

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK ERJAVEC,

Defendant.

WOR NO ECT/EMB
INDICTMENT

18 U.S.C. § 1343
18 U.S.C. § 981(a)(1)(C)
28 U.S.C. § 2461(c)

The UNITED STATES GRAND JURY charges that:

INTRODUCTION

At times relevant to this Indictment:

The Small Business Administration

1. The Small Business Administration (SBA), an executive branch agency of the United States government, provided support to entrepreneurs and small businesses. The SBA helped maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses, as well as assisting in the economic recovery of communities after disasters.

Economic Injury Disaster Loan (EIDL)

2. The Economic Injury Disaster Loan (EIDL) program, managed by SBA, offered financial assistance to small businesses, renters, and homeowners in areas affected by declared disasters. The Coronavirus Aid, Relief, and Economic Security (CARES) Act authorized the SBA to provide EIDLs to eligible small businesses and

FILED *9/18/25*
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other qualifying organizations that experienced substantial financial hardship due to the COVID-19 pandemic.

3. To obtain an EIDL, a qualifying business submitted an application to the SBA that provided detailed information about the business's operations, including the number of its employees and the gross revenues and cost of goods sold for the 12-month period preceding the date of disaster. In the case of EIDLs issued for COVID-19 relief, the 12-month period started on January 31, 2020. As such, the applicant was required to submit detailed information about the business's operations for the 12 months preceding this date. The applicant was also required to certify that all of the information in the application was true and correct to the best of the applicant's knowledge.

4. EIDLs were submitted directly to the SBA and processed with support from a government contractor. If an application was approved, the amount of the EIDL was determined, in part, based on the information provided in the application about employment, revenue, and cost of goods sold as described above. Any funds issued for an EIDL were paid from the United States Treasury. Applicants were authorized to use EIDL funds for payroll expenses and other business-related expenses.

Paycheck Protection Program

5. In addition to the EIDL program, the CARES Act also made government-guaranteed loans available to qualified small businesses through the Paycheck Protection Program (PPP). The purpose of loans issued under the PPP was

to enable small businesses suffering from the economic downturn to continue to pay salary or wages to their employees.

6. To obtain a PPP loan, a qualifying business was required to submit a PPP loan application, which was signed by an authorized representative of the business. The PPP loan application required 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 (SBA Form 2483), the small business (through its authorized representative) was required to certify, among other things: (a) that the small business was in operation on February 15, 2020; (b) average monthly payroll expenses; and (c) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation showing their payroll expenses.

7. A PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were guaranteed by the SBA. Data from the application, including the information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan.

8. PPP loan proceeds were required to be used on certain permissible expenses, including payroll costs, mortgage interest, rent, and utilities. Under the

applicable PPP rules and guidance, the interest and principal on the PPP loan was eligible for forgiveness if the business spent the loan proceeds on these expense items within a designated period of time and used a certain portion of the loan towards payroll expenses.

The Defendant Mark Erjavec

9. From at least in or about April 2020 through in or about August 2020, the defendant, MARK ERJAVEC, while residing in Denver, Colorado, capitalized on the COVID-19 pandemic to exploit emergency funding mechanisms to knowingly submit numerous false and fraudulent applications to receive loan proceeds he knew he was not entitled to receive. ERJAVEC used false and fraudulent pretenses, representations, promises, and concealment of material facts to apply for and obtain at least \$975,379 in fraud proceeds. ERJAVEC knowingly used these criminally derived proceeds to engage in monetary transactions exceeding \$10,000 for the benefit of himself.

10. From the mid-1990s to the early 2000s, ERJAVEC was the owner or principal officer of multiple business entities that were previously registered in Minnesota. All of the business entities were administratively terminated or dissolved by the Office of the Minnesota Secretary of State between 2008 and 2013.

11. Tricolor Heron, LLC

- a. On July 13, 2003, Tricolor Heron, LLC was registered as a business in Minnesota. ERJAVEC was the Secretary of the company. The

Office of the Minnesota Secretary of State administratively terminated Tricolor Heron, LLC on August 3, 2012.

12. Mesaba Finance – Law, LLC

- a. On July 1, 2009, Mesaba Finance – Law, LLC was registered as a business in Minnesota. ERJAVEC was the manager of the company. The Office of the Minnesota Secretary of State administratively terminated Mesaba Finance – Law, LLC on August 3, 2012.

13. Mesaba Finance Capital Raising Services, LLC

- a. On December 11, 2009, Mesaba Finance Capital Raising Services, LLC was registered as a business in Minnesota. ERJAVEC was one of the organizers of the company. The Office of the Minnesota Secretary of State administratively terminated Mesaba Finance Capital Raising Services, LLC on March 1, 2010.

14. Mesaba Finance Company, Incorporated

- a. On October 1, 2007, Mesaba Finance Company, Incorporated was registered as a business in Minnesota. In April 2011, ERJAVEC renewed Mesaba Finance Company, Incorporated's annual business registration and listed himself as the Chief Executive Officer. The Office of the Minnesota Secretary of State administratively dissolved Mesaba Finance Company, Incorporated on March 25, 2013.

15. Mesaba Finance – Summit, LLC

- a. On June 25, 2008, Mesaba Finance – Summit, LLC was registered as a business in Minnesota. An associate of ERJAVEC who worked for Mesaba Finance Company, Incorporated described in Paragraph 15 was listed as the sole incorporator. The Office of the Minnesota Secretary of State administratively terminated Mesaba Finance – Summit, LLC on August 3, 2012.
16. Lending Entity 2011-1, LLC
 - a. On January 18, 2011, Lending Entity 2011-1, LLC was registered as a business in Minnesota. ERJAVEC was the sole officer of the company. The Office of the Minnesota Secretary of State administratively terminated Lending Entity 2011-1, LLC on February 26, 2013.
17. Blue Heron, Incorporated
 - a. On August 17, 1995, Blue Heron, Incorporated was registered as a business in Minnesota. ERJAVEC was one of the incorporators of the company. In 2004, ERJAVEC listed himself as Chief Executive Officer of the company. The Office of the Minnesota Secretary of State administratively dissolved Blue Heron, Incorporated on January 9, 2008. It was re-registered on March 27, 2017, and administratively dissolved again on February 20, 2020.
18. Flashboil Agency, Incorporated

- a. On February 6, 2007, Flashboil Agency, Incorporated was registered as a business in Minnesota. ERJAVEC was the sole incorporator of the company. The Office of the Minnesota Secretary of State administratively dissolved Flashboil Agency, Incorporated on January 7, 2009.

19. Tricolor Heron, LLC, Mesaba Finance – Law, LLC, Mesaba Finance Capital Raising Services, LLC, and Mesaba Finance – Summit, LLC filed no tax returns for calendar years 2019 and 2020. Blue Heron, Inc., Mesaba Finance Company, Inc., Flashboil Agency, Inc., and Lending Entity 2011-1, LLC filed taxes after ERJAVEC applied for the EIDL loans. All of the identified entities above had no significant sources of income outside of the EIDL loan proceeds and very limited business-like transactions. Moreover, all of the identified entities did not report to the State of Minnesota the payment of any wages to a single employee in 2019 and 2020.

THE SCHEME TO DEFRAUD

20. From at least in or about April 2020, and continuing to in or about September 2020, in the District of Minnesota, and elsewhere, the defendant,

MARK ERJAVEC,

did knowingly and intentionally devise and execute a scheme and artifice to defraud and to obtain money by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts.

21. It was part of the scheme to defraud that from at least in or about April 2020 through at least in or about August 2020, ERJAVEC knowingly applied for various PPP and EIDL funds by submitting knowingly false and fraudulent applications to various lenders. Every application ERJAVEC submitted included knowingly false representations. The purpose of the scheme was for ERJAVEC to unjustly enrich himself by obtaining PPP and EIDL loan proceeds under false and fraudulent pretenses, including by submitting fabricated supporting records, making false statements about the number of employees and the amount of payroll expenses, and making false statements about the intended use of the loan proceeds.

22. In furtherance of the scheme, before submitting the fraudulent PPP and EIDL loan applications, ERJAVEC re-registered several dormant business entities that were previously dissolved or terminated by the Office of the Minnesota Secretary of State. ERJAVEC used his personal online account with the Minnesota Secretary of State's website to submit the business entity renewals. All Minnesota Secretary of State servers are located on premises within the State and District of Minnesota. Soon after resurrecting these long-dormant business entities, ERJAVEC created a new checking account for the business in his sole name. Often, ERJAVEC opened the new business checking account on the same day, or within days, of filing the business renewal. After ERJAVEC re-registered the dormant business, he then applied for the EIDL and PPP loans falsely claiming the businesses were active and had employees.

23. Tricolor Heron, LLC

- a. On July 30, 2020, ERJAVEC re-activated Tricolor Heron, LLC to an active status with the Office of the Minnesota Secretary of State. Also on July 30, 2020, ERJAVEC opened a checking account for Tricolor Heron, LLC with him as the sole account holder.
- b. On August 10, 2020, ERJAVEC submitted an EIDL loan application for Tricolor Heron, LLC, falsely claiming the company had gross revenues totaling \$306,000.00 and 2 employees for the 12 months prior to January 31, 2020.
- c. On August 17, 2020, ERJAVEC received SBA EIDL proceeds into the aforementioned account totaling \$149,900.00.

24. Mesaba Finance – Law, LLC

- a. On July 9, 2020, ERJAVEC re-activated Mesaba Finance – Law, LLC to an active status with the Office of the Minnesota Secretary of State. On July 15, 2020, ERJAVEC opened a checking account for Mesaba Finance - Law, LLC with him as the sole account holder.
- b. On July 22, 2020, Erjavec submitted an EIDL application for Mesaba Finance - Law, LLC falsely claiming the company had gross revenues totaling \$372,000.00 and 2 employees for the 12 months prior to January 31, 2020.
- c. On August 10, 2020, ERJAVEC received SBA EIDL proceeds into the aforementioned account totaling \$149,900.00.

25. Mesaba Finance Capital Raising Services, LLC

- a. On March 10, 2010, Mesaba Finance Capital Raising Services, LLC was administratively terminated by the Office of the Minnesota Secretary of State.
- b. On July 2, 2020, ERJAVEC opened a checking account for Mesaba Finance Capital Raising Services, LLC with him as the sole account holder
- c. On July 3, 2020, ERJAVEC submitted an EIDL application for Mesaba Finance Capital Raising Services, LLC, falsely claiming the company had gross revenues totaling \$365,899.00 and 2 employees for the 12 months prior to January 31, 2020.
- d. On July 29, 2020, ERJAVEC received SBA EIDL proceeds into the aforementioned account totaling \$149,900.00. On July 7, 2020, ERJAVEC also received an SBA EIDL advance of \$2,000.00 in the aforementioned account.

26. Mesaba Finance Company, Incorporated

- a. On July 17, 2017, ERJAVEC re-established Mesaba Finance Company, Inc. in Minnesota after it was dissolved in 2014.
- b. On June 18, 2020, ERJAVEC submitted an EIDL application for Mesaba Finance Company, Inc., falsely claiming the company had gross revenues totaling \$138,259.00 and 4 employees for the 12 months prior to January 31, 2020.

- c. On July 23, 2020, ERJAVEC received SBA EIDL proceeds into the aforementioned account totaling \$65,100.00. ERJAVEC also received an SBA EIDL advance payment of \$4,000 in the company's account on June 23, 2020.
- d. On April 22, 2020, ERJAVEC filed an application for a PPP Loan with Wells Fargo Bank. In the application, ERJAVEC falsely claimed that he had 2 employees with an average monthly payroll of \$7,352, accompanied by a falsified IRS Form 1040 and IRS Form 941. On May 7, 2020, ERJAVEC received a PPP Loan in the amount of \$18,379 in the company's account.

27. Mesaba Finance – Summit, LLC

- a. On July 30, 2020, Erjavec re-activated Mesaba Finance – Summit to an active status with the Minnesota Secretary of State. On August 17, 2020, Erjavec opened a checking account for Mesaba Finance – Summit with him as the sole account holder.
- b. On August 17, 2020, Erjavec submitted an EIDL application for Mesaba Finance – Summit, falsely claiming the company had gross revenues totaling \$318,000.00 and 2 employees for the 12 months prior to January 31, 2020.
- c. On August 31, 2020, Erjavec received SBA EIDL proceeds into the aforementioned account totaling \$149,900.00.

28. Lending Entity 2011-1, LLC

- a. On July 9, 2020, ERJAVEC re-activated Lending Entity 2011-1, LLC to an active status with the Office of the Minnesota Secretary of State. Also on July 9, 2020, ERJAVEC opened a checking account for Lending Entity 2011-1, LLC with him as the sole account holder.
- b. On July 14, 2020, Erjavec submitted an EIDL application for Lending Entity 2011-1, LLC falsely claiming the company had gross revenues totaling \$280,000.00 and 2 employees for the 12 months prior to January 31, 2020.
- c. On August 4, 2020, ERJAVEC received SBA EIDL proceeds into the aforementioned account totaling \$25,000.00.

29. Blue Heron, Incorporated

- a. On June 23, 2020, ERJAVEC re-activated Blue Heron, Inc. to an active status with the Office of the Minnesota Secretary of State. On June 24, 2020, ERJAVEC opened a checking account for Blue Heron, Inc. with him as the sole account holder.
- b. On June 26, 2020, Erjavec submitted an EIDL application for Blue Heron, Inc. falsely claiming the company had gross revenues totaling \$1,200,000.00 and 2 employees for the 12 months prior to January 31, 2020.
- c. On July 9, 2020, ERJAVEC received SBA EIDL proceeds into the aforementioned account totaling \$149,900.00. ERJAVEC also received an SBA EIDL advance payment of \$2,000 on June 30, 2020.

30. Flashboil Agency, Incorporated

- a. On June 30, 2020, ERJAVEC re-activated Flashboil Agency, Incorporated to an active status with the Office of the Minnesota Secretary of State. On July 1, 2020, ERJAVEC opened a checking account for Flashboil Agency, Incorporated with him as the sole account holder.
- b. On July 3, 2020, ERJAVEC submitted an EIDL application for Flashboil Agency, Incorporated claiming the company had gross revenues totaling \$378,685.00 and 2 employees for the 12 months prior to January 31, 2020.
- c. On July 22, 2020, ERJAVECE received SBA EIDL proceeds into the aforementioned account totaling \$107,400.00. ERJAVEC also received an SBA EIDL Advance payment of \$2,000 on July 7, 2020.

31. In total, as a result and in furtherance of the scheme ERJAVEC unlawfully obtained \$975,379 in fraudulent proceeds. ERJAVEC misappropriated these proceeds for his personal benefit and did not use the PPP and EIDL funds for permissible business expenses.

COUNTS 1-5
(Wire Fraud)

30. Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

31. On or about the dates set forth below, in the State and District of Minnesota and elsewhere, the defendant,

MARK ERJAVEC,

for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud, knowingly transmitted and caused to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, and sounds, as described below:

Count	Date of Wire (on or about)	Wire
1	June 23, 2020	Knowingly causing a wire communication from Denver, Colorado, through interstate servers outside Minnesota, to re-register the dormant Blue Heron, Incorporated with the Minnesota Secretary of State.
2	June 30, 2020	Knowingly causing a wire communication from Denver, Colorado, through interstate servers outside Minnesota, to re-register the dormant Flashboil Agency with the Minnesota Secretary of State.
3	July 9, 2020	Knowingly causing a wire communication from Denver, Colorado, through interstate servers outside Minnesota, to re-register the dormant Mesaba Finance – Law, LLC with the Minnesota Secretary of State.
4	July 30, 2020	Knowingly causing a wire communication from Denver, Colorado, through interstate servers outside Minnesota, to re-register the dormant Tricolor Heron, LLC with the Minnesota Secretary of State.
5	July 30, 2020	Knowingly causing a wire communication from Denver, Colorado, through interstate servers outside Minnesota, to re-register the dormant Mesaba Finance – Summit, LLC with the Minnesota Secretary of State.

All in violation of Title 18, United States Code, Section 1343.

FORFEITURE ALLEGATIONS

32. Counts 1 through 5 of this Indictment are incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), in conjunction with Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(a)(1).

33. Upon conviction of the offense alleged in Counts 1 through 4, as set forth in this Indictment, defendant shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the violation.

34. If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL

ACTING UNITED STATES ATTORNEY

FOREPERSON