited the Defendant from contacting M.Z. or A.G. The very next day, on July 30, the Defendant sent a text message to A.G. using a 305 number.[2] The Defendant wrote that a meeting "can't wait," that it was "super super important for both of us," and added, "got your check." As described below, the agent testified that A.G. told law enforcement she had previously had issues being paid by the Defendant, and felt she was being pressured by the Defendant through these text messages to meet with him in person.
- Between August 4 and August 11, M.Z. and the Defendant exchanged text messages

2 There is no dispute between the parties that the 305 number is the Defendant's number. Defendant stipulated that these text messages were from the Defendant.

through the 786 Number discussing review of "files"[3] and submission of claims to Medicare. (Government's Hearing Exhibit D).

- On August 10, A.G. received a text message from the 786 Number. The text message stated that this was a "special number" that would change soon but that until then A.G. could use to "communicate to me, your 20 year admirer." The agent testified that A.G. identified the sender of this message as the Defendant, with whom she had worked for approximately twenty years. On August 14 at 7:56 am, A.G. received a second text message from the 786 Number, which purported to be from "a friend of dr. noble" [sic], stating, "he asks that you did nothing wrong with care credit or green sky patients," a reference to the credit card programs the Defendant is charged with exploiting in this case, and, in the Government's view, an ask that the witness tell law enforcement that there was "nothing wrong" with the Defendant's credit card arrangements. The Defendant added that "your checks for hours worked will be coming to you."[4] (Government's Hearing Exhibit F). The agent testified that A.G. had told law enforcement that she believed this message was also from the Defendant; that this offer of payment was surprising to A.G. because she had experienced issues being paid by the Defendant; and that she felt "blackmailed" by his offer to pay her and "pressured" by him.

3 The agent testified that, based on his investigation, the only "files" this could be referring to were patient files, which were evidence underlying the criminal investigation. The Defendant objected, and the Court appeared to sustain, that the agent could not testify to this as hearsay.

4 At the hearing, the Defendant tried to cast doubt on whether Nobbe himself had sent this text message, which, as noted above, purported to be sent from a "friend of Dr. noble" [sic]. Even assuming, however, that this text message was sent by a mysterious unidentified "friend" who happened to be using the same phone that the Defendant conceded he used to contact M.Z, and the same phone that had previously sent messages to A.G., this text message would still be a violation of the condition that prohibited the Defendant from contacting witness A.G. "except through counsel," and was still an effort to influence the witness. Moreover, the decision to contact A.G. seemingly indirectly through a "friend" would further illustrate that the Defendant understood that he was not to be contacting the witness.

- Later in the day on August 14, Probation Officer Jimmy Navarro met with the Defendant in person to discuss the conditions of release. In that meeting the Defendant signed a written statement of pre-trial instructions, confirming that he understood he was required to "avoid all contact with victims or witnesses," including M.Z. and A.G., who are identified by name in the written statement signed by the Defendant. Defendant affirmed that he understood failures to comply would be reported to the Court and could result in revocation of Bond. (Government's Hearing Exhibit G).
- The *following morning* (August 15) at 9:30 am, A.G. received a text message from the 786 Number stating the sender had "been told to tell you" that Probation might contact A.G. to confirm that she could not communicate with the Defendant. The Government argued this was a veiled instruction to A.G. to lie if Probation contacted her to inquire if she had been contacted by the Defendant. (Government's Hearing Exhibit F).
- That afternoon (August 15) at 4:04 pm, M.Z. received a phone call from the Defendant via the 786 Number.[5] The call was reflected in a call log provided by M.Z. (Government's Hearing Exhibit B). The agent testified that he had interviewed M.Z. about this call, and that M.Z. had stated that during this call, he recognized Defendant's voice on the other end of the phone line, definitively linking the 786 number to the Defendant despite his arguments to the contrary. The agent testified that the Defendant invited M.Z. to continue acting as the Defendant's "medical director," which M.Z. understood to be an offer to continue in the same "scheme" in which the Defendant and M.Z. had previously engaged. The testifying agent explained that, as part of the fraud scheme underlying the criminal

5 The Defendant stipulated that Defendant placed this call, but did not stipulate to the contents of the call.

investigation for which the Defendant was charged, the Defendant had concealed bribe payments to physicians by, among other things, paying them under the guise of fake "medical director" positions. The agent testified that M.Z. responded by telling the Defendant that the Defendant was a criminal, and noting that the bank accounts they had been using were frozen. The agent further testified that the Defendant replied that the Government had left one bank account unfrozen, which M.Z. understood to mean they could continue in the same arrangement as before—i.e., the wire fraud and health care fraud scheme underlying this case.[6]

- On August 20, M.Z. received a second call from the 786 Number, which he declined. (*See* Government's Hearing Exhibit C).

The Government argued that this evidence established not only that there was clear and convincing evidence that the Defendant had violated his release to satisfy 18 U.S.C. § 3148(b)(1)(B), but also that there was probable cause to believe that the Defendant had committed a crime[7] while on release under 18 U.S.C. § 3148(b)(1)(A).

Notwithstanding the fact that the "rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information" at a bond hearings, *see* 18 U.S.C. § 3142(f)(2)(B), the magistrate judge refused to consider evidence concerning what M.Z. and A.G. had told law enforcement after the Defendant objected to the introduction of this evidence as hearsay. Based on this evidentiary error, the magistrate judge concluded that although the

6 Subsequent to the hearing, counsel for M.Z. provided the Government with an affidavit from M.Z. (attached hereto as Exhibit A) describing that conversation.

7 The Government argued that there was probable cause to believe that the Defendant was attempting, through M.Z. to engage in the same wire fraud and health care fraud scheme with which he was charged in violation of 18 U.S.C. §§ 1343, 1347, and 1349; and also that the Defendant had violated 18 U.S.C. § 1518 (obstruction of a criminal investigation of a health care offense); 18 U.S.C. § 1503 (obstruction of justice); and/or 18 U.S.C. § 1512 (witness tampering).

Defendant had violated the condition of his release that prohibited him from contacting witnesses M.Z. and A.G., the Government had not established probable cause that the Defendant attempted to obstruct justice or tamper with witnesses. The magistrate judge then concluded—despite the Defendant's repeated and serious bond violations—that the Defendant was not unlikely to abide by any condition or combination of conditions of release. Accordingly, the magistrate judge agreed to impose additional conditions of bond on the Defendant, including prohibiting him from using a cell phone and imposing electronic monitoring, but denied the one condition that would prevent him from future violations: revocation of release. (D.E. 17).

Because the magistrate judge (1) erred in refusing to consider the Government's evidence of obstruction of justice; and (2) erred in concluding the Defendant was not unlikely to abide by any condition of release, the Government hereby appeals the magistrate court's decision.

LEGAL STANDARD

A defendant who has violated a condition of his release is subject to revocation of release, an order of detention, and a prosecution for contempt of court. 18 U.S.C. § 3148(a). Under Section 3148(b), a judicial officer "shall" revoke a defendant's bond if, after a hearing, the judicial officer determines (1) that there is probable cause to believe the defendant has committed a crime while on release, or there is clear and convincing evidence the defendant has violated any other condition of release; and (2) there is no combination of conditions of release that will assure the defendant will not flee or pose a danger to the safety of the community, or the person is unlikely to abide by any condition or combination of conditions of release. 18 U.S.C. § 3148(b). Revocation of bond is not discretionary; the court *must* order detention if the Court finds these conditions are satisfied. *United States v. Gotti*, 794 F.2d 773, 776 (2nd Cir. 1986).

Under Section 3148(b)(1)(A), a "probable cause" showing "requires only that the facts

available to the judicial officer warrant a [person] of reasonable caution in the belief that the defendant has committed a crime while on bail." *United States v. Gilley*, 771 F. Supp. 2d 1301, 1306 (M.D. Ala. 2011) (citing *Gotti*, 794 F.2d at 777). Probable cause "does not demand any showing that such a belief be correct or more likely true than false." *Id.* (citing *Texas v. Brown*, 460 U.S. 730, 742 (1983)).

Bond violations involving efforts to contact witnesses are particularly serious. "A federal court's authority to protect the integrity of its proceedings encompasses the authority to take reasonable action to avoid intimidation or coercion of witnesses." *United States v. Vasilakos*, 508 F.3d 401, 411 (6th Cir. 2007); *see also United States v. Burstyn*, No. 04-60279-CR-ZLOCH, 2005 U.S. Dist. LEXIS 14995, at *4 n.2 (S.D. Fla. Mar. 18, 2005) (collecting cases describing court authority to "detain defendants to ensure the integrity of the trial process"). For that reason, courts have revoked a defendant's bond based solely on the defendant's violation of the condition prohibiting contact with witnesses. *See, e.g.*, *United States v. Heffington*, No. 7:16-09-KKC, 2016 U.S. Dist. LEXIS 128760, at *11-12 (E.D. Ky. Sep. 21, 2016); *United States v. Stathakis*, No. 04 CR 790 (CBA) (CLP), 2007 U.S. Dist. LEXIS 79178, at *4-6 (E.D.N.Y. Oct. 24, 2007) (describing order "that the defendant's Bond be revoked and that he be remanded into federal custody based on [a] finding 'by clear and convincing evidence . . . that defendant twice violated the condition of release . . . not to speak with any potential witness in the case.'").

This Court reviews the magistrate court's denial of revocation of bond *de novo*. *United States v. Cropper*, 361 F. Supp. 3d 1236, 1238 (N.D. Ala. 2019) (citing *United States v. Hurtado*, 779 F.2d 1461, 1481 (11th Cir. 1985)). "Thus, in this case, the Magistrate Judge's findings cannot be afforded any deference." *Id.*

ARGUMENT

I. The Magistrate Court Erred in Refusing to Consider Evidence of the Defendant's Obstructive Conduct

As the Government explained during the August 27 hearing, the Federal Rules of Evidence do not govern the presentation or the consideration of information presented at a hearing to revoke a Defendant's bond. 18 U.S.C. § 3142 ("The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the [detention] hearing.") Indeed, "even in the pre-trial context, few detention hearings involve live testimony or cross examination. Most proceed on proffers." *United States v. Abuhamra*, 389 F.3d 309, 321 (2d Cir. 2004) (citing *United States v. LaFontaine*, 210 F.3d 125, 131 (2d Cir.2000)); *see also United States v. Gaviria*, 828 F.2d 667 (11th Cir. 1987) (holding "the government as well as the defense may proceed by proffering evidence subject to the discretion of the judicial officer presiding at the detention hearing"); *United States v. Hardy*, No. 15-60136-CR, 2016 U.S. Dist. LEXIS 115826, at *6-9 (S.D. Fla. Aug. 23, 2016) (explaining that in a bond revocation hearing the defendant is "not entitled to a 'mini' trial and the Government may "proceed by proffer alone.") Because such hearings are "typically informal affairs, not substitutes for trial or discovery," courts "often base detention hearings on hearsay evidence." *Abuhamra*, 389 F.d at 321 (quoting *United States v. Acevedo-Ramos*, 755 F.2d 203, 206 (1st Cir. 1985)). Accordingly, the magistrate court erred in refusing to consider testimony of what witnesses M.Z. and A.G. had told the Government about their contacts with the Defendant.

That evidence shows that the Defendant made affirmative efforts to interfere with the federal investigation in this case to contact witnesses, pressuring them to meet with him in person, inviting them to review evidence in this case, dangling payment opportunities over their head, and

refusing to cease contact even when the witnesses themselves demanded it. Equally troubling, the evidence shows that the Defendant attempted to convince M.Z. that they could continue in the fraud scheme through which the Defendant concealed bribes to physicians to open credit card accounts that could be used to exploit vulnerable low-income patients for financial gain. The question before the court is whether the Government's interpretation of the evidence is probable. *United States v. Gilley*, 771 F. Supp. 2d 1301, 1309 (M.D. Ala. 2011). Because "there is probable cause that, with his conversations [Defendant] sought to influence" a witness, the Government has established probable cause that the Defendant committed a crime while on release. *Id.*

II. The Defendant is Unlikely to Abide by Conditions of His Release

First, because there is probable cause to believe that the Defendant committed a crime while on release, there is a rebuttable presumption that no condition or combination of conditions will assure that the Defendant will not pose a danger to the safety to the community. 18 U.S.C. § 3148(b)(2)(b). Yet even if the Court were to conclude that there is not probable cause to believe the Defendant committed crimes while on release, the Defendant's blatant, repeated, and undisputed contacts with witnesses to the criminal action in which he was charged illustrate his refusal to abide by even the most lenient conditions of release. *See, e.g., United States v. Childress*, No. 3:16-cr-2556-GPC, 2017 U.S. Dist. LEXIS 206801, at *19 (S.D. Cal. Dec. 15, 2017) ("The Court also finds it unlikely that [defendant] will abide by any conditions of release in light of his recent failure to abide by the condition that he not make contact with the parents of a victim witness."). As the Court in *Heffington* explained:

> When Defendant was initially released, the Court imposed only one condition additional to the usual statutory conditions—that he have no contact with any witnesses or potential witnesses outside of the presence of counsel. As the record demonstrates, Defendant was unable to abide by that one condition and had improper contact with a potential witness. Defendant's conduct presents a real

> danger to the judicial process and to the community, and it justifies continued detention until trial is complete. Because Defendant has proved himself willing to violate the one additional bond condition placed on him, which was designed specifically to protect the quality of justice, the Court cannot trust Defendant to abide by additional restrictions that would have the same goal.

Id. As set forth in the Government's initial Motion to Revoke Bond, courts have revoked bond on far less egregious violations than the Defendant's. (D.E. 5 at 4) (citing *United States v. Holden*, No. 04-80112-Cr-Middlebrooks/Johnson, 2004 U.S. Dist. LEXIS 34368, at *22 (S.D. Fla. Oct. 4, 2004) (revoking bond where defendant failed to take affirmative efforts to assist probation in installing equipment for electronic monitoring)).

Here, Defendant was put on explicit notice on three separate occasions on July 29 that he could not contact M.Z. and A.G: first on the record at the court hearing; second in his bond paperwork filed at D.E. 4; and finally by the undersigned's email to his defense attorney. Defendant violated that condition on multiple occasions between July 29 and August 14. On August 14, the Defendant affirmed in writing to Probation that he would avoid all contact with victims or witnesses to the crime charged, and specifically that he would have no contact with M.Z. or A.G. Defendant not only failed to inform Probation that he had sent text messages to A.G. from an undisclosed phone number that very morning; he continued, the very next day to (1) text A.G. to alert her to the fact that Probation might contact her to confirm that she could not have contact with the Defendant, a veiled insinuation that A.G. should lie to Probation if asked if the Defendant had contacted her;[8] and (2) called M.Z. to try to persuade him to continue in the very same fraud scheme for which the Defendant was charged—effectively offering to bribe M.Z. in

8 As noted above, Defendant, through counsel, denied that he had sent these text messages. Even if that were true—and the evidence shows it is not—the message was clearly sent at Defendant's direction, meaning Defendant still made contact with A.G. through the 786 number.

the process. The Defendant could not have made it clearer to the Court that he will not respect any conditions the Court imposes. Revocation of release is the only appropriate remedy.

III. There Are No Conditions of Release to Address the Defendant's Obstruction Efforts

Among the Government's chief concerns is that the Defendant will continue to obstruct by any means available to him. The Defendant has already shown himself willing to go to great lengths to do so, and none of the conditions imposed by the magistrate judge would prevent him from continuing in the same pattern. The conditions imposed by the magistrate do not prevent the Defendant from accessing tools of obstruction. The Defendant has only surrendered one cell phone to his attorney (*see* D.E. 16), although the record reflects the Defendant's use of *two* cell phones to contact witnesses (a 305 number and a 786 number), one of which—the 786 number—appears to have been a "burner" phone. While the modified conditions imposed by the magistrate prevent the Defendant from acquiring another phone, there is no mechanism by which compliance with that condition can be monitored or enforced—there is nothing to stop the Defendant from continuing to use the 786 Number, or from acquiring yet another number to continue his efforts to tamper with witnesses.

In short, while the request to revoke the Defendant's release is not a request that the Government makes lightly, it is the only way to ensure the Defendant's compliance with the simple mandate that he not contact witnesses.

CONCLUSION

For the foregoing reasons, the United States of America respectfully requests that the Court issue an order revoking the Defendant's release.

Respectfully submitted,

ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

DANIEL KAHN
ACTING CHIEF
U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION

By: s/ *Sara M. Clingan*

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that, on September 4, 2020 I electronically filed the foregoing document onto the Court's CM/ECF system.

s/ *Sara M. Clingan*
Trial Attorney
U.S. Department of Justice

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared: **DR. MARK ZAGER**, who being first duly sworn, deposes and states that:

1. My name is **DR. MARK ZAGER**.

2. I have known Dennis Nobbe for approximately nine (9) months.

3. I have had numerous conversations with Dennis Nobbe both in person and over the phone.

4. I am very familiar with Dennis Nobbe's voice.

5. Dennis Nobbe provided me with the following phone number with which to contact him by, (786) 403-7216. I communicated with Dennis Nobbe using that phone number.

6. On August 15, 2020, Dennis Nobbe contacted me through the (786) 403-7216, phone number he had previously provided. We spoke for approximately five (5) minutes. I unequivocally recognized the voice of the caller to be Dennis Nobbe. I am absolutely positive that the person who called me was Dennis Nobbe.

7. During the August 15, 2020, phone call, Dennis Nobbe asked me if I wanted to continue to serve as his Medical Director. I understood Dennis Nobbe's question to mean whether I wanted to continue in the same scheme we had in the past.

8. On August 20, 2020, I received a missed call from the (786) 403-7216, phone number.

FURTHER AFFIANT SAYETH NAUGHT.

Mark Zager MD

DR. MARK ZAGER
AFFIANT

SWORN TO AND SUBSCRIBED before me by DR. MARK ZAGER, personally known to me, on this 31st day of August 2020.

Jacqueline Paya

NOTARY PUBLIC
State of Florida at Large

My Commission Expires:

JACQUELINE PAYA
MY COMMISSION # GG 949890
EXPIRES: February 5, 2024
Bonded Thru Notary Public Underwriters