UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA v. BRIAN A. DEPENA, Defendant	Criminal No. 26cr10232 Violations: <u>Counts One - Four</u>: Wire Fraud; Aiding and Abetting (18 U.S.C. §§ 1343, 2) <u>Counts Five - Eleven</u>: Unlawful Monetary Transactions; Aiding and Abetting (18 U.S.C. §§ 1957, 2) <u>Wire Fraud Forfeiture Allegation</u>: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)) <u>Money Laundering Forfeiture Allegation</u>: (18 U.S.C. § 982(a)(1))

INDICTMENT

At all times relevant to this Indictment:

General Allegations

1. Defendant Brian A. DEPENA ("DEPENA") was a resident of Lawrence, Massachusetts.

2. DEPENA owned and operated Tenares Tire Services Inc. ("Tenares Tire"), a tire sales and repair shop that also provided other professional automotive services, located in Lawrence, Massachusetts.

3. DEPENA was a Lawrence City Councilor from January 2016 until November 2021, when he was elected Mayor of Lawrence.

4. DEPENA organized the Committee to Elect Brian Depena in Massachusetts in or around September 2015, when he first sought election to the Lawrence City Council.

5. The United States Small Business Administration (the "SBA") was an agency of the executive branch 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 by assisting in the economic recovery of communities after disasters. Among other things, the SBA was authorized to make loans to eligible small businesses located in a disaster area that suffered substantial economic injury as a result of the disaster. These were called Economic Injury Disaster Loans ("EIDLs").

6. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in March 2020 and designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. The CARES Act and subsequent legislation allocated billions of dollars in EIDL funding and authorized the SBA to provide EIDLs to eligible small businesses experiencing substantial financial disruptions due to the COVID-19 pandemic.

Scheme to Defraud

7. Beginning at least as early as August 2020, and continuing until at least in or around January 2022, in the District of Massachusetts and elsewhere, DEPENA devised and executed a scheme to fraudulently obtain EIDL funds by making materially false representations in EIDL agreements, in order to unlawfully enrich himself. Specifically, DEPENA falsely represented to the SBA that he would use EIDL funds as working capital for Tenares Tire, when in fact he intended to use EIDL funds, and did use EIDL funds, for prohibited personal expenses, including his campaign for Mayor of Lawrence, his personal federal income tax debt, and his

payoff of over $880,000 in high interest, hard-money mortgages that encumbered various properties DEPENA owned in Lawrence.

8. CARES Act EIDLs had terms that were attractive to many small businesses, including a low interest rate (3.75%), a long repayment period (30 years), and a deferred first repayment date (usually twelve months after the date a borrower received their loan proceeds).

9. The maximum amount of a CARES Act EIDL was initially $150,000. In or about the week of April 6, 2021, the SBA increased the maximum to $500,000. On or about October 8, 2021, the SBA increased the maximum to $2,000,000.

10. A small business applying for a CARES Act EIDL was required to complete a loan application that requested information including, among other things, business name, owner name, number of employees, and gross revenues and cost of goods sold for the 12-month period ending January 31, 2020. The applicant did not request a specific loan amount; the SBA determined the amount based on the gross revenues and cost of goods sold identified on the application. The applicant signed the application with a digital signature and submitted it through the SBA's online portal.

11. The application required the applicant to certify that all information on their application, and any information submitted with their application, was "true and correct to the best of [their] knowledge," and that they would "submit truthful information in the future." The information provided by the borrower and the borrower's certification were material to the SBA's decision whether to approve the loan.

12. The SBA received EIDL applications and related documents electronically. All EIDL applications and related documents submitted before July 11, 2020, traveled through a server located in either Virginia, Iowa, or Washington state. All EIDL applications and related

documents submitted on or after July 11, 2020, traveled through a server located in Iowa.

13. If the SBA approved the EIDL loan, it sent the borrower three documents electronically. The borrower had to sign these documents electronically and submit them to the SBA before the SBA disbursed any EIDL funds. The documents were:

a. a Loan Authorization and Agreement (the "LA&A"), which described the terms and conditions of the loan;

b. a promissory note (the "Note"), which stated the loan amount, the interest rate, and the repayment schedule; and

c. a Security Agreement, which gave the SBA a security interest in the borrower's property in case the borrower defaulted on the loan.

14. In the LA&A, the borrower certified that "[a]ll representations in the Borrower's Loan application (including all supplementary submissions) are true, correct and complete and are offered to induce SBA to make this Loan." This certification was material to the SBA's decision whether to disburse the loan proceeds.

15. Upon receipt of a signed LA&A, Note, and Security Agreement, the SBA caused EIDL proceeds to be electronically deposited into the borrower's bank account.

16. After a borrower received their loan proceeds, they could ask the SBA for one or more loan modifications for additional funds. The borrower did not complete another application; the SBA relied on the borrower's initial application, including the certification contained therein, when determining whether to approve the borrower's request for additional funds.

17. If the SBA approved the loan modification, the borrower was required to electronically sign an amended LA&A, amended Note, and amended Security Agreement. In

each amended LA&A, the borrower again certified that "[a]ll representations in the Borrower's Loan application (including all supplementary submissions) are true, correct and complete and are offered to induce SBA to make this Loan." This certification in each amended LA&A was material to the SBA's decision whether to disburse the additional EIDL funds.

18. A business receiving EIDL funds could only use EIDL funds to alleviate specific economic injury from the COVID-19 pandemic. Specifically, borrowers could only use EIDL funds for working capital necessary to carry the small business until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, and could not use EIDL funds for expansion of facilities or acquisition of fixed assets.

19. Before the SBA disbursed EIDL funds, EIDL borrowers were required to certify that the EIDL funds would be used only for working capital to alleviate economic injury caused by the COVID-19 pandemic. For example:

a. by signing the LA&A and any Amended LA&A, the borrower certified: "Borrower will use all the proceeds of this Loan solely as working capital to alleviate economic injury caused by [the] disaster occurring in the month of January 31, 2020 and continuing thereafter . . . ."

b. by signing the Security Agreement and any Amended Security Agreement, the borrower certified: "Borrower certifies that . . . none of the [loan proceeds] are or will be primarily for personal, family or household purposes . . . ."

These certifications were material to the SBA's decision whether to disburse EIDL funds. As set forth above, the borrower had to sign the LA&A and the Security Agreement, and any Amended LA&A and Amended Security Agreement, electronically and submit them to the SBA before the

SBA would disburse any EIDL funds.

The Tenares Tire Initial EIDL Application

20. On or around May 4, 2020, DEPENA caused an application for an EIDL for Tenares Tire to be electronically submitted with the SBA. Based on the initial application, the SBA approved an EIDL in the amount of $150,000 to Tenares Tire.

21. On or about June 17, 2020, DEPENA caused the electronic execution and submission of an LA&A, Note, and Security Agreement for an EIDL to Tenares Tire in the amount of $150,000.

22. On or about June 18, 2020, approximately $149,900[1] in EIDL funds were electronically deposited into Tenares Tire's Digital Federal Credit Union ("DCU") account no. -7823-2.

The Tenares Tire First Fraudulent EIDL Modification

23. By early 2021, DEPENA needed cash. In or around January 2020, DEPENA had purchased 342 Broadway in Lawrence ("342 Broadway") for $700,000:

[1] In some cases, the SBA deducted $100 from the loan amount as a processing fee.

To purchase 342 Broadway, DEPENA borrowed $525,000 at twelve percent (12%) interest from a hard money lender. The loan was a balloon note (the "Balloon Note"), payable in full in January 2021, and it was secured by a commercial mortgage, security agreement, and assignment of leases and rents against 342 Broadway, Tenares Tire, and other real property DEPENA owned in Lawrence.

24. In addition, DEPENA owed $375,000 to another hard money lender in connection with a June 2016 Promissory Note Modification Agreement (the "Promissory Note") secured by properties DEPENA owned at 272 Broadway, 73 Tremont Street and 95-97 Tremont Street, Lawrence. The interest rate under the Promissory Note was eight percent (8%), and DEPENA was obligated to make monthly, interest-only payments of approximately $2,150.

25. Starting at least as early as August 2020, DEPENA sought a conventional commercial real estate loan from various lenders to be used for, among other things, refinancing

the Balloon Note and the Promissory Note. DEPENA was unable to obtain such financing in 2020 or 2021.

26. On or about February 9, 2021, DEPENA wrote an email to the Balloon Note lender requesting a six-month extension to give him time to obtain new financing to pay the Balloon Note:

> On 02/09/2021 11:33 PM Brian De Pena [redacted] wrote:
>
> Dear [redacted],
>
> I am writing to you to inform you about how I am still in the process of trying to obtain refinancing for the property on which you financed for me. I understand the loan was only for 1 year. At this time, I would like to see if you can please extend it by 6 months in order to give me ample time to obtain the new financing. The CoronaVirus pandemic has complicated things, but I have been succeeding on working my way towards completing the payment.

The lender responded on February 10, 2021, extending the Balloon Note maturity date to July 19, 2021, concluding, "I hope that works for you and you'll be able to refinance in that time."

27. In addition to the Balloon Note and the Promissory Note, by in or around April 2021, DEPENA had an outstanding federal tax liability. DEPENA's personal tax debt was an impediment to his ability to obtain conventional financing.

28. In or around April 2021, DEPENA caused a loan modification request to be submitted to increase the Tenares Tire EIDL.

29. On or about July 14, 2021, the SBA approved a modification to the Tenares Tire EIDL in the amount of $350,000, bringing the total loan amount to $500,000.[2]

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[2] On or about June 3, 2021, a $10,000 Targeted EIDL Advance was deposited into Tenares Tire's DCU account no. -7823-2. This was funding that did not need to be repaid, similar to a grant.

30. As set forth above, the Balloon Note was due on or about July 19, 2021. On or about the dates set forth below, after the SBA approved the first Tenares Tire EIDL modification but before the amended documents were executed and before the funds were disbursed, DEPENA sent the following texts to his accountant and financial advisor, who had been assisting DEPENA with the EIDL application and modification:[3]

July 22, 2021:	Brother, call me, I'm in trouble. I don't want to pressure you, but I don't have time to wait for this loan. I'm in your hands. 🙏
July 25, 2021:	Brother, I need your help with this loan. I've been trying to reach you all week because I haven't been able to get it resolved. I know I'm bothering you a lot, but I have no other option. Only you can give me what I need. 🙏🙏🙏🙏
July 28, 2021:	Brother call me 🙏🙏🙏

31. On or about August 12, 2021, DEPENA caused the electronic execution and submission of an Amended LA&A, 1st Amended Note, and Amended Security Agreement for an EIDL to Tenares Tire in the amount of $500,000. When the documents were executed on or about August 12, 2021, DEPENA caused the following false certifications:

a. in the Amended LA&A, "Borrower will use all the proceeds of this Loan solely as working capital to alleviate economic injury caused by [the] disaster occurring in the month of January 31, 2020 and continuing thereafter . . . ."; and

[3] The texts referred to herein were originally in Spanish, and have been translated into English.

b. in the Amended Security Agreement, "that . . . none of the [loan proceeds] are or will be primarily for personal, family or household purposes . . . ."

In truth, DEPENA did not intend to use the Tenares Tire EIDL funds solely as working capital to alleviate economic injury caused by the COVID-19 pandemic.

32. In the meantime, the Balloon Note lender had granted DEPENA an additional, unspecified extension of time within which to repay the Balloon Note.

33. On or about August 16, 2021, approximately $350,000 in EIDL funds were electronically deposited into Tenares Tire's DCU account no. -7823-2. The balance of the account prior to the deposit of the EIDL funds was approximately $20.23.

34. On or about August 26, 2021, DEPENA made two payments to the IRS totaling $85,000 for his personal tax liabilities with the EIDL funds in the Tenares Tire DCU account no. -7823-2.

35. In or around September 2021, DEPENA used approximately $90,000 traceable to the EIDL funds for his mayoral campaign. Specifically:

a. Between approximately August 16 and September 10, 2021, DEPENA transferred $20,000 (traceable to the EIDL funds) from the Tenares Tire DCU account no. -7823-2 to his personal DCU account no. -1285-2. On or about September 10, 2021, DEPENA caused to be deposited two checks, each in the amount of $10,000, each payable to "C.T.E."[4] DEPENA, each containing the memo "Loan," and each drawn on DEPENA's personal DCU account no. -1285-2, into the Committee to Elect Brian DePena TD

[4] *I.e.*, Committee to Elect.

Bank checking account no. -7469.

b. On or about August 19, 2021, DEPENA transferred approximately $100,000 of the EIDL funds from the Tenares Tire DCU account no. -7823-2 to DEPENA's personal DCU account no. -1285-1. The balance in DEPENA's personal DCU account no. -1285-1 prior to the transfer was approximately $16.66. DEPENA then conducted the following transactions:

   i. On or about September 14, 2021, after two checks totaling approximately $15,442 were overdrawn on the Committee to Elect Brian DePena TD Bank checking account no. -7469, DEPENA transferred $25,000 (traceable to the EIDL funds) from his personal DCU account no. -1285-1 to his personal DCU account no. -1285-2, used the funds to purchase a $25,000 Treasurer's Check payable to the "Campaign to Elect Brian A Depena," and caused the $25,000 Treasurer's Check to be deposited into the Committee to Elect Brian DePena TD Bank checking account no. -7469;

   ii. On or about September 16, 2021, DEPENA transferred another $10,000 (traceable to the EIDL funds) from his personal DCU account no. -1285-1 to his personal DCU account no. -1285-2 and used the funds to purchase a $10,000 Treasurer's Check payable to "CTE Re Brian A Depena," which DEPENA caused to be deposited into the Committee to Elect Brian DePena TD Bank checking account no. -7469 on or about September 17, 2021;

iii. On or about October 20, 2021, DEPENA transferred another $25,000 (traceable to the EIDL funds) from his personal DCU account no. -1285-1 to his personal DCU account no. -1285-2, and subsequently caused a check drawn on DEPENA's personal DCU account no. -1285-2 in the amount of $25,000, payable to "CTE Brian Depena" and containing the memo "Loan" to be deposited into the Committee to Elect Brian DePena TD Bank checking account no. -7469; and

iv. On or about October 27, 2021, DEPENA transferred another $22,000 (traceable to the EIDL funds) from his personal DCU account no. -1285-1 to his personal DCU account no. -1285-2, and subsequently caused a check drawn on DEPENA's personal DCU account no. -1285-2 in the amount of $10,000, payable to "CTE Brian A. Depena" and containing the memo "Loan" to be deposited into the Committee to Elect Brian DePena TD Bank checking account no. -7469.

36. When the Massachusetts Office of Campaign and Political Finance ("OCPF") asked DEPENA to report the source of the September 10, 14, and 17, 2021, deposits to his campaign account described above, he reported that the checks were "Candidate Loans" and "Funds Need It [sic] For The CTE Brian De Pena."

The Tenares Tire Second Fraudulent EIDL Modification

37. Meanwhile, between August and October 2021, DEPENA caused another loan modification request to be submitted to increase the Tenares Tire EIDL.

38. On or about October 20, 2021, DEPENA executed and caused to be submitted to the SBA a Resolution and Certification of Tenares Tire, stating that he was authorized to submit an application for an SBA loan in the amount of $1,654,400 on behalf of the company.

39. On or about October 27, 2021, the SBA approved a second modification to Tenares Tire's EIDL in the amount of $1,154,400, bringing the total loan amount to $1,654,400.

40. On or about October 27, 2021, DEPENA caused the electronic execution and submission of an Amended LA&A, 2nd Amended Note, and Amended Security Agreement for an EIDL to Tenares Tire in the amount of $1,654,400. When the documents were executed on or about October 27, 2021, DEPENA caused the following false certifications:

a. in the Amended LA&A, "Borrower will use all the proceeds of this Loan solely as working capital to alleviate economic injury caused by [the] disaster occurring in the month of January 31, 2020 and continuing thereafter . . . ."; and

b. in the Amended Security Agreement, "that . . . none of the [loan proceeds] are or will be primarily for personal, family or household purposes . . . ."

In truth, DEPENA did not intend to use the Tenares Tire EIDL funds solely as working capital to alleviate economic injury caused by the COVID-19 pandemic.

41. On or around November 30, 2021, approximately $1,154,188 in EIDL funds were electronically deposited into Tenares Tire's DCU account no. -7823-2. The balance of the account prior to the deposit of the EIDL funds was approximately $2,128.

42. On or around November 30, 2021, DEPENA transferred approximately $1,156,316 (including all of the EIDL funds) from the Tenares Tire DCU account no. -7823-2 to DEPENA's personal DCU account no. -1285-2. The balance in the personal account prior to that transfer was approximately $1,401.56.

43. DEPENA then used $42,112.96 traceable to the EIDL funds for his mayoral campaign:

a. On or about November 30, 2021, DEPENA wrote a $10,000 check from his personal DCU account no. -1285-2 payable to "CTE Brian Depena," and caused it to be deposited into the Committee to Elect Brian DePena TD Bank checking account no. -7469 on or about December 2, 2021[5]; and

b. On or about January 11, 2022, DEPENA wrote a $32,112.96 check from his personal DCU account no. -1285-2 payable to "CTE Brian Depena," and caused it to be deposited into the Committee to Elect Brian DePena TD Bank checking account no. -7469 on or about January 11, 2022.

44. When the OCPF asked DEPENA to report the source of the December 2, 2021 and January 11, 2022 deposits, he reported that they were "Candidate Loans" and "Funds Need It [sic] For The CTE Brian De Pena."

45. In addition, DEPENA used approximately $883,293 traceable to the EIDL funds to pay off high-interest loans secured by real properties he owned:

a. On or about December 9, 2021, DEPENA purchased a Treasurer's Check

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[5] The campaign account had been overdrawn for approximately twenty (20) days before the December 2, 2021, deposit.

for approximately $538,109.03 with the EIDL funds in his personal DCU account no. -1285-2, and used the check to pay off the Balloon Note; and

b. On or about December 18, 2021, DEPENA purchased a Treasurer's Check for approximately $345,184.13 with the EIDL funds in his personal DCU account no. -1285-2, and used the check to pay off the Promissory Note.

46. On or about February 27, 2024, DEPENA sent an email to the SBA requesting a payment plan for past due payments for the Tenares Tire EIDL:

[redacted]

From:	Brian De Pena <[redacted]>
Sent:	Tuesday, February 27, 2024 11:14 AM
To:	CESC Covid EIDL Servicing 1 Shared GFAX Mailbox- Dynamics
Subject:	SBA LOAn # 7116667901

CAUTION - The sender of this message is external to the SBA network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@sba.gov.

Tenares' Tire Shop 348 Broadway Lawrence, MA 01841

Good Morning. I set-up the monthly payments starting this month, but I have a balance due for prior payments not made.
Is it possible to set-up a payment plan to pay the arrears separate from the monthly regular payments?
Please let me know.

Thanks

Brian De Pena

47. On or about June 7, 2024, DEPENA sent an email to the SBA requesting a hardship accommodation plan for payment of the Tenares Tire EIDL:

[redacted]

From: Brian De Pena <[redacted]>
Sent: Friday, June 7, 2024 2:30 PM
To: CESC Covid EIDL Servicing 1 Shared GFAX Mailbox- Dynamics
Subject: Requesting HAP assistance- Loan above 200k

CAUTION - The sender of this message is external to the SBA network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@sba.gov.

Good afternoon, my name is Brian Depena owner of Tenares Tire Services. In reference to Loan #7116667901

I am writing to you in order to request a hardship accommodation plan.
I have been having trouble making payment. I have many expenses trying to keep the business up and running and have been having a hard time getting the money to pay the loan.

I want to make payments in order to not fall behind but the amount is too much for me to pay. It is an expense I cannot handle.

Loan # 7116667901

Sent from Yahoo Mail for iPhone

48. As of August 5, 2026, only sixteen (16) payments totaling approximately $130,160 had been made towards the Tenares Tire EIDL; all of the payments were applied to interest accrued on the EIDL. The outstanding principal balance of the EIDL was approximately $1,654,420.

COUNTS ONE – FOUR
Wire Fraud; Aiding and Abetting
(18 U.S.C. §§ 1343 and 2)

The Grand Jury charges:

49. The Grand Jury re-alleges and incorporates by reference paragraphs 1-48 of this Indictment.

50. On or about the dates set forth below, in the District of Massachusetts and elsewhere, the defendant,

BRIAN A DEPENA,

having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing the scheme to defraud, as set forth below:

Count	Approximate Date	Description
1	August 12, 2021	Electronic submission of Amended LA&A for Tenares Tire to SBA
2	August 16, 2021	SBA electronic transfer of $350,000 to Tenares Tire's DCU account no. -7823-2
3	October 27, 2021	Electronic submission of Amended LA&A for Tenares Tire to SBA
4	November 30, 2021	SBA electronic transfer of $1,154,188 to Tenares Tire's DCU account no. -7823-2

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

COUNTS FIVE – ELEVEN
Unlawful Monetary Transactions; Aiding and Abetting
(18 U.S.C. §§ 1957 and 2)

The Grand Jury charges:

51. The Grand Jury re-alleges and incorporates by reference paragraphs 1-48 of this Indictment.

52. On or about the dates set forth below, in the District of Massachusetts and elsewhere, the defendant,

BRIAN A. DEPENA,

knowingly engaged and attempted to engage in the following monetary transactions by, through, and to a financial institution affecting interstate commerce, that is, TD Bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, and Digital Federal Credit Union, in criminally derived property of a value greater than $10,000, which monetary transactions involved the proceeds of specified unlawful activity, that is, wire fraud, in violation of 18 U.S.C. § 1343:

Count	Approximate Date	Description
5	August 26, 2021	Electronic payment in the amount of $55,000 to IRS from Tenares Tire DCU account no. -7823-2
6	August 26, 2021	Electronic payment in the amount of $30,000 to IRS from Tenares Tire DCU account no. -7823-2
7	September 14, 2021	Deposit of $25,000 Treasurer's Check payable to the "Campaign to Elect Brian A Depena" into Committee to Elect Brian DePena TD Bank checking account no. -7469
8	October 21, 2021	Deposit of $25,000 check payable to "CTE Brian Depena," drawn on DEPENA's personal DCU account no. -1285-2, into the Committee to Elect Brian DePena TD Bank checking account no. -7469
9	December 9, 2021	Purchase of Treasurer's Check in the amount of $538,109.03 with funds in DEPENA's personal DCU account no. -1285-2
10	December 18, 2021	Purchase of Treasurer's Check in the amount of $345,184.13 with funds in DEPENA's personal DCU account no. -1285-2

Count	Approximate Date	Description
11	January 11, 2022	Deposit of $32,112.96 check payable to "CTE Brian Depena," drawn on DEPENA's personal DCU account no. -1285-2, into the Committee to Elect Brian DePena TD Bank checking account no. -7469

All in violation of Title 18, United States Code, Sections 1957 and 2.

WIRE FRAUD FORFEITURE ALLEGATION
(18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c))

1. Upon conviction of Wire Fraud, in violation of Title 18, United States Code, Section 1343, set forth in Counts One through Four, the defendant,

BRIAN A. DEPENA,

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 property, real or personal, which constitutes or is derived from proceeds traceable to the offense.

2. If any of the property described in Paragraph 1, above, as being forfeitable pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), as a result of any act or omission of the defendant --

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

it is the intention 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 the defendant up to the value of the property described in Paragraph One above.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

MONEY LAUNDERING FORFEITURE ALLEGATION
(18 U.S.C. § 982(a)(1))

1. Upon conviction of one or more of the offenses in violation of Title 18, United States Code, Section 1957, set forth in Counts Five through Eleven, the defendant,

BRIAN A. DEPENA,

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, involved in such offenses, and any property traceable to such property.

2. If any of the property described in Paragraph 1, above, as being forfeitable pursuant to Title 18, United States Code, Section 982(a)(1), as a result of any act or omission of the defendant --

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

it is the intention of the United States, pursuant to Title 18, United States Code, Section 982(b), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the property described in Paragraph 1 above.

All pursuant to Title 18, United States Code, Section 982(a)(1).

A TRUE BILL

[redacted]

FOREPERSON

KRISTINA E. BARCLAY
CHRISTINE WICHERS
ASSISTANT UNITED STATES ATTORNEYS
DISTRICT OF MASSACHUSETTS

District of Massachusetts: August 25, 2026
Returned into the District Court by the Grand Jurors and filed.

Dawn M. King 1:54pm
DEPUTY CLERK