

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 21-cr-00165-RM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. RUSSELL FOREMAN and
2. CHANDLER SIMBECK,

Defendant.

INDICTMENT

The Grand Jury charges:

COUNTS 1-7

1. At all times material to this indictment, the United States Small Business Administration ("SBA") was an executive branch agency of the United States government. The mission of the SBA was to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses and assist in the economic recovery of communities after disasters. As part of this effort, the SBA enabled and provided for loans through banks and other lenders. These loans had government backed guarantees.

2. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 and was designed to provide emergency financial assistance to Americans suffering the economic effects caused by the COVID-19 pandemic. The CARES Act authorized the SBA to issue loans to small businesses and non-profit entities experiencing revenue loss due to the pandemic.

3. One form of assistance was the Economic Injury Disaster Loan ("EIDL loan") program, which provided loan assistance for certain businesses negatively affected by the COVID-19 pandemic. To qualify for an EIDL loan, a business had to, among other requirements, be in operation prior to February 1, 2020.

4. Applicants for EIDL loans used the SBA online portal to submit their application materials. The SBA servers that processed the EIDL loan applications were based in the state of Iowa.

5. Applicants had to certify that the information in the application was true and correct, under the penalty of perjury and applicable criminal statutes. The application process involved filling out data fields relating to the size and ownership of the affected business entity, and other information about the relevant business for the 12 months prior to COVID-19 impacting the national economy, such as the number of employees in the business, the gross business revenues realized, and the cost of goods sold. This information, submitted by the applicant, was then used by SBA systems to calculate the amount of money the applicant was eligible to receive. Additionally, applicants were asked questions about their criminal history to include whether they were convicted of a felony within the last 5 years.

6. Non-profit applicants and non-agricultural for-profit applicants were both generally eligible to receive an EIDL loan of up to \$150,000, with a 30-year scheduled repayment, deferred for 12 months.

7. In conjunction with the submission of an EIDL application, by simply clicking on and checking a box within the online application, an applicant could request

and then receive up to \$10,000 in an EIDL Cash Advance Grant based on the number of employees claimed.

8. Any funds paid by the SBA under an EIDL loan were processed and issued from the state of Colorado and sent to the applicant borrower's financial institution.

9. Pursuant to the provisions governing the EIDL program, loan proceeds could only be used by the affected business receiving EIDL loans for certain permissible expenses. The loans could be used by the business to pay fixed debts, payroll, accounts payable, and other bills that could have been paid had the COVID-19 disaster not occurred.

10. Another form of assistance provided by the CARES Act was the authorization of United States taxpayer funds in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP").

11. To obtain a PPP loan, a qualifying business was required to submit a PPP loan application, signed by an authorized representative of the business. The PPP loan application required the small business, through its authorized representative, to acknowledge the program rules and make certain affirmative certifications to be eligible to obtain the PPP loan.¹ In the PPP loan application, the small business, through its authorized representative, was required to provide, among

¹ The authorized representative of the applicant was required to affirm that "The [PPP loan] funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments and utility payments," and that the "loan proceeds will be used only for business-related purposes as specified in the loan application" and consistent with PPP rules.

other things, its average monthly payroll expenses and number of employees.² 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.

12. PPP loan applications were processed by a participating financial institution. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were 100% guaranteed by the SBA. Data from the application, including 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.

13. PPP loan proceeds could only be used by the business on certain permissible expenses, such as payroll costs, interest on mortgages, rent and utilities. The PPP allowed the interest and principal on the PPP loan to be entirely forgiven if the business spent the loan proceeds on the allowable expenses within a designated period of time and used a certain percentage of the PPP loan proceeds towards payroll expenses.

14. Between at least March 29, 2020 and October 6, 2020, RUSSELL FOREMAN devised and intended to devise a scheme and artifice to defraud and to

² The authorized representative of the applicant was also required to certify that “the information provided in this application and the information provided in all supporting documents and forms is true and accurate in material respects,” and “I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.”

obtain money by means of materially false and fraudulent pretenses, representations, and promises made to the SBA in EIDL and PPP applications.

15. In furtherance of the scheme, on or about March 30, 2020, a false and misleading EIDL application in the name of RUSSELL FOREMAN was electronically submitted to the SBA. The application listed RUSSELL FOREMAN as the owner, was electronically certified by RUSSELL FOREMAN, and the information provided was certified as true and accurate. The application contained materially false information concerning the lack of a criminal record of the applicant. As a result of the application, on or about April 16, 2020, the SBA funded RUSSELL FOREMAN with a \$1,000.00 EIDL Cash Advance Grant.

16. In furtherance of the scheme, on or about May 14, 2020, a false and misleading PPP application in the name of RUSSELL FOREMAN was submitted to Kabbage Inc., a PPP loan application processor and approved SBA lender of PPP loans located in Atlanta, Georgia. It was electronically signed by RUSSELL FOREMAN on May 21, 2020, and the information provided as well as supporting documents and forms were certified as true and accurate. As a result of the application, on May 26, 2020, Cross River Bank, an FDIC insured bank located in Fort Lee, New Jersey and an approved SBA lender of PPP loans, funded RUSSELL FOREMAN with a \$20,052.00 PPP loan.

17. In furtherance of the scheme, on or about June 18, 2020, a false and misleading EIDL application in the name of ECS Consulting LLC was electronically submitted to the SBA. The application listed RUSSELL FOREMAN as the owner, was electronically certified by RUSSELL FOREMAN, and the information provided was

certified as true and accurate. The application contained materially false information concerning the establishment date of the company, the gross revenues and costs of goods sold, and the lack of a felony criminal record of the applicant. As a result of the application, the SBA funded ECS Consulting LLC with a \$10,000.00 EIDL Cash Advance Grant on or about June 23, 2020 and an EIDL of \$35,500.00 on or about June 26, 2020.

18. In furtherance of the scheme, on or about June 26, 2020, a false and misleading EIDL application in the name of Grand Luxury Marketing was electronically submitted to the SBA. The application listed RUSSELL FOREMAN as the owner, was electronically certified by RUSSELL FOREMAN, and the information provided was certified as true and accurate. The application contained materially false information concerning the establishment date of the company, the gross revenues and costs of goods sold, and the lack of a felony criminal record of the applicant. As a result of the application, on or about August 31, 2020 the SBA funded Grand Luxury Marketing with an EIDL of \$150,000.00.

19. In furtherance of the scheme, on or about June 26, 2020, a false and misleading EIDL application in the name of Quantum Boost Technology was electronically submitted to the SBA. The application listed RUSSELL FOREMAN as the owner, was electronically certified by RUSSELL FOREMAN, and the information provided was certified as true and accurate. The application contained materially false information concerning the establishment date of the company, the gross revenues and costs of goods sold, and the lack of a felony criminal record of the applicant. The application was not funded by SBA.

20. In furtherance of the scheme, on or about June 28, 2020, a second false and misleading EIDL application in the name of Quantum Boost Technology was electronically submitted to the SBA. The application listed RUSSELL FOREMAN as the owner, was electronically certified by RUSSELL FOREMAN, and the information provided was certified as true and accurate. The application contained materially false information concerning the establishment date of the company, the gross revenues and costs of goods sold, and the lack of a felony criminal record of the applicant. The application was not funded by the SBA.

21. On or about the dates specified as to each count below, RUSSELL FOREMAN, in the District of Colorado and elsewhere, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly transmit and cause to be transmitted, by means of wire, radio, and television communication, writings and signals in interstate commerce:

Count	Date	Description of Interstate Wire
1	April 16, 2020	Electronic transfer of \$1,000.00 EIDL Cash Advance Grant from SBA in Denver, CO to Navy Federal Credit Union account xxxxxx9426, held in the name of Russell R. Foreman.
2	May 21, 2020	Russell Foreman PPP loan application electronically signed and submitted in Colorado and routed interstate through servers outside Colorado.
3	June 23, 2020	Electronic transfer of \$10,000.00 EIDL Cash Advance Grant from SBA in Denver, CO to Bank of the West account xxxxx6416, held in the name of ECS Consulting LLC and controlled by Russell Ray Foreman.
4	June 26, 2020	Electronic transfer of \$35,400.00 EIDL from SBA in Denver, CO to Bank of the West account xxxxx6416, held in the name of ECS Consulting LLC and controlled by

		Russell Ray Foreman.
5	August 31, 2020	Electronic transfer of \$149,900.00 EIDL from SBA in Denver, CO to FirstBank account xxxxxx1558, held in the name of Grand Luxury Marketing and controlled by Russell Ray Foreman.
6	June 26, 2020	Quantum Boost Technology EIDL application submitted in Colorado and routed interstate through servers outside Colorado.
7	June 28, 2020	Quantum Boost Technology EIDL application submitted in Colorado and routed interstate through servers outside Colorado.

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

COUNTS 8-11

22. On or about the dates set forth below, in the State and District of Colorado, and elsewhere, RUSSELL FOREMAN, did knowingly engage and attempt to engage in a monetary transaction, as defined in Title 18, United States Code, Section 1957(f)(1), in criminally derived property of a value greater than \$10,000.00, which was derived from a specified unlawful activity, that is, wire fraud (a violation of Title 18, United States Code, Section 1343).

Count	Date	Financial Transaction
8	September 1, 2020	Unnumbered check in amount of \$60,000.00 from FirstBank account xxxxxx1558, held in the name of Grand Luxury Marketing and controlled by Russell Ray Foreman, payable to Russell Foreman was deposited into Navy Federal Credit Union account xxxxxx8829, held in the name of Russell R. Foreman.
9	September 1, 2020	Unnumbered check in amount of \$80,000.00 from FirstBank account xxxxxx1558, held in the name of Grand Luxury Marketing and controlled by Russell Ray Foreman, payable to Mellissa Irish was deposited into Navy Federal Credit

		Union account xxxxxx3025, held in the name Melissa M. Irish.
10	October 19, 2020	Debit Card transaction in amount of \$10,251.95 at Monarch Casino Black Hawk from Navy Federal Credit Union account xxxxxx9426, held in the name of Russell R. Foreman.
11	October 20, 2020	Debit Card transaction in amount of \$10,295.00 at Isle Casino Black Hawk from Navy Federal Credit Union account xxxxxx9426, held in the name of Russell R. Foreman.

All in violation of Title 18, United States Code, Section 1957.

COUNT 12

23. Paragraphs 1 – 13 are realleged.

24. Between in or about June 2020 and on or about December 7, 2020, in the State and District of Colorado and elsewhere, RUSSELL FOREMAN and CHANDLER SIMBECK, did knowingly and voluntarily conspire and agree together and with each other to defraud the United States and any agency thereof.

MANNER AND MEANS OF THE CONSPIRACY

25. Acting interdependently, the defendants, carried out the conspiracy using the following manner and means:

A. The defendants assisted each other in creating an entity named Fusion Group.

B. The defendants assisted each other in Fusion Group making an application with the SBA for an EIDL.

C. The proceeds received from the approval of the loan by the SBA

were shared by the defendants.

OVERT ACTS

26. In furtherance of the conspiracy's objectives, one or more of the conspirators committed one or more of the following acts in the State and District of Colorado and elsewhere:

A. On or about June 2020, RUSSELL FOREMAN and CHANDLER SIMBECK caused the issuance of an Employer Identification Number (EIN) by the United States Internal Revenue Service for Fusion Group listing CHANDLER SIMBECK as the Sole Member.

B. On June 25, 2020, RUSSELL FOREMAN emailed CHANDLER SIMBECK with the subject line 'Fusion Group' and attached two documents titled: (1) 'Chandler's EIN.pdf' – A letter from the Internal Revenue Service dated June 25, 2020 to Fusion Group / Chandler E Simbeck Sole Mbr with notification that an Employer Identification Number (EIN) has been assigned to Fusion Group; and 2) 'Chandler's LLC.pdf' – The Articles of Organization of Fusion Group which had been filed with the Colorado Secretary of State on June 25, 2020 with a recorded principal office address of 1555 South Havana Street, Unit F #210, Aurora, Colorado 80012; an address used by RUSSELL FOREMAN.

C. On or about June 27, 2020, RUSSELL FOREMAN and CHANDLER SIMBECK caused an EIDL application in the name of Fusion Group to be submitted to the SBA listing the owner as CHANDLER SIMBECK. Fusion Group's address was listed as 1555 South Havana Street, Unit F #210, Aurora, Colorado 80012. The application contained materially false information concerning the establishment date of the company, the gross revenues and costs of goods sold.

D. On or about June 28 and June 30, 2020, CHANDLER SIMBECK forwarded to RUSSELL FOREMAN emails from SBA confirming the status of the EIDL application in the name of Fusion Group.

E. On or about August 24, 2020, CHANDLER SIMBECK emailed RUSSELL FOREMAN with the subject line 'vegisvir articles of incorporation' and attached a document titled 'vegisvir_test.pdf'. The body of the email was blank. The document attached to the email was a copy of the Articles of Organization for Vegisir Consults LLC. This document was ultimately filed with the Colorado Secretary of State on or about August 28, 2020.

F. On or about August 28, 2020, RUSSELL FOREMAN and CHANDLER SIMBECK caused two entities named Vegisir Consults LLC and Vegvisir Consults LLC to be formed and registered with the Colorado Secretary of State. For both companies, CHANDLER SIMBECK was listed as the Registered Agent and Person Forming the Limited Liability Company.

G. On August 27, 2020, the Fusion Group EIDL was approved by the SBA and \$149,900.00 was deposited into a First National Bank of Pennsylvania held in the name of Fusion Group LLC and controlled by CHANDLER SIMBECK. Between August 31 and September 1, 2020, following the deposit of the funds into the Fusion Group LLC bank account, CHANDLER SIMBECK caused funds to be withdrawn from the account via: 1) a \$8,000.00 check that was cashed; 2) a \$30,000.00 check payable to Vegvisir Consults LLC that was deposited to a PNC Bank account held in the name of Vegvisir Consults LLC and controlled by CHANDLER SIMBECK; 3) a \$60,000.00 check payable to Vegisir Consults LLC that was deposited to a Citizens Bank account held in the name of Vegisir Consults LLC and controlled by CHANDLER SIMBECK; and

4) a \$50,000.00 check payable to an individual identified herein as E.L., a relative of CHANDLER SIMBECK.

H. On October 6, 2020, RUSSELL FOREMAN and CHANDLER SIMBECK caused a \$55,000.00 wire transfer from Citizens Bank account in the name of Vegisir Consults LLC to be made to the account of RUSSELL FOREMAN at Navy Federal Credit Union.

All in violation of Title 18, United States Code, Section 371.

COUNT 13

27. Paragraphs 1 – 13 are realleged.

28. Between on or about June 2020 to August 31, 2020, RUSSELL FOREMAN and CHANDLER SIMBECK devised and intended to devise a scheme and artifice to defraud and to obtain money by means of materially false and fraudulent pretenses, representations, and promises made to the SBA in an EIDL application.

29. In furtherance of the scheme, on or about June 25, 2020, records creating the entity Fusion Group were submitted to the Colorado Secretary of State. The principal office address for Fusion Group was the same address listed in other records submitted to the Colorado Secretary of State by RUSSELL FOREMAN as addresses of businesses he operated.

30. In furtherance of the scheme, on or about June 27, 2020, a false and misleading EIDL application in the business name of Fusion Group, naming CHANDLER SIMBECK as the owner, was electronically submitted to the SBA. The application was electronically certified by CHANDLER SIMBECK and the information provided was certified as true and accurate. The application contained materially false information

concerning the establishment date of the company, the gross revenues and costs of goods sold. As a result of the application, in August 2020, the SBA funded Fusion Group with an EIDL in the amount of \$150,000.00.

31. On or about August 31, 2020, RUSSELL FOREMAN and CHANDLER SIMBECK, in the District of Colorado and elsewhere, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be transmitted, by means of wire, radio, and television communication, writings and signals in interstate commerce, to wit: proceeds of an EIDL of \$149,900.00 was electronically sent from SBA in Denver, Colorado to the account of Fusion Group LLC at the First National Bank of Pennsylvania, outside of Colorado.

All in violation of Title 18, United States Code, Sections 1343 and 2.

NOTICE OF FORFEITURE

32. The allegations contained in Counts 1 through 13 of this Indictment hereby are re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Sections 981(a)(1)(A), 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

33. Upon conviction of one or more of the violations alleged in Counts 1 through 7, 12, and 13, as such counts apply to each individual defendant, of this Indictment involving the commission of violations of Title 18, United States Code, Sections 1343 and 2, the defendants RUSSELL FOREMAN and CHANDLER SIMBECK shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any and all rights, title, and interest in all property constituting and derived from any proceeds he

obtained directly and indirectly as a result of such offense or offenses or shall be liable for a money judgment in the amount of the proceeds that he obtained as a result of the scheme charged in Counts 1 through 7, 12, and 13 of this Indictment.

34. Upon conviction of one or more of the violations alleged in Counts 8 through 11 of this Indictment involving the commission of violations of Title 18, United States Code, Sections 1957, the defendant RUSSELL FOREMAN shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(A), any and all rights, title, and interest in all property involved in such offense or offenses, or property traceable to such property or shall be liable for a money judgment in the amount of the proceeds that he obtained as a result of the offenses charged in Counts 8 through 11 of this Indictment.

35. If any of the property described above, as a result of any act or omission of RUSSELL FOREMAN and CHANDLER SIMBECK, cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been substantially diminished in value; or has been commingled with other property that cannot be divided without difficulty, it is the intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of RUSSELL

FOREMAN and CHANDLER SIMBECK up to the value of the forfeitable property
described above.

A TRUE BILL: Ink signature on file in Clerk's Office

FOREPERSON

MATTHEW KIRSCH
Acting United States Attorney

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