

FILED

MAY 21 2013

State Grand Jury Judge

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

State Grand Jury

Number SGJ637-13-12-S

Superior Court

Docket Number 13-05-00098-S

STATE OF NEW JERSEY)

v.)

THOMAS J. FAGAN,)

ENERGEX SYSTEMS, INC.,)

and)

ARBIOS SYSTEMS, INC.)

SUPERSEDING

INDICTMENT

The Grand Jurors of and for the State of New Jersey, upon their oaths, present that:

COUNT ONE

(Failure to File Gross Income Tax Return - Third Degree)

THOMAS J. FAGAN

between on or about April 15, 2008 and on or about October 15, 2008, at the Borough of Emerson, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the

provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:8-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN did fail to file a New Jersey Gross Income Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54A:8-1 with the intent to defraud or evade payment or any part thereof New Jersey Gross Income Tax, for the tax year ending 2007 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, and against the peace of the state, the government and dignity of the same.

COUNT TWO

(Failure to File Gross Income Tax Return - Third Degree)

THOMAS J. FAGAN

between on or about April 15, 2009 and on or about October 15, 2009, at the Borough of Emerson, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:8-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN did fail to file a New Jersey Gross Income Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54A:8-1 with the intent to defraud or evade payment or any part thereof New Jersey Gross Income Tax, for the tax year ending 2008 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, and against the peace of the state, the government and dignity of the same.

COUNT THREE

(Failure to File Gross Income Tax Return - Third Degree)

THOMAS J. FAGAN

between on or about April 15, 2010 and on or about October 15, 2010, at the Borough of Emerson, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:8-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN did fail to file a New Jersey Gross Income Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54A:8-1 with the intent to defraud or evade payment or any part thereof New Jersey Gross Income Tax, for the tax year ending 2009 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, and against the peace of the state, the government and dignity of the same.

COUNT FOUR

(Filing of Fraudulent Return - Third Degree)

THOMAS J. FAGAN

on or about April 7, 2011, at the Borough of Emerson, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court did file, prepare, caused to be filed or assist in the preparation or filing of a false or fraudulent return, report, statement, or application required to be filed pursuant to the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:8-1 et seq., as amended or supplemented, or any State tax law, with the intent to evade, avoid or otherwise not make timely payment of any tax, fee, penalty or interest, or any part thereof, that is, the said THOMAS J. FAGAN, did file, prepare, cause to be filed or assist in the preparation or filing of false or fraudulent New Jersey Gross Income Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54A:8-1 with the intent to defraud or evade payment or any part thereof New Jersey Gross Income Tax, for the tax year ending 2010 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-10, and against the peace of the state, the government and dignity of the same.

COUNT FIVE

(Failure to File Corporate Business Tax Return - Third Degree)

THOMAS J. FAGAN

and

ENERGEX SYSTEMS, INC.

between on or about April 15, 2009 and on or about October 15, 2009, at the Borough of Allendale, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN and ENERGEX SYSTEMS, INC. did fail to file a New Jersey Corporate Business Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54:10A-2 with the intent to defraud or evade payment or any part thereof New Jersey Corporate Business Tax, for the tax year ending 2008 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, N.J.S.A. 2C:2-7, and

against the peace of the state, the government and dignity of the same.

COUNT SIX

(Failure to File Corporate Business Tax Return - Third Degree)

THOMAS J. FAGAN

and

ENERGEX SYSTEMS, INC.

between on or about April 15, 2010 and on or about October 15, 2010, at the Borough of Allendale, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN and ENERGEX SYSTEMS, INC. did fail to file a New Jersey Corporate Business Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54:10A-2 with the intent to defraud or evade payment or any part thereof New Jersey Corporate Business Tax, for the tax year ending 2009 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, N.J.S.A. 2C:2-7, and

against the peace of the state, the government and dignity of the same.

COUNT SEVEN

(Failure to File Corporate Business Tax Return - Third Degree)

THOMAS J. FAGAN

and

ENERGEX SYSTEMS, INC.

between on or about April 15, 2011 and on or about October 15, 2011, at the Borough of Allendale, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN and ENERGEX SYSTEMS, INC. did fail to file a New Jersey Corporate Business Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54:10A-2 with the intent to defraud or evade payment or any part thereof New Jersey Corporate Business Tax, for the tax year ending 2010 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, N.J.S.A. 2C:2-7, and

against the peace of the state, the government and dignity of the same.

COUNT EIGHT

(Failure to File Corporate Business Tax Return - Third Degree)

THOMAS J. FAGAN

and

ENERGEX SYSTEMS, INC.

between on or about April 15, 2012 and on or about October 15, 2012, at the Borough of Allendale, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN and ENERGEX SYSTEMS, INC. did fail to file a New Jersey Corporate Business Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54:10A-2 with the intent to defraud or evade payment or any part thereof New Jersey Corporate Business Tax, for the tax year ending 2011 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, N.J.S.A. 2C:2-7, and

against the peace of the state, the government and dignity of the same.

COUNT NINE

(Failure to File Corporate Business Tax Return - Third Degree)

THOMAS J. FAGAN

and

ARBIOS SYSTEMS, INC.

between on or about April 15, 2010 and on or about October 15, 2010, at the Borough of Allendale, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN and ARBIOS SYSTEMS, INC. did fail to file a New Jersey Corporate Business Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54:10A-2 with the intent to defraud or evade payment or any part thereof New Jersey Corporate Business Tax, for the tax year ending 2009 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, N.J.S.A. 2C:2-7, and

against the peace of the state, the government and dignity of the same.

COUNT TEN

(Failure to File Corporate Business Tax Return - Third Degree)

THOMAS J. FAGAN

and

ARBIOS SYSTEMS, INC.

between on or about April 15, 2011 and on or about October 15, 2011, at the Borough of Allendale, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN and ARBIOS SYSTEMS, INC. did fail to file a New Jersey Corporate Business Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54:10A-2 with the intent to defraud or evade payment or any part thereof New Jersey Corporate Business Tax, for the tax year ending 2010 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, N.J.S.A. 2C:2-7, and

against the peace of the state, the government and dignity of the same.

COUNT ELEVEN

(Failure to File Corporate Tax Return - Third Degree)

THOMAS J. FAGAN

and

ARBIOS SYSTEMS, INC.

between on or about April 15, 2012 and on or about October 15, 2012, at the Borough of Allendale, in the County of Bergen, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as amended or supplemented, or any State tax law, that is, the said THOMAS J. FAGAN and ARBIOS SYSTEMS, INC. did fail to file a New Jersey Corporate Business Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54:10A-2 with the intent to defraud or evade payment or any part thereof New Jersey Corporate Business Tax, for the tax year ending 2011 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, N.J.S.A. 2C:2-7, and

against the peace of the state, the government and dignity of the same.

COUNT TWELVE

(Misapplication of Entrusted Property - Second Degree)

THOMAS J. FAGAN,

ENERGEX SYSTEMS, INC.,

AND

ARBIOS SYSTEMS, INC.

between on or about April 15, 2008 and on or about August 19, 2011, at the Borough of Allendale, in the County of Bergen, in the City of Atlantic City, in the County of Atlantic, elsewhere, and within the jurisdiction of this Court, did apply or dispose of property that had been entrusted to him as a fiduciary in a manner which he knew was unlawful and involved substantial risk of loss or detriment to the owners of the property and did derive a benefit having a value of \$75,000 or more, in that the said THOMAS J. FAGAN, ENERGEX SYSTEMS, INC., and ARBIOS SYSTEMS, INC. did apply or dispose of the money of investors whose identities are known to the State Grand Jurors to that was entrusted to the said THOMAS J. FAGAN, ENERGEX SYSTEMS, INC., and ARBIOS SYSTEMS, INC. as a fiduciary, in a manner which the said THOMAS J. FAGAN, ENERGEX SYSTEMS, INC., and ARBIOS SYSTEMS, INC. knew to be unlawful and involving a substantial risk of loss or detriment to the investors whose identities are known to the State Grand Jurors, thereby deriving a benefit having a value of \$75,000 or more, all in violation of the provisions of N.J.S.A. 2C:21-15,

N.J.S.A. 2C:2-7, and against the peace of this State, the government and dignity of the same.

COUNT THIRTEEN

(Theft by Unlawful Taking - Second Degree)

THOMAS J. FAGAN,

ENERGEX SYSTEMS, INC.,

AND

ARBIOS SYSTEMS, INC.

between on or about December 24, 2008 and on or about August 19, 2011, at the Borough of Allendale, in the County of Bergen, elsewhere, and within the jurisdiction of this Court, did unlawfully take or exercise unlawful control over the moveable property of the investors whose identities are known to the Grand Jurors, that is, investment money having a value of \$75,000 or more, with the purpose to deprive the owners thereof, contrary to the provisions of N.J.S.A. 2C:20-3(a), N.J.S.A. 2C:2-7, and against the peace of the state, the government and dignity of the same.

COUNT FOURTEEN

(Financial Facilitation of Criminal Activity - Second Degree)

THOMAS J. FAGAN,

ENERGEX SYSTEMS, INC.,

AND

ARBIOS SYSTEMS, INC.

between on or about April 15, 2008 and on or about August 19, 2011, at the Borough of Allendale, in the County of Bergen, in the City of Atlantic City, in the County of Atlantic, elsewhere, and within the jurisdiction of this Court, did engage in transactions involving property, in an aggregate amount of \$75,000 but less than \$500,000, known or which a reasonable person would believe to be derived from criminal activity, knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity, that is the said THOMAS J. FAGAN, ENERGEX SYSTEMS, INC., and ARBIOS SYSTEMS, INC. did engage in transactions of bank account withdrawals and deposits, automatic teller machine withdrawals, cash deposits and cashier check purchases, in an amount of \$75,000 but less than \$500,000, known to be derived from criminal activity, knowing the transactions were designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the property, contrary to the provisions

of N.J.S.A. 2C:21-25(b)(2)(a), N.J.S.A. 2C:2-7, and against the peace of this State, the government and dignity of the same.

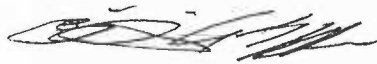
COUNT FIFTEEN

(Misconduct by a Corporate Official - Second Degree)

THOMAS J. FAGAN

between on or about December 24, 2008 and on or about August 19, 2011, at the Borough of Allendale, in the County of Bergen, elsewhere, and within the jurisdiction of this Court, purposefully or knowingly did use, control or operate a corporation for the furtherance or promotion of a criminal object, thereby deriving a benefit of \$75,000 or more, that is the said THOMAS J. FAGAN, an unregistered agent and President of ENERGEX SYSTEMS, INC. and ARBIOS SYSTEMS, INC., did use, control or operate ENERGEX SYSTEMS, INC. and ARBIOS SYSTEMS, INC., corporations with principal business offices in the State of New Jersey, for the promotion of the criminal objects of Failure to File Corporate Business Return, in violation of N.J.S.A. 2C:54-52-8, Misapplication of Entrusted Property, in violation of N.J.S.A. 2C:21-15, Theft by Unlawful Taking, in violation of N.J.S.A. 2C:20-3(a), and Financial Facilitation of Criminal Activity, in violation of N.J.S.A. 2C:21-25(b)(2)(a), as alleged in Counts Five through Fourteen, which are realleged and incorporated by reference herein contrary to the provisions of N.J.S.A. 2C:21-9(c), and against the peace of this State, the

government and dignity of the same.



Christine A. Hoffman
Deputy Director
Division of Criminal Justice

A TRUE BILL:


Foreperson

Dated: 5/21/13

FILED

MAY 21 2013

State Grand Jury Judge

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

State Grand Jury

Number SGJ637-13-12-S

Superior Court

Docket Number

13-05-00098-S

STATE OF NEW JERSEY)

v.)

THOMAS J. FAGAN)

ENERGEX SYSTEMS, INC.)

and)


ARBIOS SYSTEMS, INC.)

ORDER OF VENUE

An Indictment having been returned to this Court by the State Grand Jury in the above captioned matter,

IT IS ORDERED on this *21st* day of *May*, 2013, pursuant to paragraph 8 of the State Grand Jury Act, that the County of Mercer be and hereby is designated as the County of venue for the purpose of trial.

IT IS FURTHER ORDERED that the Clerk of the Superior Court shall transmit forthwith the Indictment in this matter and a certified copy of this Order to the Criminal Division Manager of the County of Mercer for filing.


Thomas W. Sumners, Jr., J.S.C.