

Approved: David R. Lewis
DAVID RAYMOND LEWIS and ELI J. MARK
Assistant United States Attorneys

Before: HONORABLE SARAH NETBURN
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA : **SEALED**
 : **COMPLAINT**
 - v. - :
 STEVEN WHITTICK, : Violation of 18 U.S.C.
 : §§ 1001(a), 1512(c)
 Defendant. : COUNTY OF OFFENSE:
 : NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

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

COUNT ONE

(Obstruction of a Grand Jury Investigation)

1. From at least on or about September 18, 2019 up to and including at least in or about October 2019, in the Southern District of New York and elsewhere, STEVEN WHITTICK, the defendant, corruptly obstructed, influenced, and impeded an official proceeding and attempted so to do, to wit, WHITTICK sought to impede and interfere with a federal grand jury investigation of financial fraud and embezzlement by officials, trustees, directors, and employees of the Law Enforcement Employees Benevolent Association ("LEEBA") and its associated LEEBA Welfare Fund (the "Welfare Fund") and LEEBA Annuity Fund (the "Annuity Fund," and together with the Welfare Fund, the "LEEBA Funds"), by providing false and misleading information to federal investigators about withdrawals and other payments made from LEEBA bank accounts and the Funds.

(Title 18, United States Code, Section 1512(c)(2)).

COUNT TWO

(False Statements to Federal Agents)

2. On or about October 1, 2019, in the Southern District of New York and elsewhere, STEVEN WHITTICK, the defendant, in a matter within the jurisdiction of the executive and judicial branches of the Government of the United States, knowingly and willfully did falsify, conceal, and cover up material facts by trick, scheme, and device, and did make materially false, fictitious, and fraudulent statements and representations, to wit, WHITTICK made the false statements described below at paragraph 16 to federal investigators, regarding withdrawals and other payments made from LEEBA bank accounts and the Funds.

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

COUNT THREE

(False Statements to Federal Agents)

3. On or about October 14, 2019, in the Southern District of New York and elsewhere, STEVEN WHITTICK, the defendant, in a matter within the jurisdiction of the executive and judicial branches of the Government of the United States, knowingly and willfully did falsify, conceal, and cover up material facts by trick, scheme, and device, and did make materially false, fictitious, and fraudulent statements and representations, to wit, WHITTICK made additional false statements described below at paragraph 17 to federal investigators further described below regarding withdrawals and other payments made from LEEBA bank accounts and the Funds.

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

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

4. I have been a Special Agent with the FBI for more than three years. I have participated in multiple investigations of financial fraud, tax fraud, mail and wire fraud, and obstruction of justice, among other things, and have conducted and participated in surveillance, interviews of witnesses, and the execution of search warrants and arrest warrants. Since at least 2018, I have been personally involved in the investigation of this matter, along with other law enforcement officers and investigators working with the FBI, the United States Department of Labor's Office of Labor-Management Standards ("DOL"), and other law enforcement agencies.

5. I am familiar with the facts and circumstances set forth below from my participation in the investigation of this matter, from my personal knowledge, from my conversations with other law enforcement agents and personnel, and with witnesses, and from my examination of various reports and records. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts that I have learned during the course of my investigation. In addition, due to the ongoing nature of the investigation, the monetary calculations are based on the records obtained to date and are approximate, unless otherwise noted. 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. The charges in this Complaint result from the obstruction of a federal criminal investigation of a labor union by the union's treasurer, STEVEN WHITTICK, the defendant. Since in or about 2018, a federal grand jury in the Southern District of New York has been investigating whether fraud was committed by officers, directors, and trustees of LEEBA, a union that principally represents law enforcement personnel of various agencies of the City of New York (the "City"), who are not members of the New York City Police Department, and the funds that LEEBA manages for the benefit of its members. The investigation has revealed that LEEBA's president, Kenneth Wynder, Jr. ("Wynder"), has been involved in a multi-year scheme to embezzle hundreds of thousands of dollars from LEEBA's members' retirement accounts, resulting in a Complaint charging Wynder with wire fraud, in violation of Title 18, United States Code, Section 1343. See *United States v. Kenneth Wynder, Jr.*, No. 20 Mag. ___ (S.D.N.Y.) (the "Wynder Complaint").

7. More specifically, since 2018, the FBI, DOL and the grand jury have been investigating whether, since at least in or about 2012, Wynder stole and embezzled more than \$500,000 from the LEEBA Annuity Fund and individual members' retirement accounts, and whether Wynder and STEVEN WHITTICK, the defendant, used these stolen funds to enrich themselves at union members' expense, including through unauthorized and excessive checks and cash withdrawals from LEEBA bank accounts, as well as by causing the union to pay for various personal expenses, such as travel expenses and personal automobiles, and by failing to contemporaneously report such income to the Internal Revenue Service ("IRS"), as required. The grand jury has also been investigating whether WHITTICK and Wynder have made and approved false and misleading

statements to LEEBA's members and prospective members about their retirement accounts and the LEEBA Annuity Fund.

8. As described in greater detail below, STEVEN WHITTICK, the defendant -- LEEBA's Treasurer and a member of LEEBA's board of directors and a trustee of LEEBA's Annuity Fund, which is the custodian of members' retirement accounts -- attempted to obstruct and to influence this federal grand jury investigation into fraud and embezzlement. Among other things, and after learning of the existence of the grand jury investigation into LEEBA and its finances, WHITTICK provided false information and made false and fraudulent statements to federal investigators about: (1) cash withdrawals he made from LEEBA's bank accounts; (2) withdrawals that were made by LEEBA from LEEBA's Annuity Fund and from members' individual accounts; and (3) LEEBA's payment for travel and entertainment expenses, as well as for other improper personal expenses, for himself and other LEEBA officers.

Relevant Persons and Entities

9. Based upon LEEBA records and interviews in this case, I have learned the following:

a. LEEBA. LEEBA is a labor union that has acted as the collective bargaining representative principally for law enforcement personnel of various City agencies, and has entered into certain agreements on behalf of those law enforcement employees, including agreements that provided for insurance and retirement benefits for its members.

b. STEVEN WHITTICK, the defendant. At all times relevant to this Complaint, STEVEN WHITTICK, the defendant, was the Treasurer of LEEBA, and a member of the board of directors of LEEBA and the boards of trustees of the LEEBA Annuity Fund and the LEEBA Welfare Fund. As LEEBA's Treasurer, WHITTICK had responsibility for LEEBA's financial matters and accounts, including ensuring that expenditures were proper and were correctly accounted for, arranging for LEEBA to pay its payroll through an outside payroll processing firm (the "Payroll Processor") starting in 2016, as well as having signatory authority over LEEBA's main operating bank account. WHITTICK was also at all relevant times a police officer for the City's Department of Environmental Protection ("DEP"), and a union member of LEEBA.

c. Kenneth Wynder, Jr. At all times relevant to this Complaint, Wynder was the President of LEEBA and a member of LEEBA's board of directors. Wynder has also been the Fund Administrator of the Annuity Fund, and a member of the boards of trustees of the Annuity Fund and the Welfare Fund.

d. The Annuity Fund. The Annuity Fund is a LEEBA fund that received monthly contributions from the City for the benefit of members, and maintained separate accounts for each fund member. These accounts were functionally similar to an employer-sponsored 401(k) retirement account. Both WHITTICK and Wynder were Trustees of the Annuity Fund, and signatories to agreements that governed the fund. Pursuant to the relevant governing agreements and plans, the money in the Annuity Fund could be used for no purpose other than funding individual member retirement accounts and defraying reasonable administrative expenses of the Annuity Fund itself.

e. The Welfare Fund. The Welfare Fund received monthly contributions from the City for the benefit of members, in order to provide these employees ancillary health benefits, including prescription drugs, dental services, vision care, and life insurance. Based on my review of records from the insurance providers, I have learned that Wynder and another LEEBA officer, who were neither City employees nor participants in the Welfare Fund, and so not eligible to receive such benefits, received certain benefits, including prescription drug coverage and dental insurance that were paid for by the Welfare Fund.

The Investigation

10. Since at least 2018, the FBI and DOL have been assisting a federal grand jury sitting in New York, New York in its investigation into allegations concerning fraud, embezzlement, and misappropriation from LEEBA and the Funds by, among others, STEVEN WHITTICK, the defendant, and Kenneth Wynder, Jr. In particular, among other things, the grand jury and the FBI and DOL were investigating WHITTICK's and Wynder's repeated suspicious withdrawals of tens of thousands of dollars of cash from LEEBA bank accounts; LEEBA's fraudulent transfer, at Wynder's direction, of more than \$500,000 from member's retirement accounts held by the Annuity Fund to the union; and the use of LEEBA's operating account to pay personal expenses, including for personal automobiles, insurance benefits, a second residence, and a football trip to Dallas for STEVEN WHITTICK, the defendant, Wynder and others, as are further described below.

11. WHITTICK's Suspicious Withdrawals from LEEBA. Based upon my review of documents obtained from LEEBA, bank records, and interviews of current and former LEEBA employees, I have learned the following:

a. As LEEBA's Treasurer, from at least in or about 2014 through in or about 2019, STEVEN WHITTICK, the defendant, was a signatory on a number of LEEBA bank accounts. From at least in

or about 2017, WHITTICK also had at least one debit card that enabled him to make withdrawals from one of those accounts via ATMs.

b. From at least 2016 through 2019, WHITTICK was an authorized administrator of LEEBA's payroll through an outside payroll processing firm (the "Payroll Processor"), which permitted him to control how, when, and in what amounts money was paid through the Payroll Processor to LEEBA's employees, including himself.

c. From at least in or about 2017 through in or about August 2019, WHITTICK withdrew more than \$108,000 in cash from LEEBA's operating account.

d. Such cash withdrawals included approximately twenty withdrawals through bank tellers, in which WHITTICK signed withdrawal slips and received cash totaling approximately \$97,800. Nine of those withdrawals ranged between \$5,000 and \$16,000 per withdrawal. In addition, WHITTICK caused his bank card to be used at an ATM in Kingston, New York, where he lived, to make approximately ten separate withdrawals totaling approximately \$11,000 in cash and ranging up to \$3,000 cash at a time.

e. For example, on one such occasion, on or about May 11, 2018, WHITTICK withdrew \$5500 in cash from a LEEBA bank account. On the previous day, WHITTICK sent a text message to Wynder, stating that WHITTICK needed \$5500 for a down payment on the purchase of an automobile, and seeking authorization to withdraw that amount as an advance against his future paychecks, promising that he would repay the withdrawal over his next four paychecks.¹ Although WHITTICK controlled payroll processing, a review of the records of the Payroll Processor indicates that WHITTICK made no reduction in his future paychecks and thus did not repay the \$5500 cash withdrawal.

f. On at least two occasions, on or about February 1, 2018 and March 30, 2018, bank records reflect that WHITTICK twice withdrew \$16,000 in cash from a LEEBA bank account, and on each of those same dates, WHITTICK subsequently deposited \$15,000 into Wynder's personal bank account and \$1,000 into WHITTICK's own personal bank account. At the time of both withdrawals, WHITTICK's and Wynder's salaries were being paid through the Payroll

¹ Credit union records reflect that, on May 11, 2018, WHITTICK made a cash payment of \$5000 as a down payment on the purchase of a personal automobile.

Processor. WHITTICK's payroll for those months showed no reduction in his regular salary payment through the Payroll Processor.

12. Withdrawals from Annuity Fund to LEEBA. Based upon my review of documents obtained from the custodian of the Annuity Fund (the "Fund Custodian") and LEEBA, as well as interviews with LEEBA employees, I learned the following:

a. At all times relevant to this Complaint, STEVEN WHITTICK, the defendant, was a trustee of the Annuity Fund, as well as a member of the board of directors of LEEBA.

b. From in or about 2012 through in or about 2019, LEEBA withdrew and transferred approximately \$529,000 from the Annuity Fund, and thus from the retirement accounts of individual members, to LEEBA's main operating account, where the money was used for purposes unrelated to the Annuity Fund. Such withdrawals were effected through misleading instruction forms that Wynder caused to be sent to the Fund Custodian, which forms falsely stated that the withdrawals were to defray administrative expenses of the Annuity Fund. Such withdrawals directly violated the fiduciary duties that Wynder and other members of the Annuity Fund's board of trustees, including WHITTICK, owed to the Annuity Fund and its members.

c. LEEBA's withdrawals from the Annuity Fund, which were transferred into LEEBA's main operating account for which WHITTICK was a signatory, steadily increased over time, taking an increasingly large percentage of monthly contributions made by the City for the benefit of members. For example, in or about 2015, Wynder caused LEEBA to withdraw approximately \$37,000 from the Annuity Fund and transferred it to LEEBA's own accounts. This was more than 17% of the approximately \$210,140 in City funds contributed to the Annuity Fund for the benefit of members that year. By 2019, from in or about January through in or about September of that year (before the search warrant was executed at LEEBA's office), Wynder caused LEEBA to withdraw approximately \$160,000 from the Annuity Fund and transferred it to LEEBA's own accounts. This was more than 74% of the approximately \$216,470 in City funds contributed for the benefit of members for that year.²

² From in or about September 2018 through the date of this Complaint, the City has been placing its monthly contributions to the LEEBA Funds in escrow, because of the failure of the LEEBA Funds and its officers and trustees to comply with their reporting, compliance and disclosure obligations.

d. WHITTICK was aware of these withdrawals both through discussion with other board members, including Wynder, and through his review of LEEBA's financial and bank accounts, as WHITTICK himself admitted during an interview with federal investigators, described below, on October 14, 2019.

e. As a result of the above withdrawals, numerous fund members currently have virtually no money in their individual retirement accounts at the Annuity Fund.

f. As described above, during the same time that these funds were being withdrawn from the Annuity Fund and transferred to LEEBA's operating account, Wynder and WHITTICK were making tens of thousands of cash withdrawals from that account and using funds in that account to pay for personal expenses.

g. Without these improper withdrawals from the Annuity Fund, the LEEBA operating account would have been insolvent, and would have had insufficient funds to pay for Wynder's and WHITTICK's cash withdrawals and the personal expenses they caused to be charged to that account.

13. LEEBA Bankrolls a Weekend Football Trip to Dallas for WHITTICK, Wynder, and Others. Based upon a review of bank and credit card records of LEEBA, social media postings, and airline and hotel records, as well as interviews with LEEBA employees, I have learned that LEEBA funds were used to pay for various charges related to a September 2018 weekend trip by Wynder, STEVEN WHITTICK, the defendant, and others, to Dallas, Texas, during which trip Wynder, WHITTICK and approximately four other LEEBA employees and/or board members attended an NCAA collegiate football game on September 15 and an NFL game between the New York Giants and the Dallas Cowboys on September 16 (the "Dallas Trip"). There was no labor conference or other labor-related event in Dallas on the weekend of this football getaway, and the investigation has identified no other business purpose for the trip. During this weekend trip, LEEBA funds were used to pay for more than \$2,970 in hotel room charges in Dallas, including for WHITTICK's hotel room. LEEBA funds were also used to purchase six roundtrip airline tickets, including WHITTICK's roundtrip ticket from New York to Dallas. The investigation has revealed no effort to subsequently reimburse LEEBA by WHITTICK or other participants in the trip.

WHITTICK's Efforts to Cover-Up His and Others'
Misconduct at LEEBA

14. I know from my personal participation in executing a search warrant at the Manhattan offices of LEEBA on September 18, 2019, as well as from my participation in serving subpoenas upon

STEVEN WHITTICK, the defendant, and from phone records, emails, texts, and witness interviews, that the existence of this federal investigation became known to WHITTICK no later than September 18, 2019. On that date, while I and other law enforcement officers were at the LEEBA offices to execute the search warrant and to serve a grand jury subpoena upon LEEBA for records pertaining to the union and the Annuity Fund, WHITTICK placed a telephone call to a LEEBA employee who was present at the offices. On that call, which I witnessed from the perspective of the LEEBA employee, the employee told WHITTICK about the search warrant and that agents were there to execute it.

15. Based on my review of emails obtained from LEEBA, I know that on or about September 18, 2019, after the search, STEVEN WHITTICK, the defendant, emailed other LEEBA officers the following message that was subsequently distributed in sum and substance to LEEBA Members: "Dear LEEBA Member This Morning Agents of the FBI came to the LEEBA office at 80 Broad Street requesting all records in a form of a searching warrant dating back to 2012. . . . As usual this is the City Attempt to intimidate this union"

16. On or about October 1, 2019, as part of the investigation in this case, I and other law enforcement agents conducted a voluntary interview of STEVEN WHITTICK, the defendant, and at the end of the interview served WHITTICK with a grand jury subpoena for documents and his testimony. Shortly before the scheduled interview, based on a review of phone records, WHITTICK had an approximately ten minute long telephone call with Wynder. During this interview, WHITTICK falsely stated in substance and in part that:

a. No employee had been paid in cash, other than rare cash payroll payments to WHITTICK and LEEBA's office administrator. In fact, as described above, on at least two occasions, WHITTICK participated directly in making cash payments of \$15,000 each into Wynder's bank account.

b. He did not know the salaries of Wynder or LEEBA's office administrator. In fact, as described above, as LEEBA's treasurer, it was part of WHITTICK's job each month to provide salary payment amounts to the Payroll Processor via its website, to cause the issuance of Wynder's paychecks.³

³ In a subsequent interview with federal investigators on October 14, 2019, after having had phone conversations with Wynder as noted above, WHITTICK admitted that he knew that Wynder received salary

17. On or about October 14, 2019, as part of the investigation in this case, I and other federal agents conducted another voluntary interview of STEVEN WHITTICK, the defendant. Shortly before the scheduled interview, based on a review of phone records, WHITTICK had a telephone call with Wynder. During this interview, WHITTICK falsely stated in substance and in part that:

a. He believed that up to approximately 10% could be withdrawn from the Annuity Fund to pay bills for the union. Not only was there no basis for WHITTICK to claim such a belief, but this professed belief directly contradicted WHITTICK's prior statement to federal investigators on October 1, 2019, that he believed that up to 2% could be so withdrawn for such purposes, a statement equally without basis. As noted above, WHITTICK had repeated conversations with Wynder between these two interviews.

b. He did not believe he withdrew money from LEEBA's accounts from an ATM. Even after being confronted with bank documents reflecting several such ATM withdrawals, WHITTICK continued to maintain that he could not recall any ATM withdrawals, and that he could not describe any reason for any such withdrawal nor what any of the withdrawn money was used for, other than a single occasion when he claimed to have withdrawn \$50 to pay for gasoline. In fact, as described above, WHITTICK on approximately ten occasions used his LEEBA-issued debit card to withdraw money totaling approximately \$11,000 from LEEBA's operating bank account, through an ATM near his home.

c. The most cash that WHITTICK had ever taken from a LEEBA account through a bank teller was "just \$3,000." In fact, as described above, WHITTICK had withdrawn \$16,000 on two occasions in February and March 2018. In addition, LEEBA's bank records show that on approximately 13 occasions between approximately May 2017 and August 2019, WHITTICK had made cash withdrawals from LEEBA's account through bank tellers in amounts ranging from approximately \$3,500 to \$10,000, totaling approximately \$74,500.

d. He paid for his own airfare and hotel for the Dallas Trip, and that all participants on that trip "paid their own way" and that "nothing was paid for by the union funds." In fact, as noted above, WHITTICK did not pay for his airfare and hotel; rather, union funds were used to pay for those expenses for WHITTICK and every other participant in the trip.

18. On or about October 14, 2019, based on my review of text messages obtained from LEEBA, after his interview that day with

payments of up to \$15,000 per month, *i.e.* the amount reflected on payroll processor records for which he was responsible.

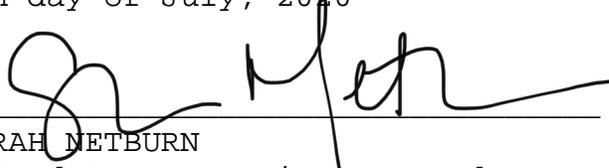
law enforcement, STEVEN WHITTICK, the defendant, texted Wynder:
"We will be indicted."

WHEREFORE, I respectfully request that an arrest warrant be issued for STEVEN WHITTICK, the defendant, and that he be imprisoned or bailed, as the case may be.

/s authorized electronic signature

JOSEPH DUOME
Special Agent
Federal Bureau of Investigation

Sworn to before me this
9th day of July, 2020



SARAH NETBURN
United States Magistrate Judge