

ORIGINAL

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By:  KEVIN P. WEIMER, Clerk
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

MARCOS SOZA

Criminal Indictment

No. **1:21-CR-495**

UNDER SEAL

THE GRAND JURY CHARGES THAT:

Background

At times relevant to this Indictment:

The Defendant

1. MARCOS SOZA ("SOZA") was an individual residing in the state of Arizona who claimed to be the owner of Yes Auto Sales Inc., an Arizona corporation.

Unindicted Co-Conspirator

2. Mark Mason ("Mason") was an individual residing in the Northern District of Georgia who claimed ownership of M&N Enterprise, LLC, a Georgia corporation, doing business as Atlanta Business Capital.

The Small Business Administration

3. The United States Small Business Administration ("SBA") was an executive branch agency of the United States government that provided support to entrepreneurs and small businesses. The mission of the SBA was to maintain and strengthen the nation's economy by enabling the establishment and viability

of small businesses and by assisting in the economic recovery of communities after disasters.

4. As part of this effort, the SBA enabled and provided for loans through banks, credit unions, and other lenders. These loans had government-backed guarantees.

The Paycheck Protection Program

5. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or about March 2020 and was designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic.

6. One source of relief that the CARES Act provided was the authorization of up to \$349 billion in forgivable loans to small businesses for payroll, mortgage interest, rent/lease, and utilities, through a program referred to as the Paycheck Protection Program ("PPP"). In April 2020, Congress authorized up to \$310 billion in additional PPP funding.

7. The PPP allowed qualifying small businesses and other organizations to receive PPP loans. Businesses must use PPP loan proceeds for 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 these expense items within a designated period of time and used a certain percentage of the PPP loan proceeds for payroll expenses.

8. The amount of a PPP loan that a small business may have been entitled to receive was determined by the number of employees employed by the business and the business's average monthly payroll costs.

9. In order 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, the small business (through its authorized representative) had to state, among other things, its (a) average monthly payroll expenses and (b) 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 had to provide documentation showing their payroll expenses.

10. The SBA oversaw the PPP. However, individual PPP loans were issued by private, approved lenders who received and processed PPP applications and supporting documentation, and then made loans using the lenders' own funds, 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, were transmitted by the lender to the SBA in the course of processing the loan.

Background on Financial Institution 1

11. Financial Institution 1 is a non-bank financial institution headquartered in Laguna Hills, California. Financial Institution 1 participated in the SBA's PPP as a lender, and as such, was authorized to lend funds to eligible borrowers under the terms of the PPP.

The Fraudulent PPP Loan Application and Supporting Documentation

12. Between on or about April 26, 2020 and May 3, 2020, defendant SOZA submitted, and assisted in the submission of, a PPP loan application for Yes Auto Sales Inc. to Financial Institution 1 to issue a PPP loan. The PPP Borrower Application Form reported that Yes Auto Sales Inc. had an average monthly payroll of \$28,333 and four employees.

13. Defendant SOZA electronically signed, or authorized another individual to sign, the PPP Borrower Application Form for Yes Auto Sales Inc. on or about April 15, 2020.

14. In addition, the PPP Borrower Application Form contained defendant SOZA'S initials to certify each of the following representations regarding Yes Auto Sales Inc.:

- a. The Applicant business was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC;
- b. The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
and

- c. The information provided in the application and the information provided in all supporting documents and forms is true and accurate in all material respects.

15. The PPP loan application for Yes Auto Sales Inc. included falsified Internal Revenue Service (IRS) Forms 941 for all four quarters of 2019. The IRS Form 941 is the Employer's Quarterly Federal Tax Return. This form is used by employers to report income taxes, FICA taxes, Social Security tax, or Medicare tax withheld from employees' paychecks, and to pay the employer's portion of Social Security or Medicare tax. Generally, any person or business that pays wages to an employee must file a Form 941 each quarter and must continue to do so even if there are no employees during some of the quarters. The falsified IRS Forms 941 included with the PPP loan application reported quarterly payroll figures for Yes Auto Sales Inc.

16. In addition, the PPP loan application for Yes Auto Sales Inc. included falsified payroll documentation, including a purported payroll calculator.

17. For the PPP loan application for Yes Auto Sales Inc., the falsified Forms 941 were created and submitted by Mason. Mason also created the purported payroll calculator.

18. Defendant SOZA knew that the Forms 941 filed with the Yes Auto Sales Inc. loan application were falsified. Mason communicated with SOZA about the fraudulent PPP loan application, as well as the amounts to include on the Forms 941 submitted with the application.

PPP Loan Funding and Transfers of Money

19. Based on the fraudulent and false representations and submissions made by and on behalf of defendant SOZA, on or about May 20, 2020, approximately \$70,832 in PPP loan funds was distributed by Financial Institution 1 to Yes Auto Sales Inc.

Count One

Conspiracy to Commit Wire Fraud - 18 U.S.C. § 1349

20. The Grand Jury re-alleges and incorporates by reference the factual allegations contained in paragraphs 1 through 19 of this Indictment as if fully set forth herein.

21. From on or about April 3, 2020 to on or about May 20, 2020, the exact dates unknown, in the Northern District of Georgia and elsewhere, the defendant,

MARCOS SOZA,

did knowingly and willfully combine, conspire, confederate, agree, and have a tacit understanding with Mark Mason and others known and unknown to the Grand Jury, to devise and intend to devise a scheme and artifice to defraud, and to obtain money and property, by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts, well knowing and having reason to know that said pretenses were and would be false and fraudulent when made and caused to be made and that said omissions were and would be material, and, in doing so, caused interstate and foreign wire communications to be made, in furtherance of the scheme and artifice to defraud, in violation of Title 18, United States Code, Section 1343.

Manner and Means

22. Defendant SOZA, together with Mason and others known and unknown to the Grand Jury, conspired to submit false materials, such as a false PPP loan application and false IRS Forms 941, to Financial Institution 1 to obtain PPP loan funding.

23. As part of the conspiracy, defendant SOZA, together with Mason, submitted false documents to Financial Institution 1 when applying for a PPP loan on behalf of Yes Auto Sales Inc., including fabricated IRS Forms 941 listing falsified payroll information. Mason created the falsified Forms 941 on behalf of defendant SOZA. The Forms 941 that Mason created, which had never been filed with the IRS, were submitted in support of the PPP loan application. The purpose of the false Forms 941 was to circumvent Financial Institution 1's requirement that prospective borrowers submit Forms 941 to support the payroll figures that served as the basis for PPP loan amounts.

24. The fabricated Forms 941 reflected the following payroll figures for 2019:

Business	Q1 2019 Jan - Mar	Q2 2019 Apr - Jun	Q3 2019 Jul - Sep	Q4 2019 Oct - Dec
Yes Auto Sales Inc.	5 employees \$68,525	5 employees \$67,125	5 employees \$70,365	5 employees \$68,685

25. None of the Forms 941 included with the PPP loan application for Yes Auto Sales Inc. was filed with the IRS. In fact, in 2019, Yes Auto Sales Inc. did not: (1) file any Forms 941 with the IRS, (2) pay unemployment tax to the IRS, or (3) withhold federal income tax for any employee.

26. In addition, Mason created and submitted falsified payroll documentation for Yes Auto Sales Inc., including a purported payroll calculator.

27. When the PPP loan application for Yes Auto Sales Inc. was submitted, defendant SOZA, together with Mason, knew that the application attached Forms 941 that had never been filed with the IRS.

28. Throughout the conspiracy, defendant SOZA, together with Mason, utilized interstate wires to submit, assist in the submission, and communicate about the submission of false documents to Financial Institution 1 when applying for a PPP loan, including fabricated IRS Forms 941 listing falsified payroll information and false loan documentation that listed false payroll information, false employment information, and a false purpose for the loan funding.

29. As a result of and based on the fraudulent and false representations and submissions made by defendant SOZA, together with Mason, Financial Institution 1 distributed the loan proceeds of the Yes Auto Sales Inc. loan in the amount of \$70,832 on May 20, 2020.

All in violation of Title 18, United States Code, Section 1349.

Counts Two through Seven

Wire Fraud – 18 U.S.C. § 1343

30. The Grand Jury re-alleges and incorporates by reference the factual allegations contained in paragraphs 1 through 19 and 22 through 29 of this Indictment as if fully set forth herein.

31. On or about the dates listed in Column B, in the Northern District of Georgia and elsewhere, the defendant,

MARCOS SOZA,

aided and abetted by Mark Mason, and other persons known and unknown to the Grand Jury, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by omission of material facts, knowing and having reason to know that the pretense, representation, promise, and omission was and would be material, did, with intent to defraud, cause to be transmitted by means of a wire communication in interstate and foreign commerce certain writings, signs, and signals – that is, the electronic transmissions listed in Column C.

A Count	B Date (on or about)	C Description of Wire Transmission
Two	April 3, 2020	Email from Mason to defendant SOZA, with the subject "Paycheck Protection Program Application," in which Mason attached a blank PPP Borrower Application Form.
Three	April 10, 2020	Email from defendant SOZA to Mason, with no subject, which attached photographs of a completed PPP Borrower Application Form with defendant SOZA's handwritten signature dated April 10, 2020. The document listed the average monthly payroll as \$20,000 and the requested loan amount as \$50,000.
Four	April 14, 2020	Email from defendant SOZA to Mason, with the subject "Fw: Your Application," in which defendant SOZA forwarded the link to the Financial Institution 1 online application portal.

Five	April 16, 2020	Email from defendant SOZA to Mason, with the subject "Fw: Your Application," in which defendant SOZA forwarded the link to the Financial Institution 1 online application portal.
Six	May 3, 2020	Email from defendant SOZA to Mason, with the subject "Re: PPP - Yes Auto Sales Inc.," in which defendant SOZA forwarded an email he received from a PPP Program Processor with Financial Institution 1 asking for an explanation about the discrepancy between figures on the PPP Borrower Application Form and the tax forms submitted with the loan application.
Seven	May 5, 2020	Email from Mason to defendant SOZA, with the subject "941 Quarterly Taxes for Cars Sales and Payroll Spreadsheet," which attached Forms 941 for all four quarters of 2019 for Yes Auto Sales Inc. and a purported payroll spreadsheet for Yes Auto Sales Inc.

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

Forfeiture

Upon conviction of one or more of the offenses alleged in Counts One through Seven of this Indictment, the Defendant,
MARCOS SOZA,
shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2), any property constituting, or derived from, proceeds obtained directly or indirectly as the result of such violation, including but not limited to the following:

- a. **MONEY JUDGMENT:** A sum of money in United States currency equal to the amount of proceeds the Defendant obtained as a result of the offense for which the Defendant is convicted.

If, as a result of any act or omission of the defendant, any property subject to forfeiture:

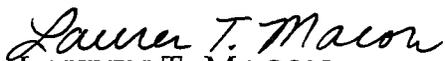
- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the United States intends, pursuant to Title 21, United States Code, Section 853(p) as incorporated by Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property.

A Tms BILL
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FOREPERSON

KURT R. ERSKINE
United States Attorney


NICHOLAS HARTIGAN
Assistant United States Attorney
Georgia Bar No. 408147


LAUREN T. MACON
Assistant United States Attorney
Georgia Bar No. 763604

600 U.S. Courthouse
75 Ted Turner Drive SW
Atlanta, GA 30303
404-581-6000; Fax: 404-581-6181