

PROBABLE CAUSE AFFIDAVIT

STATE OF FLORIDA
COUNTY OF PALM BEACH

DEPARTMENT OF REVENUE
CASE NUMBER: 3000011447

Defendant: Gregory John Sutor
Sex: Male
Race: White
Date of Birth: November 12, 1971
Height: 6'03"
Weight: Unknown
Eyes: Unknown
Hair: Unknown
Driver License: Florida S360-290-71-412-0

Address: 5377 Helene Circle
Boynton Beach, FL 33472-1263

Offense: Tax Evasion (Sales Tax)
Section 212.12(2)(e), Fla. Stat. (2005)
Felony of the 3rd Degree, 6 Counts
Applied dates: July 2019 through December 2019
Offense dates: August 2019 through January 2020

Business Name: J.G. Primos LLC, doing business as Primo Hoagies

Business Address: 1313 West Boynton Beach Blvd. #4-5
Boynton Beach, Florida 33426

Victim: State of Florida

Before me this day personally appeared Toni Ricciardelli, who, being first duly sworn, deposes and says that the above-named defendant committed the offense charged and the facts and circumstances showing probable cause to believe same are as follows:

I, Toni Ricciardelli, am a Senior Financial Investigator with the State of Florida, Department of Revenue. I have conducted an investigation of J.G. Primos LLC, doing business as Primo Hoagies; a closed business that engaged in the retail sales of food and drinks located in Palm Beach County, Florida. During the course of the investigation; through the acquisition of documentary evidence and witness testimony, I found that for the periods July 2019 through December 2019, Gregory John Sutor, an owner and managing member of the business, collected and failed to pay a minimum of **\$11,665.79**, in sales tax to the State of Florida Department of Revenue, thereby depriving the State of Florida of sales tax revenue, in violation of Florida Statute 212.12.

I obtained information from Gregory John Sutor's Florida Driver's License and other personal information, such as social security number and driver license number, from the Florida Department of Highway Safety and Motor Vehicles, with the purpose of comparing that information with records obtained through the course of the investigation.

J & G Primo LLC, doing business as Primo Hoagies, was registered with the Florida Department of Revenue as a multi member limited liability company and was engaged in the business of a limited-service restaurant. The closed business was located at 1313 West Boynton Beach Blvd., 4-5, Boynton Beach, FL, 33426. The business registered on October 4, 2018 and was issued certificate number [REDACTED]. The business opening date was listed as September 19, 2018. The business was required to file sales and use tax returns on a monthly basis with the Florida Department of Revenue.

On item 12 of Section A ("Owner Information"), of the Florida Business Tax Application, the name of Greg J. Sutor was listed as Managing Member with fifty Percent of Ownership/Control. In that same section, Greg J. Sutor identified himself with his social security number.

I obtained subpoena duces tecum number 21-1936 from the Fifteenth Judicial Circuit Court for certified records of the Florida Department of State. The subpoena was served, via United States Mail, on the Secretary of State's Corporation Division.

In response, the Florida Department of State provided certified records which reveal that the business is registered with the Secretary of State as a limited liability company. The limited liability company name was J. G. Primos LLC, and the limited liability company was effective July 12, 2017. The records show the principal business address was 1313 West Boynton Beach Blvd., 4-5, Boynton Beach, FL, 33426. The registration status of the limited liability company is administratively dissolved as of September 27, 2019. In addition, the Limited Liability Company's annual report dated January 15, 2018 is electronically signed Greg Sutor as manager.

I reviewed the Department of Revenue records and certified copies of Sales and Use Tax Returns the business electronically filed for the periods of July 2019 through October 2019. These returns list Greg Sutor, with a phone number and email address, in the contact information portion of the electronic filing. The filed returns demonstrate that Greg Sutor had knowledge of his legal responsibility and duty to collect, report and remit the sales tax collected by J.G. Primos LLC, doing business as Primo Hoagies. These returns document the collection of \$8,089.63 for sales tax periods July 2019 through October 2019.

Furthermore, this review reveals that after the Department of Revenue issued delinquency notices to the business, Greg Sutor did not file Sales and Use Tax returns on behalf of the business for the monthly periods of November 2019 and December 2019.

In addition to not filing returns, as required by law, Department of Revenue records reveal that Greg Sutor did not pay the taxes due for the monthly periods of July 2019 through December 2019.

As the designated custodian of records of the Department of Revenue with regard to Department of Revenue criminal cases, I am providing a certified statement indicating that "after a diligent search of Department's records, I do not find where J.G. Primos LLC, doing business as Primo Hoagies, BP# 5589121, has filed a Sales and Use Tax returns with the Department of Revenue for the monthly periods of November 2019 and December 2019."

As the designated custodian of records of the Department of Revenue with regard to Department of Revenue criminal cases, I am providing a certified statement indicating that "after a diligent search of Department's records, I do not find where J.G. Primos LLC, doing business as Primo Hoagies, BP# 5589121, has remitted Sales and Use Tax payments to the Department of Revenue for the monthly periods of July 2019 through December 2019."

I conducted a review of the Department's System for Unified Taxation, which indicates that Department of Revenue specialists made numerous contacts with Greg Sutor in an effort to resolve the company's sales tax delinquencies and secure voluntary compliance with sales tax reporting and remittance requirements. These contacts were memorialized in comments made by the revenue specialists and entered into the Department's System for Unified Taxation. These comments demonstrate that Greg Sutor was aware of the sales tax liability associated with the operation of his business, made promises to pay said liability, but failed to do so.

In addition to the Department of Revenue specialists' documented comments, I obtained an affidavit from a Department of Revenue Specialist. In the affidavit, the Department of Revenue Specialist stated that on November 19, 2019, she conducted a field visit to the business location of J.G. Primos LLC, doing business as Primo Hoagies. She arrived to an open/active restaurant at 1313 West Boynton Beach Blvd., Ste R-5, Boynton Beach, FL, 33426. She handed her business card to a person, who described herself as an employee. She asked if anyone present was considered a manager. The employee stated no. The Revenue Specialist could see two other men working on orders behind her, and left a business card with the date of the field visit written on it and a written request to have an officer call a Department of Revenue representative within 24 hours.

In addition, the revenue specialist while parking and preparing to enter the business whose suite number is R-5 on the storefront, noticed this area had an extremely busy parking lot with a lot of late lunch time traffic. While waiting to park she noticed 5 men walking out of the business, some with white plastic carrying bags typical for sandwich orders. She noticed a couple men and a woman exiting the restaurant with a screw-top Pepsi bottle in their hands, along with a white plastic bag. Upon entry, the

revenue specialist noticed three more men seated at various areas throughout this storefront counter service restaurant.

Furthermore, I obtained a second affidavit from a Department of Revenue Specialist. In the affidavit, the Department of Revenue Specialist stated that on January 29, 2020, she spoke with Greg Sutor, Managing Member, regarding the sales and use tax account for J G Primos LLC. Mr. Sutor stated that he and another other managing Member, closed the business as of December 28, 2019. Mr. Sutor further explained that the entity was not really making any money and they decided to shut it down. She advised Mr. Sutor to file the sales and use tax returns for November and December 2019. Mr. Sutor stated that he would like to request a payment arrangement for sales tax amounts due as he does not have the money to pay the entire amount due. Mr. Sutor further stated that he and the other managing member are equally responsible for the entity and that he will consult with the other managing member and that they will make a payment towards the balance due.

In addition, the Revenue Specialist advised Mr. Sutor that once the sales and use tax returns for November and December 2019 are processed, she would contact him regarding how much he will be paying. The Revenue Specialist also advised that Florida Department of Revenue will require six months of his and the other managing member's personal bank statements and their last two federal tax returns for review, to obtain approval for a payment arrangement. Mr. Sutor stated he would email the confirmations for the filing of the sales and use tax returns, November and December 2019, by Friday, January 31, 2020.

This review also revealed that all attempts to collect the full amount of the sales tax due was unsuccessful.

Moreover, the Department's System for Unified Taxation shows sales tax warrants were filed with the Clerk of the Court, Palm Beach County, Florida.

I mailed a letter to Gregory John Sutor as custodian of records for J.G. Primos LLC, doing business as Primo Hoagies, advising him that the Florida Department of Revenue was conducting an investigation of J.G. Primos LLC, doing business as Primo Hoagies. I requested voluntary production of business records for the period of February 1, 2019 through December 31, 2019. The certified letter was received and signed for on United States Postal Service Certified Mail Receipt [REDACTED]

Based upon information obtained from the Department of Revenue database, a determination was made that J.G. Primos LLC, doing business as Primo Hoagies, used a bank account at Wells Fargo Bank, N.A. to remit sales tax payments to the Department of Revenue. This account was titled J.G. Primos LLC.

I then obtained a subpoena duces tecum number 21-1934 from the Fifteenth Judicial Circuit Court. The subpoena sought the production of bank records in the name of J.G. Primos LLC, doing business as Primo Hoagies, from Wells Fargo Bank, N.A., for the period of February 1, 2019 through December 31, 2019.

In response to the subpoena, I received the Business Records Declaration, Business Account Application, Business Signature Card and cancelled checks for the period of February 1, 2019 through December 31, 2019, from Wells Fargo Bank, N.A., on all accounts titled J.G. Primos LLC.

The Business Account Application and Business Signature Card for account number ending in [REDACTED] titled J.G. Primos LLC shows Gregory J. Sutor, as owner and authorized signatory on the account identified by his Florida Driver license number.

My review of all canceled checks for the business bank account held at Wells Fargo Bank, NA, titled J.G. Primos LLC, account number ending in [REDACTED] show for the periods July 2019 through December 2019 that Gregory J. Sutor was the only authorized signatory who exercised his authority as bank signatory. All checks were signed with signature that appears to be that of Gregory J. Sutor. In addition, Greg Sutor received regular payroll checks signed by himself for the periods July 2019 through December 2019.

No business records were received from the business; as a result, bank statements were used to identify the unreported or additional taxable revenue for those periods.

I reviewed the bank statements, provided by Wells Fargo Bank, N.A., and scheduled the bank deposits of each account by month. This review shows that for the periods of July 1, 2019 through December 31, 2019 a net total of **\$178,320.00** was deposited in the account maintained by the subject's business. This review also shows that for all the periods included in this investigation, there were enough funds in the accounts to pay the Department of Revenue the taxes due.

Furthermore, my review of bank deposits revealed that other managing member deposited funds from a personal bank account to the business bank account in the months of July 2019 and October 2019.

Using the bank statements, I prepared a schedule of bank deposits of the business bank account by month for the periods of July 2019 through December 2019. I excluded and deducted all non-income deposits and credits and deposits that did not appear to be generated from regular business' sales or were unidentified. The review reveals that a minimum of **\$178,320.00** appears to be the gross revenue/sales (net deposits/income) from the taxable activities of the business during the periods of July 2019 through December 2019.

I then divided the taxable income revenue/sales (including sales tax) amount of each period by 1.07 for the periods of July 2019 through December 2019 where the sales tax rate for Palm Beach County was 7 percent, resulting in net taxable income revenue of **\$166,654.21**. I then subtracted this amount from the taxable income revenue amount (which includes sales tax collected) amount of **\$178,320.00**, leaving a minimum sales tax collected amount of **\$11,665.79** for those periods.

In addition, after completing the bank deposits' analysis, I then concluded that J.G. Primos LLC, doing business as Primo Hoagies, evaded paying a minimum of **\$11,665.79**, in sales tax during the period of July 2019 through December 2019 by willfully failing to remit the sales tax due for these periods.

Furthermore, on December 16, 2021, I contacted a former employee, via telephone. I identified myself as a Department of Revenue employee and asked her to confirm her identity by confirming her address and last four of her social security number. I asked her to confirm if she is familiar with a business called J.G. Primos LLC, doing business as Primo Hoagies. I told her that my research revealed that she was a former employee of the business and I wanted to obtain information regarding her knowledge of business operations. The former employee stated the information was correct. I asked when she was employed by the business and she replied that he was employed by the business for approximately six months, July 2019 through December 2019. I asked her what her duties and she were said she was a cashier. I asked the former employee if she observed sales tax being collected or collected sales tax herself on items sold in the restaurant. The former employee confirmed she collected sales tax herself on items sold in the restaurant. I asked her if sales tax was listed as a separate line item on business receipts and she stated yes, the Point-of-Sale System, which she could not remember the name of, calculated all items separately.

In addition, I asked the former employee who was in charge of the daily operations of the business, and she stated the owner, Greg Sutor. I asked who made the business decisions and who made financial decisions regarding bill paying and she stated that Greg Sutor signed checks, as well as assignment of duties, create work schedules and hired new employees. The former employee added that Greg Sutor was the day-to-day operations decision maker. I asked her about the other managing member's role in the business. The former employee stated that the other managing member she understood to be a business partner only and that he was not a part of the daily operations of the business. The former employee further added that she saw the other managing member maybe only twice the whole time she was employed there.

On November 12, 2021, I mailed a letter, to John Sutor, managing member and owner, of J.G. Primos LLC, doing business as Primo Hoagies requesting a voluntary interview concerning his involvement with J.G. Primos LLC, doing business as Primo Hoagies. The letter was sent regular and certified mail via the United States Post Office

to the most current verified address of John Sutor. The certified letter was received and signed for on United States Postal Service Certified Mail Receipt [REDACTED]

In addition, on November 16, 2021, Power of Attorney and Certified Public Accountant, for the business responded to the interview request via telephone. He stated in response to my voluntary request for business records he was unfortunately unable to accommodate the request. He stated that the business records were not available and that his firm was currently in process of trying to reconstruct them from bank records for the purpose of filing required documents to the Internal Revenue Service.

Power of Attorney and Certified Public Accountant, for the business stated that there was a managing member who was an investor in the business and not involved with the daily operations of the business during the offense period July 2019 through December 2019; for J.G. Primos LLC, doing business as Primo Hoagies. Lastly, he stated that he would respond at a later date with regards to the voluntary interview requests. As of January 10, 2022, I have not heard from Power of Attorney and Certified Public Accountant, for J.G. Primos LLC, doing business as Primo Hoagies., in response to my requests for voluntary interviews.

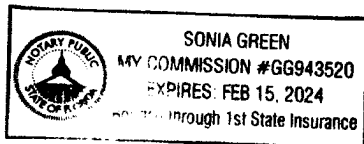
Under penalties of perjury, I declare that I have read the foregoing probable cause affidavit and that the facts stated in it are true and correct to the best of my knowledge and belief.

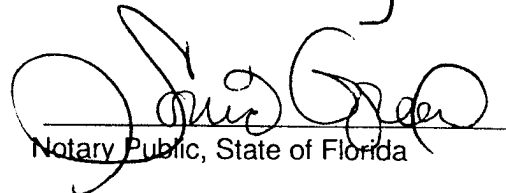

Toni Ricciardelli, Senior Financial Investigator

Before me, a notary public of the State of Florida, the affiant, TONI RICCIARDELLI, who appeared personally ☒ or by means of audio-video communication technology ☐, after being duly sworn, says under penalty of perjury that the foregoing affidavit and the facts stated therein are true and correct to the best of their knowledge. The affiant ☒ is personally known to me or ☐ produced a valid form of identification. Type of identification produced _____.

Sworn to (or affirmed) and subscribed before me this 2nd of February 2022

(SEAL)




Notary Public, State of Florida