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Approved:

Sarah Mortazavi
SARAH MORTAZAVI
Assistant United States Attorney

Before: THE HONORABLE ONA T. WANG
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA	:	<u>SEALED COMPLAINT</u>
- v. -	:	Violations of
	:	18 U.S.C. §§ 1344 and
STEPHEN SHERAK a/k/a "STEPHEN	:	371
PENALVER,"	:	COUNTY OF OFFENSE:
	:	MANHATTAN
Defendant.		

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SOUTHERN DISTRICT OF NEW YORK, ss.:

DANIEL ALESSANDRINO, being duly sworn, deposes and says that he is a Detective with the New York City Police Department, and charges as follows:

COUNT ONE
(Bank Fraud)

1. From at least in or about August 2017 up to and including in or about June 2018, in the Southern District of New York and elsewhere, STEPHEN SHERAK, the defendant, willfully and knowingly, would and did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were insured by the Federal Deposit Insurance Corporation ("FDIC"), and to obtain money, funds, credits, assets, securities and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

(Title 18, United States Code, Section 1344.)

COUNT TWO

(Conspiracy to Commit Theft of Government Funds)

1. From at least in or about February 2018 up to and including in or about June 2018, in the Southern District of New York and elsewhere, STEPHEN SHERAK, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit theft of government funds, in violation of Title 18, United States Code, Section 641.

2. It was a part and an object of the conspiracy that STEPHEN SHERAK, the defendant, and others known and unknown, willfully and knowingly did embezzle, steal, purloin, and convert to their own use and the use of another, vouchers, money and things of value of the United States and a department and an agency thereof, to wit, the IRS, which exceeded the sum of \$1,000, and did receive, conceal, and retain the same with intent to convert it to their use and gain, knowing it to have been embezzled, stolen, purloined and converted, to wit, after a company incorporated and controlled by SHERAK, Gavnet, Inc., received a tax refund check on the basis of a fraudulently certified tax return, SHERAK and others known and unknown retained the tax refund check and made several attempts to deposit the check in bank accounts held at different financial institutions, in violation of Title 18, United States Code, Section 641.

(Title 18, United States Code, Section 371)

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

3. I am a Detective with the New York City Police Department ("NYPD"), and I have been personally involved in this matter. This affidavit is based upon my investigation; my conversations with law enforcement agents, witnesses, and others; and my examination of reports and records. 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 OF BANK FRAUD SCHEME

4. As described in greater detail below, STEPHEN SHERAK, the defendant, undertook a scheme to defraud multiple national banks. As part of this scheme, SHERAK opened bank accounts at several different banking institutions in SHERAK's name or in the names of shell companies that SHERAK had incorporated. SHERAK would then deposit forged checks and/or checks drawn from other accounts belonging to SHERAK, knowing the checks were counterfeit or otherwise would not clear due to insufficient funds. These checks typically contained account information for non-existent accounts, or contained actual account information misattributed to other business entities. To date, the investigation has uncovered over \$270,000 of fraudulent checks deposited by SHERAK into bank accounts at various national banks.

FRAUDULENT CHECK DEPOSITS AND WITHDRAWALS RELATED TO BANK-1

5. As described below, STEPHEN SHERAK, the defendant, deposited fraudulent checks into personal and corporate bank accounts and, in many cases, attempted to withdraw funds from those same accounts prior to the discovery of the fraudulent nature of the check deposited. Based upon my review of bank account records and surveillance photographs from a certain national bank ("Bank-1"), my conversations with a representative of Bank-1, and my analysis of other relevant sources of information as specified below, I have learned the following, in substance and in part:

a. On or about August 30, 2017, SHERAK opened a personal bank account in his own name at Bank-1 (ending in number 9048). Surveillance photographs from Bank-1's bank branch depict SHERAK depositing a check (number 50002057) in the amount of \$13,381.92 at a teller window on or about September 9, 2017. The check listed a third-party remitter ("Victim Business-1").

b. Based on my examination of a legitimate check from Victim Business-1, an image of the check deposited by SHERAK on or about September 9, 2017, and discussions with representatives at Bank-1, I believe that the check that SHERAK deposited purporting to belong to Victim Business-1 was counterfeit, was not issued by Victim Business-1, and was not authorized by any employee of Victim Business-1.

c. Approximately 5 minutes after SHERAK deposited the fraudulent check, see ¶ 5.a, into his account at Bank-1,

surveillance photographs from Bank-1's bank branch depict SHERAK in front of an ATM within Bank-1's bank branch. Bank account records from account ending in 9048 show that an individual with access to the account withdrew \$100 in cash from Bank-1's ATM on or about September 9, 2018. Bank account records also show that an individual with access to the account withdrew \$183 in cash and \$803 in cash later that same day at a non-Bank-1 ATM, before Bank-1 detected the fraudulent check and withdrew the funds from SHERAK's account.

d. On or about May 10, 2018, SHERAK opened a personal checking account in his own name at a Bank-1 branch in Manhattan, New York (ending in number 2401). On or about June 18, 2018, an individual with access to the account deposited a check in the amount of \$496.34 into that same bank account by mobile deposit. The check cleared on or about June 20, 2018. The remitter name listed on the check is "Axis Ent." The account number listed on the check belonged to a separate account held in the name of SHERAK and an entity named "ENVIRON" (the "ENVIRON Bank Account"). From my review of account opening documents and other corporate records, I have learned that STEPHEN SHERAK, the defendant, is listed as the only member of the Board of Directors of "ENVIRON," which was incorporated by an individual named "Paul Sherak." The ENVIRON Bank Account had been closed as of in or about April 2018.

e. On or about June 25, 2018, Bank-1 withdrew \$496.34 from SHERAK's bank account as the \$496.34 check was determined to be fraudulent.

FRAUDULENT CHECK DEPOSITS RELATED TO BANK-2

6. Based upon my review of account records from a second national bank ("Bank-2"), my conversations with a representative of Bank-2, and my analysis of other relevant sources of information as specified below, I have learned the following in substance and in part:

a. As of on or about August 24, 2017, an entity named "Gavnet Professional Corporation" ("Gavnet") held two accounts at Bank-2 in Gavnet's name (accounts ending in numbers 0029 and 0037). STEPHEN SHERAK, the defendant, was the sole signatory for both accounts. From my review of records from the New Jersey Department of the Treasury Division of Revenue and Enterprise Services, I know that Gavnet was incorporated by SHERAK, and he is listed as the only director on Gavnet's Board of Directors.

b. Based upon my review of Bank-2 records and my

conversations with Bank-2 officials, I have learned that on or about August 24, 2017, an individual ("Individual-1") approached the teller window at a Bank-2 bank branch and deposited an endorsed check (number 2044) in the amount of \$4,500, into one of Gavnet's accounts at Bank-2 (ending in number 0029). I have also learned that an individual ("Individual-2") approached the teller window at a second Bank-2 bank branch and deposited a second endorsed check (number 2045) in the amount of \$4,500 into the second account at Bank-2 (ending in number 0037). The checks ending in 2044 and 2045 listed the same remitter ("Victim Business-2") and the same remitting bank.

c. Checks ending in numbers 2044 and 2045 were endorsed with a signature and the phrase: "For Deposit Only." From my review of two checks that I believe SHERAK deposited based upon my review of bank security images associated with those deposits, *see supra* ¶ 5.a, *see infra* ¶ 7.a ("Deposited Checks"), I have learned that the Deposited Checks were endorsed, in part, with the phrase: "For Deposit Only." Based upon my comparison of the handwriting on checks 2044 and 2045 and the Deposited Checks, I believe that checks 2044 and 2045 were endorsed by STEPHEN SHERAK, the defendant.

d. Based upon discussions with Bank-2 representatives who spoke with the account owner of Victim Business-2's account, which was listed on the deposited check, *see supra* ¶ 6.b, I believe that the checks that appeared to belong to Victim Business-2, ending in numbers 2044 and 2045 respectively, were counterfeit, were not issued by Victim Business-2, and were not authorized by any employee of Victim Business-2.

FRAUDULENT CHECK DEPOSIT RELATED TO BANK-3

7. Based upon my review of bank account records from a third national bank ("Bank-3"), and my conversations with a representative of Bank-3, and my analysis of other relevant sources of information as specified below, I have learned the following in substance and in part:

a. On or about April 24, 2018, based upon my review of surveillance photographs from one of Bank-3's bank branches, an individual I believe to be STEPHEN SHERAK, the defendant, attempted to cash a check (number 210) for \$4,348.72 at a Bank-3 bank branch. The remitter listed on the check was an individual ("Victim-3") and the account was made payable to "Mentertech Inc." From my review of Bank-3 bank account records associated with Mentertech, Inc., I have learned that STEPHEN SHERAK, the

defendant, is listed as the account holder for the bank account belonging to "Mentertech, Inc." Bank-3 did not cash the check.

b. Based upon my discussions with Bank-3 bank employees who spoke to Victim-3, and representatives of Bank-3, I believe that the check that appeared to belong to Victim-3 was counterfeit, was not issued by Victim-3, and was not authorized by Victim-3.

8. Based on a review of open-source materials, I know that between February and May 2016 the deposits of Bank-1, Bank-2, and Bank-3 were insured by the FDIC.

CONSPIRACY TO COMMIT THEFT OF GOVERNMENT FUNDS

9. Pursuant to the Internal Revenue Code and associated regulations, corporations are required annually to report their income, tax liabilities, and, where appropriate, any claim for a refund on a U.S. Corporate Income Tax Return, Form 1120 ("Form 1120"), which must be filed with the Internal Revenue Service ("IRS"), which is a part of the United States Department of the Treasury.

10. Form 1120 includes a section entitled "Total Payments and Refundable Credits" where taxpayers can, among other things, list any taxes that were prepaid prior to filing Form 1120. Pursuant to the Internal Revenue Code and associated regulations, corporations are entitled to a refund of any tax payments that were prepaid, but not owed, prior to the filing date of the corporation's tax return.

11. In or about February 2018, STEPHEN SHERAK, the defendant, approached a tax preparer ("Preparer-1") for assistance in preparing and filing a corporate tax return for Gavnet for the 2017 tax year. SHERAK informed Preparer-1 that Gavnet had pre-paid approximately \$3.4 million in taxes to the IRS for the 2017 tax year and that Gavnet therefore had no tax due and was entitled to claim a tax refund for the 2017 tax year. On that basis, based on SHERAK's representations of the taxes Gavnet had pre-paid, and based on SHERAK's representations of Gavnet's lack of taxable income in 2017, according to Form 1120, Gavnet was entitled to a tax refund of \$3,319,184.

12. Based on my discussions with investigators at the IRS and my review of Gavnet's incorporation documents, I know that SHERAK incorporated Gavnet on or around August 17, 2017, and that Gavnet did not pre-pay any taxes during the 2017 tax year.

I also know that SHERAK is the sole director on Gavnet's Board of Directors.

13. Based on my discussions with Preparer-1 and my review of documents provided to Preparer-1 by SHERAK, I have learned that SHERAK completed IRS form 8879-C, by which an officer of a corporation can authorize another party to electronically sign a tax return for the corporation on the officer's behalf. On or about March 5, 2018, SHERAK authorized Preparer-1's firm to electronically sign Gavnet's 2017 income tax return.

14. After Preparer-1 filed Gavnet's income tax return on or about March 10, 2018 on SHERAK's behalf, SHERAK was issued a check by the IRS in the amount of \$3,319,184 (the "Refund Check"). The Refund Check was sent to SHERAK.

15. From my discussions with investigators at Bank-1 and a fourth national bank ("Bank-4"), and my review of bank records and surveillance footage from Bank-1 and Bank-4, I know that STEPHEN SHERAK, the defendant, attempted to open new corporate accounts in the names of various entities in order to deposit the Refund Check. From my review of the aforementioned documents and my conversations with the aforementioned individuals, I have learned the following:

a. Based upon on my review of surveillance footage and records from Bank-1, I have learned that on or about May 17, 2018, an individual I believe to be SHERAK and a second individual ("Co-Conspirator-1") attempted to open a bank account in Gavnet's name at a Bank-1 bank branch located in Manhattan for the purpose of depositing the Refund Check. SHERAK and Co-Conspirator-1 were unable to open an account that day and left the Refund Check in the possession of a Bank-1 bank representative. SHERAK and Co-Conspirator-1 returned the following day, on or about May 18, 2018, to recover the Refund Check.

b. Based upon my review of surveillance photographs and records from Bank-4, I have learned that on or about May 22, 2018, an individual I believe to be SHERAK and Co-Conspirator-1 attempted to open a bank account in Gavnet's name at a Bank-4 bank branch, with Co-Conspirator-1 as the signatory on the account. SHERAK and Co-Conspirator-1 attempted to deposit the Refund Check into the newly-opened account via teller window.

16. WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of STEPHEN SHERAK, the

defendant, and that he be arrested and imprisoned or bailed, as the case may be.



DETECTIVE DANIEL ALLESANDRINO
NEW YORK CITY POLICE DEPARTMENT

Sworn to before me this
17 day of September, 2018



THE HONORABLE ONA T. WANG
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK