



Approved: \_\_\_\_\_  
MAGGIE LYNAUGH  
Assistant United States Attorney

Before: THE HONORABLE DEBRA FREEMAN  
United States Magistrate Judge  
Southern District of New York

**21 MAG 11529**

----- x	:	<b><u>SEALED COMPLAINT</u></b>
UNITED STATES OF AMERICA	:	
- v. -	:	Violations of
	:	18 U.S.C. §§ 1343, 1623, and
	:	1001(a)(2)
BRIAN O'NEILL,	:	COUNTY OF OFFENSE:
	:	NEW YORK
Defendant.	:	
----- x	:	

SOUTHERN DISTRICT OF NEW YORK, ss.:

NASTASSJA KOSINSKI, being duly sworn, deposes and says that she is a Special Agent with the Federal Bureau of Investigation (the "FBI"), and charges as follows:

**COUNT ONE**  
**(Wire Fraud - Victim-1)**

1. From at least on or about August 2020 up to and including the present, in the Southern District of New York and elsewhere, BRIAN O'NEILL, the defendant, willfully and knowingly, 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, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, O'NEILL, through interstate emails and financial transfers, carried out a scheme to defraud Victim-1 by misappropriating over five million dollars of funds he had promised to hold in escrow.

(Title 18, United States Code, Section 1343.)

**COUNT TWO**  
**(Wire Fraud - Victim-2)**

2. From at least on or about April 2021 up to and including the present, in the Southern District of New York and elsewhere, BRIAN O'NEILL, the defendant, willfully and knowingly, 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, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, O'NEILL, through interstate emails and financial transfers, carried out a scheme to defraud Victim-2 by misappropriating over three million dollars of funds he had promised to hold in escrow.

(Title 18, United States Code, Section 1343.)

**COUNT THREE**  
**(False Statements)**

3. On or about September 10, 2021, in the Southern District of New York and elsewhere, BRIAN O'NEILL, the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, knowingly and willfully did make materially false, fictitious, and fraudulent statements and representations, to wit, O'NEILL falsely represented to the FBI that \$5.1 million he had a duty to hold in escrow remained in an escrow account.

(Title 18, United States Code, Section 1001(a)(2).)

**COUNT FOUR**  
**(Perjury)**

4. On or about October 1, 2021, in the Southern District of New York and elsewhere, BRIAN O'NEILL, the defendant, in a declaration, certificate, verification, and statement made under penalty of perjury pursuant to Title 28, United States Code, Section 1746, in a case then pending before the United States District Court for the Southern District of New York under docket number 21-CV-06135, knowingly made false material declarations, to wit, O'NEILL, in a sworn declaration, falsely stated that "[a]s of today, I still have control of the

\$1.8 million of the subject escrow funds . . . remaining to be deposited pursuant to the interpleader ordered by this Court."

(Title 18, United States Code, Section 1623.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

5. I am a Special Agent with the FBI. I have been personally involved in the investigation of this matter. This affidavit is based upon my investigation, my conversations with other law enforcement agents, and my examination of reports, records, and other evidence. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

#### OVERVIEW

6. Based on my participation in this investigation, I have learned that BRIAN O'NEILL, the defendant, engaged in two related fraudulent schemes. First, O'NEILL engaged in a scheme to defraud a medical equipment company headquartered in Pennsylvania ("Victim-1") out of over five million dollars by falsely promising to act as an escrow agent and hold those funds in escrow. Instead of holding the money in escrow, however, O'NEILL used the funds to execute personal deals for the purchase of Personal Protective Equipment ("PPE"). Second, O'NEILL engaged in a scheme to defraud a Hong Kong-based investor ("Victim-2") out of three million dollars he had similarly promised to hold in escrow. Instead of holding those funds in escrow, O'NEILL used them to attempt to satisfy an order of the United States District Court for the Southern District of New York that directed him to deposit with the Clerk of the Court the over five million dollars involved in the first scheme that he was purportedly holding in escrow. I have also learned that in an effort to conceal his wrongful conduct, O'NEILL made false statements to the FBI and submitted a false declaration, sworn to under penalty of perjury, to the United States District Court for the Southern District of New York.

**O'NEILL'S FRAUD ON VICTIM-1**

7. Based on, among other things, my personal participation in this investigation, my review of documents and records, my review of court filings, my review of bank records, my interviews with relevant witnesses, and my conversations with other law enforcement agents, I have learned that:

a. On or about August 12, 2020, Victim-1 entered into an agreement with a Florida-based medical wholesale company ("Seller-1") for the purchase of PPE (the "Purchase Order"). Victim-1, in conjunction with its partner, a humanitarian aid organization based in the Middle East ("Organization-1"), sought to purchase PPE from Seller-1 in order to donate the PPE to the Federal Emergency Management Agency ("FEMA") to help fight the COVID-19 pandemic.

b. Contemporaneously with the execution of the Purchase Order, Victim-1 and Seller-1 entered into an escrow agreement ("Escrow Agreement-1") with O'Neill & Partners, a company controlled by BRIAN O'NEILL, the defendant. Pursuant to Escrow Agreement-1, O'Neill & Partners was to act as the escrow agent for the transaction. Escrow Agreement-1 was signed by representatives of Victim-1 and Seller-1, and by O'NEILL.

c. The terms of Escrow Agreement-1 required O'Neill & Partners to maintain \$5.1 million of funds deposited by Victim-1 in a separate, segregated escrow account at Bank-1. Escrow Agreement-1 further provided that O'Neill & Partners could not disburse the funds except under specific, enumerated circumstances. Those circumstances included: the joint written instructions of Victim-1 and Seller-1; delivery of an acceptance of goods document signed by FEMA to O'Neill & Partners; and delivery of a cancellation notice by Victim-1 to O'Neill & Partners and Seller-1 cancelling the transaction. When such circumstances were met, O'Neill & Partners was to disburse the escrowed funds no later than the close of business on the next business day.

d. In connection with Escrow Agreement-1, on or about August 13, 2020, Victim-1 deposited \$5.1 million into O'Neill & Partners' operating account at Bank-1 (the "Operating Account"). Upon receipt of the \$5.1 million, on August 13, 2021, O'Neill & Partners transferred the funds from the Operating Account to a separate account under the name O'Neill & Partners LLC at Bank-1 ("Account-2"). At the time O'Neill & Partners transferred the \$5.1 million into Account-2, the

balance in that account was zero. At all times relevant to this case, the only authorized signatory on the Operating Account and Account-2 was O'NEILL.

e. Six days after Victim-1 deposited the \$5.1 million, on August 19, 2020, O'NEILL transferred \$5,099,669.88 - that is, \$5.1 million less \$330.12 in service fees charged by Bank-1 -- from Account-2 back to the Operating Account. At the time O'NEILL transferred the escrowed funds back into the Operating Account, the balance of the Operating Account was just over \$300,000.

f. O'NEILL then proceeded to make unauthorized transfers of the escrowed money out of the Operating Account to third parties, including, but not limited to, the following:

1. A transfer on August 21, 2020, of \$1,500,000 to Company-1 (the "Company-1 Transaction"); and

2. A transfer on August 25, 2020, of \$2,190,000 to Company-2 (the "Company-2 Transaction").

g. Then, on August 27, 2020, O'NEILL transferred \$1.5 million of Victim-1's deposited funds back to Account-2. One day later, O'NEILL transferred \$185,000 of those funds back to the Operating Account, leaving the balance in Account-2 at \$1,315,000.00, and bringing the balance of the Operating Account to \$268,619.45. On August 31, 2020, O'NEILL then transferred \$185,000 out of the Operating Account to Company-3 (the "Company-3 Transaction").

h. By November 2020, nearly all of the \$5.1 million deposited by Victim-1 with O'Neill & Partners had been transferred to third parties. Victim-1 did not authorize any of those transfers.

8. Based on interviews I have conducted with witnesses, my review of documents and records, and conversations I have had with other law enforcement officers, I have learned that:

a. The Company-1 Transaction was a payment made by BRIAN O'NEILL, the defendant, to purchase protective face masks. O'NEILL and Company-1 began discussions regarding purchasing face masks at least as early as July 2020 -- that is, before O'Neill & Partners entered into Escrow Agreement-1. Victim-1 was not part of the Company-1 Transaction.

b. The Company-2 Transaction was a payment made by O'NEILL for the purchase of protective gloves. O'NEILL began negotiating the Company-2 Transaction with representatives of Company-2 at least as early as August 10, 2020. Victim-1 also was not a part of the Company-2 Transaction.

9. Based on the timing of the discussions BRIAN O'NEILL, the defendant, had with Company-1 and Company-2, and the speed with which he disbursed the escrowed funds after Victim-1 deposited them, I think there is probable cause to believe O'NEILL never intended to maintain Victim-1's money in escrow as promised, but rather fraudulently promised to hold the money in escrow when in truth and in fact, he intended to use the funds to complete, among other things, the Company-1 and Company-2 Transactions.

10. Based on my review of bank records, communications I have had with bank employees, and discussions I have had with other law enforcement officers, I know that Victim-1's deposit of the \$5.1 million into the Operating Account, as well as the Company-1 Transaction and Company-2 Transactions all involved interstate and foreign wires of funds. The Company-3 Transaction involved an interstate and foreign wire of funds from the Operating Account in Delaware, through a bank account in New York, New York, to Company-3's bank account in China.

#### **O'NEILL'S STATEMENTS TO VICTIM-1**

11. Based on my personal participation in this investigation, my review of court records, my interviews with witnesses, and my discussions with other law enforcement officers, I have learned that the following series of events occurred in the wake of the fraudulent taking by BRIAN O'NEILL, the defendant, of Victim-1's escrowed funds:

a. On November 22, 2020, Victim-1 served a cancellation notice on O'Neill & Partners and Seller-1 cancelling the transaction (the "Cancellation Notice"). In light of the Cancellation Notice, counsel for Victim-1 sent a letter to O'Neill & Partners requesting that the \$5.1 million in escrowed funds be returned to Victim-1 within 48 hours, pursuant to the terms of Escrow Agreement-1.

b. Instead of responding to the Cancellation Notice by returning Victim-1's money or explaining that he was

no longer in possession of the escrowed funds, O'NEILL engaged in a series of omissions and misrepresentations in an attempt to conceal his wrongful conduct and assure Victim-1 that its funds remained secure, including the following:

a. O'Neil & Company did not respond to the Cancellation Notice and Victim-1's request that its funds be returned until December 3, 2020, more than a week after the Cancellation Notice was sent. That response -- an email from O'NEILL -- merely stated that he had been out of the office and would respond to emails over the next few days.

b. When counsel to Victim-1 followed up on December 4, 2020, O'NEILL responded that he had not caught up on matters since being out of the office, but that he would do so and respond in due course.

c. On December 7, 2020, O'NEILL sent an email to counsel for Victim-1 stating that he would need certain due diligence documentation "to ensure that there was no malfeasance or potential fraud with the purchase transaction" before he could return the funds. No such due diligence on the part of the escrow agent was contemplated under Escrow Agreement-1.

d. On December 9, 2020, counsel for Victim-1 responded to O'NEILL's requests for due diligence. Two days later, on December 11, 2020, O'NEILL responded that Victim-1's response to his request was "materially deficient, factually erroneous, and non-responsive."

e. On December 17, 2020, counsel for Victim-1 wrote O'NEILL demanding the immediate return of Victim-1's escrowed funds and insisting that O'NEILL "immediately forward documentary proof that the escrow fund remains in a segregated account controlled by" O'NEILL. No such proof was ever provided to Victim-1.

f. In early March 2021, on a call with counsel for Victim-1, O'NEILL again stated that additional information was required for O'NEILL to conduct a due diligence audit; O'NEILL agreed to send a formal request for the information to counsel for Victim-1 after the call.

g. On March 19, 2021, after not receiving the request for information, counsel for Victim-1 followed-up with O'NEILL. O'NEILL responded by again providing counsel for

Victim-1 with a request for the same information he had requested from Victim-1 in December 2020.

h. On April 28, 2021, Victim-1 provided O'NEILL with additional documentation regarding O'NEILL's due diligence request. O'NEILL responded on May 15, 2021, that he had "started to validate" the information through his channels but that the process "takes time."

#### **VICTIM-1'S LAWSUIT**

12. Based on my review of court records, interviews with witnesses, and discussions I have had with other law enforcement agents, I know the following:

a. As a result of the refusal of BRIAN O'NEILL, the defendant, to return the \$5.1 million of funds escrowed pursuant to Escrow Agreement-1, on or about July 16, 2021, Victim-1 filed a civil action in United States District Court for the Southern District of New York against O'Neill & Partners (the "Civil Action").

13. In connection with the Civil Action, on August 17, 2021, the Court ordered that O'Neill & Partners deposit the \$5.1 million of escrowed funds with the Clerk of the Court by August 24, 2021.

14. On August 25, 2021, the Court issued another order directing O'Neill & Partners to deposit the full \$5.1 million of escrowed funds with the Clerk of the Court, this time directing that the deposit be made "forthwith."

15. On August 27, 2021, counsel for Victim-1 wrote to the Court that Victim-1 had been informed by O'Neill & Partners that O'Neill & Partners would not be depositing the escrowed funds with the Clerk of the Court because BRIAN O'NEILL, the defendant, had received threats from third-parties demanding he not do so.

16. On September 15, 2021, the Court directed that O'Neill & Partners deposit the full \$5.1 million with the Clerk of the Court by 12:00 p.m. on September 20, 2021, or be held in contempt.

17. On September 21, 2021, O'Neill & Partners deposited \$3.3 million with the Clerk of the Court; \$1.8 million



short of satisfying the requirements of the Court's September 15, 2021, order.

18. On September 23, 2021, because O'Neill & Partners had not deposited the full \$5.1 million with the Clerk of the Court, the Court issued an order holding O'Neill & Partners and BRIAN O'NEILL, the defendant, in civil contempt and ordering that O'NEILL be arrested.

19. As calculated by the Court, by November 18, 2021, BRIAN O'NEILL, the defendant, had spent approximately 37 full days and parts of another six days in custody in connection with his contempt. On that date, the Court ordered his release, finding that, despite O'NEILL's failure to deposit the full \$5.1 million with the Clerk of the Court, continuing custody could be considered punitive and would not exact compliance with the Court's order.

20. As a result of BRIAN ONEILL's, the defendant's, fraud, Victim-1 has lost at least \$1.8 million.

#### **O'NEILL'S FRAUD ON VICTIM-2**

21. Based on, among other things, my personal participation in this investigation, my review of documents and records, and my conversations with other law enforcement agents, I have learned that:

a. On April 19, 2021, a Delaware-based company involved in the PPE market ("Buyer-2") entered into a sale and purchase agreement (the "Sale and Purchase Agreement") to purchase certain PPE from an Australia-based medical supply company ("Seller-2"). Funding for the deal was to be provided by Victim-2.

b. At the same time Buyer-2 and Seller-2 entered into the Sale and Purchase Agreement, they, along with Victim-2, entered into an escrow agreement ("Escrow Agreement-2") with O'Neill & Partners. Pursuant to Escrow Agreement-2, O'Neill & Partners was to act as escrow agent for the transaction. Escrow Agreement-2 was signed by representatives of Victim-2 and Seller-2, and by BRIAN O'NEILL, the defendant.

c. The terms of Escrow Agreement-2 required O'Neill & Partners to maintain a bank account to hold funds deposited with it in connection with the transaction in escrow until the goods that were the subject of the transaction were

delivered and accepted by Buyer-2 and Victim-2. At that point, O'Neill & Partners was required to transfer the escrowed funds, or a portion thereof, to Seller-2.

d. In connection with the transaction, Victim-2 deposited \$3.4 million with O'Neill & Partners to be held in escrow.<sup>1</sup>

e. After Escrow Agreement-2 was signed in April 2020, O'Neill & Partners transmitted monthly bank statements to Buyer-2 showing that the \$3.4 million was held, on its own, in Account-2. In September 2021, O'Neill & Partners stopped transmitting such statements.

f. When Buyer-2 inquired of counsel to O'NEILL whether the \$3.3 million deposited with the Clerk of the Court on September 22, 2021, in connection with the Civil Action was Victim-2's money, Buyer-2 was informed that O'NEILL had represented to counsel that it was not.

g. Since September 2021, Buyer-2 has called and emailed O'NEILL on several occasions in order to determine whether its \$3.4 million is still safely held in escrow; O'NEILL has not responded.

22. Based on, among other things, my personal participation in this investigation, my review of bank records, and my discussions with other law enforcement officers, I know that:

a. Beginning in February 2021, the only funds held in Account-2 were funds escrowed by Victim-2.

b. On September 15, 2021, BRIAN O'NEILL, the defendant, transferred \$3.4 million from Account-2 to the Operating Account, leaving the balance of Account-2 at zero, and bringing end of day balance of the Operating Account to just over \$3.4 million.

---

<sup>1</sup> The mechanics of the deposit were as follows: On or about February 12, 2021, Victim-2 had deposited \$4,925,025 with O'Neill & Partners to be held in escrow in connection with a separate transaction. When that transaction fell through, Victim-2 asked that O'Neill & Partners return to it \$1,525,000 and hold the remaining \$3.4 million in escrow pursuant to the Sale & Purchase Agreement and Escrow Agreement-2. O'Neill & Partners returned the \$1,525,000 to Victim-2 on April 20, 2021.

c. On September 20, 2021, O'NEILL transferred \$3.3 million from the Operating Account back to Account-2; he then transferred \$3.3 million from Account-2 back to the Operating Account, leaving the balance of Account-2 at zero. He subsequently transferred approximately \$100,000 from the Operating Account to an O'Neill & Partners expense account at Bank-1, bringing the balance of the Operating Account to approximately \$3.3 million.

d. On September 21, 2021, O'NEILL wired \$3.3 million from the Operating Account in Delaware to an account in New York controlled by the Clerk of the Court for the Southern District of New York; the Court received electronic notice when the \$3.3 million was deposited in the Court account.

e. I have confirmed with Buyer-2 that, pursuant to Escrow Agreement-2, O'NEILL was in no way authorized to transfer any of the escrowed funds to the Clerk of the Court.

23. As a result of O'NEILL'S fraud, Victim-2 has lost approximately \$3.4 million.

#### **O'NEILL'S FALSE STATEMENTS**

24. Based on my involvement in this investigation, my review of reports and records, and my conversations with other law enforcement officers, I know that on or about September 10, 2021, BRIAN O'NEILL, the defendant, was interviewed telephonically by FBI agents in New York, New York. During that interview, O'NEILL affirmed that as of the date of the interview, the \$5.1 million placed in escrow pursuant to Escrow Agreement-1 remained in an escrow account.

25. Based on my review of bank records, and my conversations with other law enforcement officers, however, I know that the \$5.1 million placed into escrow pursuant to Escrow Agreement-1 was dissipated by approximately November 2020. Indeed, on September 10, 2021, the Escrow Account contained only \$3.4 million -- that is, the funds placed in escrow pursuant to Escrow Agreement-2.

26. Based on my involvement in this investigation, my review of court records, and my conversations with other law enforcement officers, I know the following:

a. On or about October 1, 2021, BRIAN O'NEILL, the defendant, submitted a declaration to the United States District Court for the Southern District of New York in connection with the Civil Action (the "Declaration"). The Declaration was submitted in connection with a Motion to Stay or Modify the Court's September 23, 2021, order finding O'NEILL in contempt. The purpose of the declaration was to persuade the Court to release O'NEILL from custody to permit him to complete the remaining \$1.8 million of the deposit ordered by the Court.

b. The Declaration was made pursuant to Title 28, United States Code, Section 1746 and was signed by BRIAN O'NEILL, the defendant, under penalty of perjury. In the Declaration, O'NEILL stated that as of the date of the Declaration he "still [had] control of the \$1.8 million of the subject escrow funds . . . remaining to be deposited pursuant to the interpleader ordered by [the] Court."

27. Based on my review of bank records, and my conversations with other law enforcement officers, I know BRIAN O'NEILL's, the defendant's, statement that he still had control of the \$1.8 million of funds held in escrow to be untrue; O'NEILL dissipated the \$5.1 million placed into escrow pursuant to Escrow Agreement-1 by approximately November 2020.


WHEREFORE, deponent prays that an arrest warrant be issued for BRIAN O'NEILL, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.

s/Natassja Kosinski, by the Court, with permission

NASTASSJA KOSINSKI  
Special Agent  
Federal Bureau of Investigation

Sworn to me through the transmission of this Complaint by reliable electronic means pursuant to Fed. R. Cr. P. 4.1 & 41(d)(3) this 2nd day of December, 2021.

(FaceTime)

  
THE HONORABLE DEBRA FREEMAN  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK