No. _____

IN THE
Supreme Court of the United States

CHARLES M. HALLINAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under 18 U.S.C. § 1962(c) and (d) anyone "employed by or associated with any enterprise" is prohibited from conspiring to "conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through . . . collection of unlawful debt."

The questions presented are:

1. Whether a person violates 18 U.S.C. § 1962(c) by simply knowing an enterprise is collecting a debt that is separately determined to be unlawful, as found by the Third Circuit Court of Appeals, or whether the statute requires a defendant to know that the debt is unlawful and acted willfully to violate that law, as determined by the Second, Fifth, and Eleventh Circuit Courts of Appeals.

2. Whether a litigant who makes a false statement during a civil proceeding commits wire fraud by "defrauding" the counter party out of a right to sue when this Court has limited wire fraud to "traditionally recognized money or property."

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PETITION FOR A WRIT OF CERTIORARI

Charles Hallinan respectfully petitions this Court for a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Third Circuit following his criminal conviction.

OPINIONS BELOW

The Third Circuit's decision affirming Petitioner's counts of conviction (Pet. App. 1a-25a) is reported at *United States v. Neff*, 787 Fed. App'x 89 (3d. Cir. Sep. 6, 2019). The Third Circuit's *en banc* decision denying Petitioner's motion for rehearing is not reported. Pet. App. 105a-106a.

JURISDICTION

The Third Circuit issued its opinion and entered judgment on September 6, 2019, and denied a timely motion for rehearing on November 5, 2019. *See* Pet. App. 105a-106a. On January 7, 2020 Justice Alito extended the time to file a petition for a writ of certiorari to and including March 4, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions (18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 1962(d)) are reproduced in the appendix to this petition. *See* Pet. App. 107a-111.

INTRODUCTION

Petitioner, a seventy-nine-year old man diagnosed with prostate and bladder cancer, is serving a fourteen-year sentence for purported crimes that the government has never before prosecuted, and which conflict with this Court's jurisprudence and every other Circuit Court of Appeals that has addressed the issues herein. The Government's unprecedented and aggressive prosecution falls far short from its requirement to prove the "concurrence of an evil-meaning mind with an evil-doing hand," *Morissette v. United States,* 342 U.S. 246 (1952), and its responsibility to sound a "fair warning . . . in language that the common world will understand, of what the law intends to do if a certain line is passed." *McBoyle v. United States,* 283 U.S. 25, 27 (1931) (Holmes, J).

First, the government convicted Petitioner of participating in the affairs of an enterprise "through collection of unlawful debt," in violation of 18 U.S.C. §1962(d), but the District Court completely removed scienter from the "crucial element separating legal innocence from wrongful conduct." *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72-73 (1994). In sum, Petitioner was convicted of participating in a lending business that offered short term, high interest rate loans to borrowers. Petitioner partnered with Native American Tribes, believing that Tribal law would govern the interest rates on the loans as opposed to state usury provisions. The so-called "Tribal Model" of lending was touted by prominent law firms, practiced for nearly a decade, and its legality continues to be litigated today. *See, e.g.*, *Williams v. Big Picture Loans, LLC,* 929 F.3d 170 (4th

Cir. 2019). However, without notice, in one of the first-ever prosecutions involving the Tribal Model (the first of which was announced just two months earlier), the government suddenly charged Petitioner with a RICO violation that carried a maximum sentence of twenty years' imprisonment.

Worse, the District Court completely preempted Petitioner's defense: that he did not know the loans were unlawful and did not act willfully to violate the law. Instead, it instructed the jury that Petitioner's knowledge of state usury rates was irrelevant and it refused to give a willfulness instruction. This resulted in an effective directed verdict as the jury was only asked if Petitioner knew loans were being made at all – which was conceded. By holding that a person violates § 1962(d) if he or she simply knows a debt is being collected - whether or not the individual knows it is unlawful - the Third Circuit's holding conflicts with the Second, Fifth, and Eleventh Circuit Courts of Appeals who have all determined a willfulness instruction is appropriate.

Petitioner was also convicted of the first-ever prosecution that is premised on the conjecture that any false statement made during civil litigation constitutes wire fraud because it deprives the counterparty out of their cause of action. This prosecutorial theory lacks any limiting principle. It does not matter what type of lawsuit it is, whether the lawsuit is frivolous, or whether the statement had any effect on the outcome of the case. If a false statement is made in an interrogatory, deposition, or even amongst counsel, it is wire fraud. Despite this Court's warnings throughout the years that the wire fraud statute

is strictly constrained to fraud whose object is the deprivation of traditionally recognized money or property, *see, e.g.*, *McNally v. United States,* 483 U.S. 350 (1987), the government has aggressively stretched the statute beyond its bounds to encompass the deprivation of a nebulous right to litigate.

Petitioner was convicted of one crime where the Third Circuit has deemed his mental state irrelevant, and a second crime that depends on a fanciful prosecutorial theory that is squarely at odds with this Court's jurisprudence. Thus, to resolve conflicts amongst the Court of Appeals, rein in prosecutorial overreach, and ensure that these criminal statutes are constrained to their statutory text and provide "fair warning . . . of what the law intends to do if a certain line is passed," *McBoyle,* 283 U.S. at 27, this Court should grant review.

STATEMENT

This case arises out of Petitioner's participation in a Tribal payday loan business. Payday loans are short term loans typically made to individuals who cannot secure such loans from banks. The loans are usually a few hundred dollars and meant to allow an individual to pay bills that are immediately due without having to wait until their next "payday." *Id.* Most banks and other financial institutions do not offer payday loans for a number of reasons: (1) the default rate is extremely high; (2) collecting on any default is near impossible; and (3) even if collection was possible, the cost of collecting on such a modest debt would be much more expensive than the value of the loan itself.

The cost of obtaining a payday loan for a borrower is typically set in fixed dollar amounts identified as fees. States have wildly different laws regarding the legality of payday lending. Some states view it as predatory, others as a benefit to those with bad credit, and still other states feel that banning the loans outright is too paternalistic. *See The Alliance Between Payday Lenders and Tribes: Are Both Tribal Sovereignty and Consumer Protection at Risk?*, 69 Wash. Lee. L. Rev. 751, 754 (2012) ("An active debate rages about whether these loans do more harm than good. Consumer groups claim these loans create a debt trap. Lender groups, perhaps with some justification, point out that people of lesser means have no place else to go when they really need cash."). This ongoing policy debate has led 17 states to prohibit payday lending entirely; 27 states to permit payday loans under certain circumstances; and 6 states to allow payday lending without restriction. *See* Pet. App. 130a.

One way in which payday lenders navigated the heterogeneous nature of state lending laws was to partner with Native American Tribes under the theory that if the Tribe was the lender then tribal law would apply rather than state usury laws. The so-called "Tribal Model" flowed from this Court's seminal decision in *California v. Cabazon Band of Mission Indians,* 480 U.S. 202, 209 (1987) (holding that California gaming laws did not apply on tribal land), which was later extended to commercial activities of a tribe "whether they were made on or off a reservation." *Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc.,* 523 U.S. 751 (1998). Although this Court has never considered whether Tribal sovereign im-

munity can preempt state usury laws, Justice Thomas, in a dissenting opinion, recognized the employment of the Tribal Model as flowing from this Court's tribal immunity jurisprudence. See also *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 814 (2014) (J. Thomas, dissenting).

Petitioner, adhering to the Tribal Model, partnered with Native American Tribes to offer and collect on payday loans. The government, believing the Tribal Model to be illegal, charged Petitioner with conspiring to participate in the affairs of a racketeering enterprise through the collection of an unlawful debt under 18 U.S.C. § 1962(d). The basic facts at trial were mostly undisputed. Petitioner admitted that he partnered with Native American Tribes to offer payday loans at high interest rates. Pet. App. 3a. However, Petitioner argued that he was not acting with corrupt intent and held a good faith belief that the loans were lawful because they were issued by sovereign Tribes. Pet. App. 10a-13a. Petitioner introduced evidence demonstrating that prominent United States law firms had given opinion letters as to the legality of this arrangement. Pet. App. 12a.

Petitioner's trial was held from September 26, 2017 to November 27, 2017. At the charge conference, Petitioner requested a jury instruction on willfulness for the RICO count – i.e. that Petitioner must have intentionally acted to do something the law forbids while generally aware of its unlawful nature, but the District Court refused to provide that instruction. Instead, the District Court construed the collection of an unlawful debt under RICO as a strict liability offense on the crucial element of the charge

– the unlawfulness of the debt - and instructed the jury in sum and substance that if Petitioner knowingly and intentionally participated in collecting a debt, then Petitioner was guilty regardless of his knowledge that the debt was unlawful and notwithstanding his lawful intent. *See infra*, at pp. 16-20. This vitiated the defense, which wholly depended on defendant's good faith beliefs.

The government also charged Petitioner with wire fraud in violation of 18 U.S.C. § 1343 for his conduct in a lawsuit in Indiana (the "Indiana Action"). The Indiana plaintiffs received payday loans from a company called Apex 1 Processing. Pet. App. 3a. Although Plaintiffs believed that Petitioner owned Apex, he testified in a deposition that it was owned by a Native American Tribe. Pet. App. 3a-5a. Sometime thereafter the class action settled and Plaintiffs were paid $260,000. Pet. App. 5a.

The government alleged that Petitioner had lied during that deposition and it was Petitioner who owned Apex 1 Processing. The government argued that by lying during his deposition, Petitioner defrauded the Plaintiffs out of their cause of action because Plaintiffs might have not accepted a settlement had they had proof that Petitioner was the owner.

The jury returned a verdict of guilty on all counts.

On appeal, Defendant raised various arguments pertaining to the counts of conviction, sentencing, and forfeiture. As relevant to this Petition, Defendant argued that the District Court's refusal to instruct the jury that it needed to find that defendant

acted willfully and knew the debt was unlawful, inappropriately transformed RICO into a strict liability offense as to the crucial element of that crime. Citing this Court's decisions in *Liparota v. United States,* 471 U.S. 419 (1985), and *Staples v. United States,* 511 U.S. 600 (1994), among others, Defendant argued that the critical element of the crime of collecting an unlawful debt is not the collection of the debt, but the fact that the debt is unlawful. A scienter instruction was therefore imperative on the "crucial element" of the crime. *See United States v. X-Citement Video*, 513 U.S. 64, 72 (1994). The Third Circuit rejected Defendant's argument, reasoning that "collecting an unlawful debt, like forceful taking, necessarily falls outside the realm of otherwise innocent [conduct]." *United States v. Neff*, 787 Fed. App'x 81, 89 (3d Cir. 2019) (citing *Carter v. United States*, 530 U.S. 255, 270 (2000)). The Third Circuit then made the circular argument that "[r]easonable people would know that collecting unlawful debt is unlawful." *Neff*, 787 Fed. App'x. at 89. Finally, it argued that debt collectors had a higher obligation to "be aware of the laws that apply to them, particularly laws determining an aspect as essential as how much interest they can charge." *Id.*

As to the wire fraud count, Defendant argued that the object of a wire fraud scheme must be traditionally recognized money or property, and the government's theory that Defendant defrauded the Indiana plaintiffs out of their cause of action was not cognizable. The Third Circuit rejected that argument as well, finding that a legal cause of action was akin to the "right to be paid money," which it argued this Court has recognized as property for purposes of wire

fraud. *Id.* at 91 (citing *Pasquantino v. United States*, 544 U.S. 349, 356 (2005)). In addition, it found support for the proposition that a cause of action is traditionally recognized money or property within the wire fraud statute in this Court's Fourteenth Amendment jurisprudence finding violations of due process when a state procedure deprives an individual of his entitlement to bring a cause of action. *See, e.g., Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982).

Petitioner filed for rehearing or rehearing *en banc*, which was denied on November 5, 2019. This Petition timely followed.

REASONS FOR GRANTING THE PETITION

I. It is Imperative to Rectify the Third Circuit's Holding that the Collection of an Unlawful Debt has No Scienter Element.

It is well-settled that "offenses that require no *mens rea* generally are disfavored" and "some indication of congressional intent, express or implied, is required to dispense with *mens rea* as an element of a crime." *Staples,* 511 U.S. 600, 605-06 (1994) (internal citations omitted). This is even more so with statutes that carry stiff criminal penalties such as RICO. *Id.* at 616 ("Historically, the penalty imposed under a statute has been a significant consideration in determining whether the statute should be construed as dispensing with *mens rea*."). Here, Petitioner received a sentence of imprisonment of fourteen years and a forfeiture in excess of sixty-four million, clearly a considerable penalty.

The District Court below failed to adhere to this Court's jurisprudence and stripped scienter from the criminal violation. It refused to instruct the jury that it must find that the Defendant knew the debt was unlawful and acted willfully to do something the law forbids. In effect, the jury was told it need only find that Petitioner was not confused or mistaken when he participated in collecting a debt regardless of his knowledge of its unlawful nature or good faith intentions.

This Court should grant this Petition because: (1) the Third Circuit's decision departs from this Court's precedents and the accepted and usual course of judicial proceedings; (2) the Third Circuit's decision conflicts with other courts of appeals who have examined the same issue; and (3) allowing the Third Circuit's decision to stand would criminalize otherwise innocent conduct.

A. The District Court Turned the Collection of an Unlawful Debt Into a Strict Liability Offense.

By refusing to provide a scienter requirement to the unlawfulness of the debt, the District Court turned the collection of an unlawful debt into a strict liability offense as to the crucial element of the crime. At the charge conference below, the District Court initially included a willful charge in its instructions. Pet. App. 112a-118a. The government objected, leading the District Court to remove the willfulness instruction from the ultimate charge:

> In short, to find [Petitioner] guilty of either RICO conspiracies . . . you must find that the Government proved beyond a reasonable doubt that the Defendant joined in an agreement or conspiracy with another person or persons knowing that the objective of purpose was to conduct or to participate, directly or indirectly, in the conduct of the affairs of an enterprise through the collection of unlawful debt, and intended to join with other person or persons to achieve that objective.

Pet. App. 22a.

The District Court then instructed the jury that the government need only prove that the Defendant knowingly agreed to collect a debt from Pennsylvania borrowers and that the debt surpassed state interest rates. However, the jury need not find that Petitioner knew the loans were unlawful or otherwise acted willfully to do something the law forbids:

> However, the evidence must establish that the defendant knowingly agreed to facilitate or further a scheme, which, if completed, would include the collection of unlawful debt committed by at least one other conspirator. Therefore, if you believe the Government has presented evidence demonstrating that the Defendants agreed to collect debt from loans to borrowers living in Pennsylvania with loans at interest rates that exceeded twice the enforceable rate of in-

> terest, you may consider such evidence as evidence that the Defendant agreed to collect unenforceable debt.

Pet. App. 121a-123a.

Finally, the District Court gave an ignorance of law instruction, further cementing in the jury's mind that it made no difference if Defendant knew the loans were illicit and intended to act lawfully:

> To prove a defendant guilty of conspiracy to collect unlawful debt, the Government is not required to prove that a defendant knew that the usury rates were in the states where the borrowers lived. For example, in the case of Pennsylvania, the Government does not need to prove that the Defendant Charles M. Hallinan or [codefendant] knew that the criminal usury rate was 25 percent or that the enforceable rate of interest was six percent for a licensed lender, nor does the Government have to prove that the Defendant knew the usury laws or the enforceable rates of interest in any other state.

Pet. App. 126a.

These instructions thwarted Appellant's sole defense, which depended on his good faith belief that his actions were lawful and resulted in a directed verdict. The only pertinent question for the jury became whether Petitioner knew a loan was made – which was conceded

B. The Third Circuit's Decision Departs From This Court's Jurisprudence and the Accepted and Usual Course of Judicial Proceedings.

In deeming the collection of an unlawful debt a strict liability offense, the Third Circuit sharply deviated from this Court's rulings requiring that scienter be read into statutes that are otherwise silent as to the *mens rea* required.

Whether the collection of an unlawful debt under RICO requires proof that a defendant knew the loans exceeded state usury rates and acted willfully is initially a question of statutory construction. *See Staples*, 511 U.S. at 604 (1994) (citing *Liparota,* 471 U.S. at 419 (1985)). Under 18 U.S.C. § 1962(c), "it shall be unlawful for any person employed with or associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." Unlawful debt is defined in relevant part as a debt incurred in connection with "the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate." 18 U.S.C. § 1961(6).

On its face, RICO does not contain any *mens rea* requirement, but courts have been uniform in finding that *mens rea* should be found in the predicate crimes. *See, e.g.*, *United States v. Baker*, 63 F.3d 1478, 1492-93 (9th Cir. 1995); *United States v. Hill*, 55 F.3d 1197, 1203-04 (6th Cir. 1995); *United States v. Biasucci*, 786 F.2d 504, 512-13 (2d Cir. 1986); *United States v. Pepe*, 747 F.2d 632, 675-76 (11th

Cir. 1984); *see also Concerning RICO Legislation*, *Hearing on H.R. 2517 and H.R. 2943, Before the Subcomm. on Criminal Justice, Committee on the Judiciary* (Sept. 28, 1985) (statement of John C. Keeney, Deputy Asst. Attorney General):

> Although the substantive provisions of the statute currently contain no scienter requirement, this does not mean – as some have suggested – that it imposes strict liability. Rather, the requisite criminal state of mind for conviction is derived from the mens rea requirements of the underlying acts of racketeering activity that must be proved to establish a RICO violation.

The collection of an unlawful debt under RICO, however, has no predicate acts to guide the scienter analysis. Instead it refers to state usury rates. However, if state law is seen as the *de facto* predicate act used to supply the *mens rea,* it would be a procedural and constitutional nightmare. For example, under Florida law, criminal usury requires a showing of corrupt intent, *Polakoff v. State*, 586 So. 2d 385, 388-89 (Fla. Dist. Ct. App. 1991); Ohio's first usury statute was declared unconstitutional for lack of mens rea, and its second required only proof of reckless intent (*State v. Young*, 62 Ohio St.2d 370 (Ohio 1980), *State v. Hughes*, 1992 WL 52473 at *4 (Ohio Ct. App. 2d Dist. 1992); Colorado only requires that the usurious loan be made knowingly (*Dikeou v. Dikeou*, 928 P.2d 1286, 1294 (Colo. 1996); and in Texas, the government must prove both knowledge and intent (*Lucario v. State*, 677 S.W.2d 693, 698-99

(Tex. App. 1984). Of course, in six states, there are no usury restrictions at all. Pet. App. 130a.

Despite Congress's vision of a statute addressing usurious lending that could work in harmony with state law, conditioning RICO on state usury law would further confuse the issues of scienter.

This Court has read scienter into criminal statutes that are otherwise silent as to the mental state numerous times. *See Rehaif v. United States*, 139 S. Ct. 2191, 2196 (2019) (citing the "legion" of cases where scienter is read into a statute to separate wrongful act from innocent acts). Key to these cases is applying scienter to the "crucial element separating legal innocence from wrongful conduct." *United States v. X-Citement Video, Inc.,* 513 U.S. 64, 72-73 (1994).

For example, in *Morissette v. United States*, 342 U.S. 246 (1952), the defendant was convicted of violating 18 U.S.C. § 641, which makes it a crime to steal property belonging to the United States. Morissette had taken bomb casings from an air force bombing range, but testified that he believed the casings had been abandoned. *Id.* at 248. The district judge instructed the jury that it was "no defense to claim that [the property] was abandoned . . . [and] [t]he question on intent is whether or not he intended to take the property." *Id.* at 249. On appeal, this Court noted that crime "generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand," and the absence of scienter in common law "merely recognized that intent was so inherent in the idea of the offense that it required no statutory affirmation." *Id.* at 252. The district court

had only applied a scienter element to the act of taking the property, but not that "crucial element separating legal innocence from wrongful conduct," namely that Morissette knew it was the government's property. *See X-Citement Video Inc.*, 513 U.S. at 72-73. This Court found that answering the question "Did he intend to take the property?" fell far short from an "adequate basis on which the jury should find the criminal intent to steal." *Morissette*, 342 U.S. at 275-76.

Years later in *Liparota v. United States,* 471 U.S. 419 (1985), this Court construed a statute that made it illegal to knowingly use or possess government benefits such as food stamps "in any way contrary to this chapter or the regulations issued under this chapter." *Id.* at 420 (citing 7 U.S.C. § 2024(b)). Liparota had purchased food stamps from an undercover officer for less than face value. The District Court charged the jury that it need only find that Liparota knowingly and intentionally bought the food stamps, but need not find that Liparota acted willfully or knew of the regulations that criminalized such a purchase. *Id.* at 422-23. Thus, just as in *Morissette*, the District Court only asked the jury to determine "did Liparota transfer food stamps?", rather than focusing on the crucial element – that the transfer was "not authorized by law." 7 U.S.C. § 2024(b). This Court vacated Liparota's conviction, explaining that a scienter element is a "background assumption of our criminal law," *Liparota*, 471 U.S. at 441. This was especially appropriate when the statute would otherwise criminalize "a broad range of apparently innocent conduct." *Id.* at 419. The Court held that to violate 7 U.S.C. § 2024(b), one must act willfully,

i.e. know that the transfer was "not authorized by law." *Id.*

Similarly, in *Staples v. United States*, 511 U.S. 600 (1994), this Court returned to the same subject and considered the necessary scienter of the National Firearms Act, which criminalized the possession of an unregistered "firearm." 26 U.S.C. §§ 5861(d), 5845(a)(6), 5845 (b). Staples possessed an automatic weapon, which qualified as a firearm under the statute. *Staples,* 511 U.S. at 604. The District Court had charged the jury that it need only find that the defendant knowingly and intentionally possessed a firearm, but need not know that the gun qualified as a "firearm" under federal law. *Id.* at 604. Again, like in *Morissette* and *Liparota*, the question "did Staples possess a firearm," fell far short of the crucial question as to whether Staples knew that his weapon fell under the definition of firearm and willfully acted contrary to law. Of note, the government argued that "dangerous and regulated items place their owners under an obligation to inquire at their peril into compliance with regulations," but the Court quickly rejected the premise that owning a gun requires some heightened obligation to learn the surrounding regulations. *Id.* at 614.

This Court has consistently determined that the jury must find scienter on the "crucial element" that makes conduct unlawful. Asking if Morissette picked up shell casings, Liparota transferred food stamps, or Staples owned a firearm did nothing to "separate legal innocence from wrongful conduct." *Morissette*, 342 U.S. at 271; *see also Flores-Figueroa v. United States*, 556 U.S. 646 (2009) (finding that to

commit aggravated identify theft, the defendant must not merely possess the identification of another, but must know it is the identification of another); *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994) (determining that in a prosecution for the transportation of sexually explicit conduct involving a minor, the defendant must know that the individual is a minor); *Elonis v. United States*, 575 U.S. 723, 2011 (2015) (vacating conviction for the transmission of threatening communications because it was not enough that Elonis intended to send the communication but "the crucial element separating legal innocence from wrongful conduct is the threatening nature of the communication"); *Rehaif v. United States*, 139 S.Ct. 2191 (2019) (finding that in a prosecution under § 922 (g) and § 924 (a)(2), the Government must prove both that the defendant knew he possessed a firearm and belonged to a class of people prohibited from possessing a firearm).

Here, Petitioner was convicted of conspiring to participate in an enterprise whose object was the collection of an unlawful debt. 18 U.S.C. § 1962(d). The jury was essentially asked "did Petitioner participate in collecting a debt," but that question falls far short of the critical question that separates legal innocence from wrongful conduct. The "crucial element" of a violation of 18 U.S.C. § 1962(d) is not the collection of a debt, but the fact that the debt is "unlawful." And on this crucial element, the district court failed to provide any scienter. It refused to give a willfulness instruction and compounded this deficiency by affirmatively instructing the jury that the government need not prove that Petitioner knew what the usury rates were. Pet. App. 126a. In one fell swoop the

district court defeated Petitioner's defense and left the jury with an inconsequential and conceded question as to whether Petitioner knew that the enterprise collected debt at all.

C. The Third Circuit's Holding Conflicts With Every Other Court That Has Addressed What Scienter Applies To RICO's Unlawful Debt Collection Prohibition.

The Third Circuit's holding that the fact the debt was unlawful requires no scienter contradicts every court that has opined on the necessary *mens rea* for the collection of an unlawful debt. Specifically, the Second, Fifth, and Eleventh Circuits, and at least one lower court in the Tenth Circuit have all found that a willfulness charge is required.

First, the Second Circuit sanctioned a willfulness instruction in *United States v. Biasucci*, 786 F.2d 504, 513 (2d Cir. 1986). There, the court made clear that one element of 18 U.S.C. § 1962(d) is that the defendant act willfully:

> By its terms, all that RICO requires is proof that a debt existed, that it was unenforceable under New York's usury laws, that it was incurred in connection with the business of lending money at more than twice the legal rate, that the defendant aided collection of the debt in some manner, and that the defendant acted knowingly, willfully and unlawfully.

Id. at 512. Most recently, a district court in the Southern District of New York followed that guidance in a parallel criminal action to this case. In *United States v. Tucker*, 1:16-cr-00091-PKC, 2017 WL 3610587 at *2 (S.D.N.Y. 2017), Scott Tucker, a former business partner of Petitioner, was charged with entering into transactions with Native American Tribes to subvert state usury laws for his payday lending business. The district court charged the jury that to be guilty Tucker must have acted willfully in the collection of an unlawful debt. *Id.*; Transcript of Proceedings as to Scott Tucker, Dkt. No. 308, at 3287-88 (S.D.N.Y. Oct. 27, 2017) ("[T]he government must prove beyond a reasonable doubt that the defendant knowingly and willfully joined the conspiracy for the purpose of furthering its unlawful object, which is the collection of an unlawful debt.").[1] *Tucker* and Petitioner's case are two actions with many overlapping facts, the same relevant charges, and yet diametrically opposite as to the governing scienter element highlighting this Circuit split.

Second, the Fifth Circuit recognized that willfulness was required in *United States v. Aucoin*, 964 F.2d 1492 (5th Cir. 1992), *cert denied* 504 U.S. 1023 (1992). Aucoin argued that the crime of collection of an unlawful debt was void for vagueness because it did not allow for the defense that defendants did not believe they were violating RICO. *Id.* at 1498. The Fifth Circuit rejected Appellant's arguments because

[1] Tucker appealed his conviction and has argued in the Second Circuit that even the district court's willfulness charge was not sufficient. His appeal is pending. *United States v. Tucker*, No. 18-1802 (2d Cir. June 15, 2018).

the jury was charged that it must find the defendant "did knowingly and willfully conduct and participate, directly and indirectly in the conduct of the affairs of the enterprise through the collection of an unlawful debt," that the "Government must prove beyond a reasonable doubt that the defendant knowingly and willfully conducted or participated in the conduct of the affairs of the enterprise through the collection of an unlawful debt," and that the "charge require[d] proof of specific intent . . . ." *Id.*; *see also Egana v. Blair's Bail Bonds, Inc.*, 2019 WL 1111465, No. 17-5899 (E.D. La. Mar. 11, 2019) ("The parties agree that in order to succeed on a RICO claim based on the collection of unlawful debt, Plaintiffs must show that the Defendants acted knowingly, willfully, and unlawfully.").

Third, the Eleventh Circuit in *United States v. Pepe*, 747 F.2d 632 (11th Cir. 1984) followed suit and held that the District Court "properly instructed the jury as to the mental state required for a RICO conviction" when it told the jury that it must find that the defendant "knowingly or willfully collect[ed] an unlawful debt." *Id.* at 676; *see also United States v. McLain*, 701 F. Supp. 1544, 1546 (M.D. Fla. 1988) (explaining that one of the essential elements of 18 U.S.C. § 1962(c) is that the defendant "knowingly and willfully participated in the collection of an 'unlawful debt'").

And although the Tenth Circuit has not spoken on the issue, a district court within that Circuit also acknowledged that the collection of an unlawful debt requires a finding of willfulness. *See United States v. King*, 2014 WL 12623415 at *5, No. CR-13-063-F

(W.D. Okla. Dec. 1, 2014) (admitting co-conspirator statements that demonstrated defendant "willfully participated in the conspiracy and intended to advance the purposes of the conspiracy [to collect an unlawful debt])."[2]

The Third Circuit's holding is at odds with every other Circuit's determination that a willfulness instruction is required for an unlawful debt collection conviction under 18 U.S.C. § 1962(d). Petitioner was convicted without the jury ever considering his sole defense – that he did not act willfully or know that the debt was unlawful. Simply put, the trial court removed the issue from the jury, directed a verdict against Petitioner, and sentenced him to fourteen years of imprisonment.

D. The Third Circuit's Holding Will Criminalize Otherwise Innocent Conduct.

Turning the collection of an unlawful debt into a strict liability offense – where the jury need only find that a defendant participate in collecting a loan that separately is determined to be usurious – criminalizes otherwise "innocent conduct." *See Morissette*, 342 U.S. 246. "The contention that an injury can amount

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[2] Even the United States Attorney's Office for the Eastern District of Pennsylvania, which prosecuted Petitioner, has been inconsistent in its approach to this issue. *See United States v. Gjeli*, No. 2-13-cr-000421 (E.D. Pa.), Dkt. 266, at 108 (proposed jury instructions from the government recommending that the Court give a willfulness charge in an unlawful debt case); *United States v. McMonagle*, 437 F. Supp. 721, 722 n.6 (E.D. Pa. 1977) (noting that the indictment charged that the defendants willfully participated in the enterprise through the collection of an unlawful debt).

to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Id.* at 250; *see also* 4 WILLIAM BLACKSTONE COMMENTARIES at *21 (observing that a "vicious will" is necessary to commit a crime). As such, "[t]he purpose and obvious effect of doing away with the requirement of a guilty intent is to ease the prosecution's path to conviction, [and] to strip the defendant of such benefit as he derived at common law from innocence of evil purpose." *Morissette,* 342 U.S. at 263.

Failing to include a scienter requirement for the essential element of the collection of an unlawful debt creates uncertainty as to what is unlawful due in part to idiosyncratic and constantly changing state usury laws. When considering the house bill that ultimately became the Racketeering Influenced and Corrupt Organizations Act, some in Congress raised these very concerns:

> This provision, by employing the words "a state," raises both very difficult jurisdictional problems, and substantive problems arising from the creation of a federal law of gambling and of usury. For example, a transaction may have connections with two or more states: in one, it is legal, in another not. Innocent action in one state will be the premise for establishing the collection of an "unlawful debt" in another state under Title I. Which state's laws are to govern?

S. 30, and related proposals, RELATING TO THE CONTROL OF ORGANIZED CRIME IN THE UNITED STATES: Hearing Before the Subcomm. No. 5 of the Comm. on the Judiciary, 91st Cong. (1970) (statement of Rep. John Conyers, Jr., Member, Abner Mikva, Member and William F. Ryan, Member, Commentary on the Judiciary, H.R. Rep. 91-1549).

It is manifest that scienter requirement as to the unlawfulness of the loan is necessary to provide a "fair warning" of what constitutes a violation of 18 U.S.C. § 1962(d). *See McBoyle v. United States,* 283 U.S. 25, 27 (1931). Consider a loan being made from a lender in Utah with no usury laws to a Connecticut resident where payday lending is completely disallowed. Is the loan *de facto* usurious or does it depend on some kind of choice of law analysis? Or consider a lender in Florida who follows all state payday lending regulations who makes a loan to a borrower in California, which just instituted a new regulatory requirement. Under the district court's jury instructions it would not matter that the Florida lender completely adhered to Florida's regulations and tried to follow both states' laws but did not know about the new legislation. Even worse, take a payday loan made from a lender in Nevada to a borrower in Delaware, both of which have no usury laws, but whose bank wire travels through payday-loan-unfriendly New Jersey. Can the government prosecute the lender under RICO based on New Jerseys' usury laws?

More specifically in this case, consider a 78 year-old man who has led an otherwise law-abiding life who partners with Native American tribes, knowing he is fully adherent to all of the regulations of the

Tribe's loan program and believing it is the Tribe that has "jurisdiction," but whose loans are made to individuals in a variety of states with inconsistent usury laws. Under the District Court's jury instructions neither his lawful intent nor his lack of knowledge of state usury laws matter. Within this massively complex regulatory and statutory framework, a willfulness requirement must be an element of RICO usury to connect the "evil-meaning mind with an evil-doing hand." *Morissette*, 342 U.S. at 251.

II. The Government's Wire Fraud Theory is Unprecedented and Fosters Overreach.

The Government has doggedly pursued an exorbitantly expansive wire fraud theory that is unmoored from the statutory text and lacks any limiting principle. According to the Government's theory, any false statement made in a civil case is wire fraud because it defrauds the counter party out of the cause of action. The Third Circuit's opinion approving of this theory: (1) conflicts with this Court's jurisprudence limiting wire fraud to traditionally recognized money or property; and (2) has disturbing implications on civil litigation as it lacks any limiting principle.[3]

Appellant did not raise this argument before the district court. Where a party has failed to make a contemporaneous objection, the federal rules recog-

[3] The Court is currently considering the breadth of the wire fraud statute in *Kelley v. United States*, 139 S.Ct. 2777, No. 18-1059 (U.S. June 28, 2019, *petition for cert. granted*, which may bear on the issues presented herein.

nize a limited right to appeal. Fed. R. Crim. P. 52(b) ("A plain error that affects substantial rights may be considered even though it was not brought to the court's attention."). The court may review an error under Rule 52(b) if (1) there was an error, (2) the error is clear or obvious, (3) the error materially prejudiced the substantial rights of the defendant, and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings. *United States v. Olano*, 507 U.S. 725, 732 (1993). Convicting a defendant for a crime that does not exist must easily satisfy plain error. *Olano*, 507 U,S, at 736 ("The court of appeals should no doubt correct a plain forfeited error that causes the conviction or sentencing of an actually innocent defendant, *see, e.g.*, *Wiborg v. United States*, 163 U.S. 632, 16 S.Ct. 1127, 41 L.Ed. 289 (1896), but we have never held that a Rule 52(b) remedy is only warranted in cases of actual innocence.").

A. The Third Circuit's Decision Departs Significantly From This Court's Jurisprudence Limiting Wire Fraud To Traditionally Recognized Money Or Property.

The Government's unprecedented wire fraud theory – that a cause of action is "traditionally recognized money or property" has no basis in the wire fraud statute and runs contrary to this Court's holdings. Wire fraud requires the government to prove two elements: that the defendant engaged in a scheme or artifice to defraud and that the "object of the fraud . . . be money or property in the victim's hands." *Pasquantino v. United States*, 544 U.S. at

355 (citation omitted). The statute is "limited in scope to the protection of property rights." *McNally v. United States*, 483 U.S. 350, 360 (1987). A property right under the mail and wire fraud statutes may be intangible, but only if the property has "long been recognized." *Carpenter v. United States*, 484 U.S. 19, 25-26 (1987). Moreover, any ambiguities about the statutes' coverage "should be resolved in favor of lenity." *Cleveland v. United States*, 531 U.S. 12, 24-25 (2000) (quoting *Rewis v. United States*, 401 U.S. 808, 812 (1971)).

A cause of action that has not been reduced to a final judgment has never been considered traditionally recognized money or property. Indeed, counsel is aware of no other case where the government has even taken the view in the wire fraud context that a mere right of action is traditionally protected money or property. That alone should foreclose the government's theory.

A mere cause of action lacks the characteristics of traditionally recognized money or property. This Court has held that one hallmark of money or property is transferability, which is absent from an unvested cause of action. Thus, in *Sekhar v. United States*, 570 U.S. 729, 737-38 (2013), this Court rejected the argument that under the Hobbs Act that it would be a violation of the wire fraud statute to defraud a lawyer out of his "intangible property right to give his disinterested legal opinion." *Id.* Citing this Court's interpretation of the wire fraud statute in *Cleveland,* 531 U.S. 12, this Court recognized that obtaining property requires "not only the deprivation but also the acquisition of property." *Sekhar*, 570

U.S. at 729 (citing *Schneidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393, 404 (2003) (citing *United States v. Enmons*, 410 U.S. 396, 400 (1973))). In other words, obtaining property "requires that the victim part with his property and that the extortionist gain possession of it." *Sekhar,* 570 U.S. at 734 (citations omitted). In this case, a simple cause of action cannot be transferred from person to person, i.e., Petitioner could not have "obtained" the Indiana plaintiff's cause of action.

Relatedly, property must have some present value "in the hands of the victim." *Cleveland*, 531 U.S. at 15. Thus, in *Cleveland*, this Court rejected a reading of the wire fraud statute that would make it illegal to fraudulently obtain a gambling license. This Court reasoned that in the hands of the state, the license had no present value. *Id.* at 26-27. The fact that the license, once issued, would earn money for the state did not change the calculus because it is the present value, not the expected value, that would be an indicia of property. *Id.* at 23-24. In Petitioner's case, a bald cause of action has no value – if anything it has significant legal costs. The fact that a cause of action could lead to the owner collecting money does not change the calculus, just as the fact that the gambling license could lead to the state collecting money did not qualify it as property. *Id.* at 26-27; *see also McNally*, 483 U.S. 350 (finding that the award of a contract was not money or property despite a possible future value).

Finally, in the context of the due process clause, this Court has sometimes referred to a cause of action as a "species of property," but it has consistently

held that the government only deprives someone of "money or property" when the cause of action is fully vested. Thus, in *Logan*, 455 U.S. 422, 430 (1928), this Court found that:

> The hallmark of property . . . is an individual entitlement grounded in state law, which cannot be removed except for cause. . . . A typical tort cause of action, whether based in statute or in the common law, does not provide a claimant with such an entitlement.

Id.; see *also Duke Power Co. v. Carolina Envt'l Study Grp.*, 438 U.S. 59, 88, n.32 (1978) ("[A] person has no property, no vested interest, in any rule of the common law."); *Bd. Of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972) ("To have a property interest in a benefit, a person must clearly have . . . a legitimate claim of entitlement to it."); *Bowers v. Whitman*, 671 F.3d 905, 914 (9th Cir. 2012) ("The reason an accrued cause of action is not a vested property interest for Takings Clause purposes until it results in a 'final unreviewable judgment,' is that it is inchoate and does not provide a certain expectation in that property interest."); *In re Kane*, 628 F.3d 631, 641 (3d Cir. 2010) (holding that a spouse lacked a property interest in the equitable division of assets until there was a final judgment). The Indiana plaintiffs brought a "typical tort cause of action . . . based in statute," whose "value [was] contingent", and did not provide them with "an individual entitlement." *Id.* The Indiana plaintiffs did not have property in their cause of action.

In sum, it is the right to collect on a final judgment that is money or property, not the cause of action itself. "Property consists in the free use, enjoyment, and disposal of all acquisitions." 1 WILLIAM BLACKSTONE, COMMENTARIES at *134 (1765). A cause of action is not an "acquisition" and lacks any hallmark of property. There is no entitlement to collect money in the midst of a cause of action whose contours are still being formed and whose ultimate resolution is inchoate and unpredictable.

B. This Court Should Grant the Petition Because the Implications of the Government's Wire Fraud Theory are Far-Reaching and Extremely Troubling.

The government's wire fraud theory threatens to convert court systems everywhere into a breeding ground for wire fraud cases. If making a false statement in any litigation were wire fraud because it deprives the party out of their lawsuit, then there is no delimiting principle.

Consider this example: an inmate submits a habeas petition arguing that the prosecutor failed to produce certain discovery. The prosecutor misleadingly states that he or she did produce the discovery and the habeas petition is denied. This course is unethical, but under the Government's theory in this case, the prosecutor would have committed wire fraud assuming documents were filed electronically. Or, consider the application of the Government's theory in another example: a husband in a divorce testifies in a deposition that he did not have an affair when he did. Because the husband "defrauded" the wife out of what could have been a better division of

assets, the husband would be said to have committed wire fraud.

Indeed, the massive amount of frivolous lawsuits brought each year present concerning implications. Whether it is someone suing Starbucks for using ice in cold drinks, *Pincus v. Starbucks Corp.*, 1:16-cv-04705, 2016 WL 8202286 (N.D. Ill. 2016); or a plaintiff suing Anheuiser Busch for causing him emotional distress because Bud Light did not bring him the beautiful women and tropical locations present in its ads, *Overton v. Anheuser-Busch*, 205 Mich.App. 259 (Mich. Ct. App. 1994); each of these lawsuits, although ultimately dismissed, could be the setting for a wire fraud prosecution if any party makes a misstatement therein. The worthless value of the lawsuit would not matter if the cause of action itself were property.

It is of course virtuous to promote honest dealings in litigation, but the government's theory has no limiting principle. Every deposition, every response to an interrogatory, every statement made by counsel could constitute a wire fraud prosecution. Moreover, it raises the very serious concern as to what counsel should do if they find that their client lied during a deposition but wanted to settle the case. Professional canons of ethics may prevent a lawyer from revealing his client's deception. *See, e.g.*, California State Bar Committee on Professional Responsibility and Conduct, Formal Opinion No. 1983-74 (finding that a lawyer is prevented from revealing a client' perjurious testimony in a civil trial). However, under the Government's theory, the lawyer would be complicit

in a conspiracy to commit wire fraud if he does not fully reveal his client's lies and settles the case.

CONCLUSION

This case is a prime example of prosecutorial overreach. As it now stands Petitioner will likely spend the rest of his life in prison for one crime where the jury never found scienter, and another charge that is not a crime at all. If the Third Circuit's decision stands, many more will likely be prosecuted for innocent conduct under theories that conflict with the other Courts of Appeals and this Court's precedents. For all the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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March 4, 2020

APPENDIX

APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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Nos. 18-2282 & 18-2539

———

UNITED STATES OF AMERICA,

v.

WHEELER K. NEFF,

Appellant in No. 18-2282

———

UNITED STATES OF AMERICA,

v.

CHARLES M. HALLINAN,

Appellant in No. 18-2539

———

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Nos. 2-16-cr-00130-001 & 2-16-cr-00130-002
District Judge: Honorable Eduardo C. Robreno

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
June 27, 2019

Before: CHAGARES, GREENAWAY, JR., and GREENBERG, *Circuit Judges.*

(Filed: September 6, 2019)

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OPINION*

CHAGARES, *Circuit Judge.*

Charles Hallinan and Wheeler Neff were convicted of conspiring to collect unlawful debts in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), federal fraud, and other crimes. Their RICO convictions are based on their efforts to skirt state usury laws by partnering with American Indian tribes to offer usurious payday loans. And their fraud convictions are based on their defrauding consumers who sued one of Hallinan's payday businesses into settling their case for a fraction of its worth. They now appeal their convictions and sentences on numerous grounds. We will affirm.

I.

We write for the parties and so recount only the facts necessary to our decision.

Payday loans are a form of short-term, high-interest credit, commonly due to be repaid with the borrower's next paycheck. The loans are not termed in interest rates, but rather in fixed dollar amounts. The borrower is required to pay this amount — termed a fee — in order to secure the loan and is charged this amount each time the borrower misses the due date to pay off the loan. As a result of this cycle, the annual percentage rates (APR) on payday loans are exceedingly high: 400% for loans made through brick-and-mortar shops on average, and 650% for those made through the internet. Seventeen states outright prohibit these types of loans by capping the allowable APR on consumer loans at 36% or less. Twenty-seven regulate these loans

* This disposition is not an opinion of the full court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

by imposing licensing requirements, limiting the size of the loans or the number of renewals, or by structuring APR limits to a cap that would not all but assure the prohibition of these loans. And only six states permitted unlicensed payday lending to their residents during the indictment period.

Hallinan has been partnering with Indian tribes to offer payday loans since 2003. In 2008, after a falling out with his first tribal partner, Hallinan joined up with Randall Ginger, a self-proclaimed "hereditary chief" of a Canadian Indian tribe. They met through Neff, an attorney who previously worked with Ginger and a different payday lender. In late 2008, Neff drafted contracts by which Hallinan sold one of his companies, Apex 1 Processing, Inc., to a sole proprietorship owned by Ginger — although none of Apex 1's operations changed and Ginger never actually became involved in them.

In March 2010, Apex 1 was sued in a class action in Indiana for violating various state consumer-credit laws. The plaintiffs sought over $13 million in statutory damages ($2,000 for five violations apiece against over 1,300 class members). Through Neff, Hallinan hired an attorney to defend Apex 1.

Hallinan and Neff replaced Ginger with the Guidiville tribe, a federally recognized Indian tribe based in the United States, in late 2010. In 2011, they also introduced the tribe to Adrian Rubin, Hallinan's former payday-lending business partner, and Neff drafted agreements to facially transfer Rubin's payday loan portfolio to the tribe while Rubin continued to provide the money for the loans and the employees to collect on them. From 2010 until 2013, Hallinan used new entities associated with this tribe to issue and collect debt from payday loans to borrowers across the county (including hundreds

with Pennsylvania residents) all of which had three-figure interest rates.

In July 2013, soon after the class was certified in the Indiana lawsuit, Neff sent Hallinan an email warning him that he faced personal liability of up to $10 million if the plaintiffs could prove that he did not really sell Apex 1 to Ginger. Neff advised: "[T]o correct the record as best we can at this stage, and present Apex 1 as owned by Ginger as intended, it would be helpful if [your accountant] could correct your tax returns and remove the reference to [Apex 1] on the returns and re-file those returns." Joint Appendix ("JA") 6890. He continued:

> Also, for settlement discussion purposes, it's important that Apex 1 not be doing any further business other than maintaining a minimum net worth. For that reason, if there is any business being done through Apex 1, it would be very helpful to have all such activity discontinued and retroactively transferred to another one of your many operating companies for the entire 2013 year. All that will tend to confirm that Ginger owned Apex 1 and there are only a minimal amount of assets available for settlement . . . .

Id. Hallinan forwarded this email to his accountant and wrote: "Please see the seventh paragraph down re; my tax returns. Then we can discuss this." JA 6889.

So Hallinan called Ginger and said, "I'll pay you ten grand a month if you will step up to the plate and say that you were the owner of Apex One Processing, and upon the successful conclusion of the lawsuit, I'll give you fifty grand." JA 6391. Hallinan also falsely testified in a deposition that: Apex 1 went out of business around 2010, he sold Apex 1 to Ginger in November 2008, he

became vice president after the sale and only made $10,000 a month, he resigned from Apex 1 in 2009 and stopped receiving payments, and he did not pay Apex l's legal fees. As Neff wrote in a later email, the goal was "to avoid any potential questioning . . . as to any deep pockets or responsible party associated with Apex 1." JA 7066. In April 2014, the plaintiffs settled the Indiana lawsuit for $260,000, which Hallinan paid through one of his payday-lending companies.

Later in 2014, the Government empaneled a grand jury to investigate Hallinan and Neff's payday-lending scheme, as well as their conduct in the Indiana class action (and Ginger's as well). As part of the investigation, the Government served subpoenas for documents on Apex l's attorneys in the Indiana case. They produced some documents but withheld or redacted others as privileged communications with their client, Apex 1. When the grand-jury judge held that any privilege was held by Apex 1, not Ginger, Ginger and Hallinan hired attorney Lisa A. Mathewson to represent Apex 1 and assert its privilege. Ginger signed Mathewson's engagement letter as Apex 1's "authorized representative," while Hallinan signed an agreement to pay Mathewson for her representation. Over the course of two years, Hallinan paid Mathewson over $400,000 to represent Apex 1 in the grand-jury investigation.

The Government also served document subpoenas on Hallinan's accountant. Among other documents, he produced the July 2013 email from Neff that Hallinan had forwarded to him. The Government moved to present this email to the grand jury. The district court concluded that the email was protected attorney work product but allowed it to be presented to the grand jury under the crime-fraud exception. Hallinan filed an interlocutory appeal to this Court. We held that the

crime-fraud exception did not apply since no actual act to further the fraud had been performed. *In re Grand Jury Matter #3*, 847 F.3d 157 (3d Cir. 2017).

The grand jury indicted Neff and Hallinan and later returned a seventeen-count superseding indictment. The first two counts charged them with RICO conspiracy to collect unlawful debt in violation of 18 U.S.C. § 1962(d). Counts three through eight charged them with defrauding and conspiring to defraud the Indiana plaintiffs, in violation of 18 U.S.C. §§ 371, 1341, 1343. Counts nine through seventeen charged Hallinan with money laundering in violation of 18 U.S.C. § 1956(a)(2)(A).

Before trial, the Government moved in limine to admit the July 2013 email. The Government's motion was based on the argument that the July 2013 email had furthered certain tax crimes, not the fraud that this Court considered, and so it was admissible under the crime-fraud exception despite this Court's earlier decision. After a hearing at which Hallinan's accountant testified, the District Court agreed and granted the motion.

Trial took place in the fall of 2017 over ten weeks. Neff testified extensively over the course of four days, including about the sources he consulted regarding the legality of tribal payday lending. The District Court did not permit him to testify about the details of those sources or to introduce them into evidence, however. Hallinan and Neff were convicted on all counts in November 2017.

In 2018, after a bench trial, the District Court ordered forfeiture of certain assets of both defendants. Hallinan was ordered to forfeit over $64 million in proceeds of the RICO enterprise as well as the funds in eighteen bank accounts and three cars as a part of his interest in the RICO enterprise. Neff was ordered to

forfeit his legal fees obtained from his participation in the RICO enterprise and a portion of his interest in his residence that corresponded with the home office in which he facilitated the conspiracies.

Then the District Court sentenced the defendants. As to Hallinan, the court calculated his total offense level to be 36, resulting in a Guidelines range of 188-235 months of imprisonment, which included a two-level enhancement for obstruction of justice. That enhancement was due to Hallinan's hiring of Mathewson to make privilege assertions on behalf of Apex 1 in the grand jury investigation. The court then granted a two-level downward departure based on Hallinan's age and poor health, and varied down one more level under 18 U.S.C. § 3553(a), resulting in a final offense level of 33 and a Guidelines range of 135-168 months of imprisonment. The court sentenced Hallinan to 168 months of imprisonment followed by three years of supervised release.

As to Neff, the Presentence Report set his offense level for the fraud charges at level 39, which included a 20-level upward adjustment for an intended loss amount exceeding $9.5 million. *See* U.S.S.G. § 2B1.1(b)(1)(K). That adjustment was based on his July 2013 email to Hallinan that set the risk of the Indiana lawsuit at $10 million. But the court instead applied a loss amount of $557,200, the amount of a settlement offer extended to the Indiana plaintiffs in December 2013. The court then varied downward from the Guidelines range of 121-151 and sentenced Neff to 96 months of imprisonment followed by three years of supervised release.

This timely appeal followed.

II.[1]

Hallinan and Neff challenge their convictions and sentences on nine distinct grounds. Both defendants challenge (A) the admission of the July 2013 email at trial; (B) the mens rea jury instruction; (C) the limit on Neff's testimony; and (D) whether they defrauded the Indiana plaintiffs of "property" under the mail and wire fraud statutes. Neff alone challenges (E) the tribal-immunity jury instruction; (F) the sufficiency of the evidence against him; and (G) the loss calculation at his sentencing. Hallinan alone challenges (H) his obstruction-of-justice enhancement and (I) his forfeiture and money judgment. We address these issues in turn.

A.

We begin with the admission of the July 2013 email at trial. The District Court admitted this email under the crime-fraud exception to attorney work-product privilege. The crime-fraud exception applies when "there is a reasonable basis to suspect (1) that the privilege holder was committing or intending to commit a crime or fraud, and (2) that the attorney-client communication or attorney work product was used in furtherance of that alleged crime or fraud." *In re Grand Jury*, 705 F.3d 133, 155 (3d Cir. 2012). The District Court determined that "there is a reasonable basis to suspect that (1) the defendants were committing or intended to commit tax crimes, and (2) the email was used in furtherance of those crimes," and that this Court's earlier decision did not "foreclose the possibility that the email was used in furtherance of a *different* crime or fraud." U.S. Supp. App. 129. "We review the District Court's determination

[1] The District Court had jurisdiction under 18 U.S.C. § 3231, and we have appellate jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

that there is sufficient evidence for the crime-fraud exception to apply for an abuse of discretion." In *re Grand Jury Subpoena*, 745 F.3d 681, 691 (3d Cir. 2014).

This determination was not an abuse of discretion. The evidence suggested that Hallinan's sale of Apex 1 to Ginger was a sham and that Hallinan continued to own and operate the company. After the July 2013 email, however, Hallinan ceased declaring this ownership on his taxes and ceased having his accountant file tax returns for Apex 1. This is the "actual act to further the [crime]" that we found lacking before. *In re Grand Jury Matter #3*, 847 F.3d at 160; *see* 26 U.S.C. § 7203 (prohibiting willfully failing to file a return); *id.* § 7206(1) (prohibiting willfully filing a return that the taxpayer "does not believe to be true and correct as to every material matter"). There is reason to suspect that the July 2013 email precipitated those acts, since it instructs Hallinan to "present Apex 1 as owned by Ginger." JA 6890. Although Hallinan took a different tack than Neff recommended, he nonetheless "used [this advice] to shape the contours of conduct intended to escape the reaches of the law." *In re Grand Jury Subpoena*, 745 F.3d at 693; *see also In re Grand Jury*, 705 F.3d at 157 ("All that is necessary is that the client misuse or intend to misuse the attorney's advice in furtherance of an improper purpose.").

The law-of-the-case doctrine does not compel a different result. Even if we conclude that the doctrine applies — that is, that this issue was either expressly or by implication decided in a prior appeal, *In re City of Phila. Litig.*, 158 F.3d 711, 718 (3d Cir. 1998) — any error is harmless. Far from the "lynchpin" of the Government's case, all this email showed was that Hallinan and Neff acknowledged the risk the Indiana lawsuit posed and were motivated to mitigate it. The

substantial sums that Hallinan paid to carry out the mitigation effort alone suffice as other evidence from which this fact could be gleaned.

B.

We turn next to the District Court's mens rea jury instruction. Both Neff and Hallinan argue that the District Court should have instructed the jury that their conduct must have been willful, not merely knowing. The difference is that the term "knowing" requires "only that the act be voluntary and intentional and not that a person knows that he is breaking the law," *United States v. Zehrbach*, 47 F.3d 1252, 1261 (3d Cir. 1995), while "willful" requires that the defendant knew that his conduct was unlawful, *see*, *e.g.*, *United States v. Starnes*, 583 F.3d 196, 210-11 (3d Cir. 2009). Since the defendants raised this objection at trial, our review is plenary. *United States v. Waller*, 654 F.3d 430, 434 (3d Cir. 2011).

"The RICO statute itself is silent on the issue of mens rea . . . ." *Genty v. Resolution Tr. Corp.*, 937 F.2d 899, 908 (3d Cir. 1991). "When interpreting federal criminal statutes that are silent on the required mental state, we read into the statute only that mens rea which is necessary to separate wrongful conduct from otherwise innocent conduct." *Elonis v. United States*, 135 S. Ct. 2001, 2010 (2015) (quotation marks omitted). Some statutes require a mens rea of willfulness to separate wrongful from innocent conduct, but for others, "a general requirement that a defendant act knowingly is itself an adequate safeguard." *Id. Compare*, *e.g.*, *Liporata v. United States*, 471 U.S. 419, 425 (1985) (holding that a statute prohibiting the unauthorized possession or use of food stamps required the defendant to know that his conduct was unauthorized), *with Carter v. United States*, 530 U.S. 255, 269 (2000) (holding that a statute

prohibiting taking items from a bank "by force and violence" does not require willfulness because "the concerns underlying the presumption in favor of scienter are fully satisfied" by proof of a taking at least by force), and *United States v. Int'l Minerals & Chem. Corp.*, 402 U.S. 558, 564-65 (1971) (concluding that a statute that criminalized the violation of a regulation regarding transportation of corrosive liquids only required a showing of knowledge and not willfulness in part because a company that is engaged in business involving significant risks to the public should know of the regulations applying to its business).

A conviction for conspiring to collect unlawful debt does not require willfulness to distinguish innocent from guilty conduct. Collecting an unlawful debt, like "a forceful taking," necessarily "falls outside the realm of the 'otherwise innocent.' *Id.* at 270. Reasonable people would know that collecting unlawful debt is unlawful. Moreover, those engaged in the business of debt collection, whose risks to the public are all too familiar, should be aware of the laws that apply to them, particularly laws determining an aspect as essential as how much interest they can charge. The Government therefore need prove only that a defendant knew that the debt collected "had the characteristics that brought it within the statutory definition of an unlawful debt. *Staples v. United States*, 511 U.S. 600, 602 (1994). The District Court did not err by declining to give a willfulness instruction.

C.

Next we consider the defendants' challenge to the limit that the District Court imposed on Neff's testimony. The District Court permitted Neff to testify about the legal sources he consulted concerning the legality of tribal lending, but not to testify about the

details of those sources or to introduce them into evidence. "We review the District Court's decisions as to the admissibility of evidence for abuse of discretion." *United States v. Serafini*, 233 F.3d 758, 768 n.14 (3d Cir. 2000).

This limitation was not an abuse of discretion. Testimony about what Neff reviewed goes to his good-faith defense — whether he honestly believed that the debt was lawful because of tribal sovereign immunity. But Neff wanted to prove more — that tribal immunity did make the debts lawful — and thus to refute the District Court's instruction to the contrary. Such efforts to convince the jury that the court had the law wrong "would usurp the District Court's pivotal role in explaining the law to the jury." *Berckeley Inv. Grp., Ltd. v. Colkitt*, 455 F.3d 195, 217 (3d Cir. 2006). The District Court rightly limited Neff s efforts to contest its legal explanations before the factfinder.

Basically conceding that the District Court's ruling was not an abuse of discretion, Neff and Hallinan claim instead that their constitutional right to "a meaningful opportunity to present a complete defense . . . must take precedence over an otherwise applicable evidentiary rule." Neff Br. 37; *see* Hallinan Br. 44-52. The Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485 (1984). "This right is abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve." *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (quotation marks and brackets omitted). But the Constitution permits courts "to exclude evidence that . . . poses an undue risk of 'harassment, prejudice, [or] confusion of the issues.' *Crane v. Kentucky*, 476 U.S. 683, 689-90 (1986) (quoting

Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)); *see also Holmes*, 547 U.S. at 314 ("[W]ell-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury."). The District Court's limitation was not irrational or arbitrary, but was justified by the risk that Neff s testimony would confuse or mislead the jury about the law, which the District Court is tasked with explaining.

D.

We turn to Neff and Hallinan's last joint argument: that an unvested cause of action is not a property right protected by the federal fraud statutes. Since they failed to raise this point before the District Court, we review it only for plain error. See *United States v. Gonzalez*, 905 F.3d 165, 182 (3d Cir. 2018). "Under plain error review, we require the defendants to show that there is: (1) an error; (2) that is 'clear or obvious'; and (3) that 'affected the appellants' substantial rights.' *Id.* at 182-83 (quoting *United States v. Stinson*, 734 F.3d 180, 184 (3d Cir. 2013)). "If those three prongs are satisfied, we have 'the *discretion* to remedy the error — discretion which ought to be exercised only if the error seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.'" *Stinson*, 734 F.3d at 184 (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

The federal mail and wire fraud statutes require that an individual intended to defraud someone of "money or property." 18 U.S.C. §§ 1341, 1343. The Supreme Court has held that these statutes are "limited in scope to the protection of property rights." *McNally v. United States*, 483 U.S. 350, 360 (1987). "[T]o determine whether a particular interest is property for purposes of the fraud

statutes, we look to whether the law traditionally has recognized and enforced it as a property right." *United States v. Henry*, 29 F.3d 112, 115 (3d Cir. 1994).

We do not see a plain error with applying the fraud statutes here. The Supreme Court has upheld fraud convictions based on schemes to defraud victims of "[t]he right to be paid money," which "has long been thought to be a species of property." *Pasquantino v. United States*, 544 U.S. 349, 356 (2005). In *Pasquantino*, the Court held that a country's "right to uncollected excise taxes" is "an entitlement to collect money," the possession of which is "property" within the meaning of the wire fraud statute. *Id.* at 355-56. Along those lines, we recently held that the right to the uncollected fines and costs associated with unadjudicated traffic tickets — claims that a motor-vehicle-code violation has taken place — constituted "a property interest." *United States v. Hird*, 913 F.3d 332, 339-45 (3d Cir. 2019). An unadjudicated civil cause of action is sufficiently similar under plain-error review. *Black's Law Dictionary* defines "cause of action" as "a factual situation that entitles one person to obtain a remedy in court from another person." *Black's Law Dictionary* (11th ed. 2019). An entitlement to a remedy is like an entitlement to money (the most common remedy). In addition, the Supreme Court has held that "a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982); *see also Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). While Neff argues that "[t]hese cases speak of 'property' in the unique context of the 14th Amendment," Neff Reply 22-23, he never explains why they do not still illuminate "whether the law traditionally has recognized and enforced [a cause of action] as a property right," *Henry*, 29 F.3d at 115. This caselaw suggests that it was not an error —

at a minimum, not a clear and obvious plain error — to consider a cause of action to be property protected by the fraud statutes.

Neff and Hallinan's other responses are similarly unpersuasive. They cite cases "in other contexts [that have] concluded that there are no vested property interests in a cause of action before final judgment," Hallinan Br. 41, but they cite no authority suggesting that property rights must be vested for the fraud statutes to protect them. They also make a policy argument: that this theory transfigures "misstatements during civil litigation into a felony," Hallinan Br. 40, which "would have enormous ramifications in both the civil and criminal contexts," Neff Reply 24 n.9. But the fraud statutes are concerned with *fraud* — "false representations, suppression of the truth, or deliberate disregard for the truth." Third Circuit Model Jury Instructions § 6.18.1341-1. We reject the suggestion that "every civil litigant" commits fraud in the regular course of litigation. Hallinan Reply 16. Finally, the rule of lenity does not require a different conclusion: it controls "only if, after seizing everything from which aid can be derived, we can make no more than a guess as to what Congress intended." *Muscarello v. United States*, 524 U.S. 125, 138 (1998) (alterations and quotation marks omitted). There is no such "grievous ambiguity or uncertainty" here. *Huddleston v. United States*, 415 U.S. 814, 831 (1974). Instead, "[v]aluable entitlements like these are 'property' as that term ordinarily is employed." *Pasquantino*, 544 U.S. at 356 (citing *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004) ("When interpreting a statute, we must give words their ordinary or natural meaning."), and *Black's Law Dictionary* 1382 (4th ed. 1951) (defining "property" as "extend[ing] to every species of valuable right and interest")). So, it was not a plain

error to consider a cause of action to be "property" protected by the fraud statutes.

E.

Turning now to the defendants' individual arguments, Neff alone challenges the court's tribal-immunity instruction. The District Court told the jury that tribal sovereign immunity "protects federally recognized Indian tribes from being sued" such that "individual states do not have the authority to apply their laws to Indian tribes," but that it "does not provide a tribe or its members with any rights to violate the laws of any states" or "with any immunity from criminal prosecution." JA 5985-86. Neff argues that this instruction foreclosed a debatable question: whether an Indian tribe that lends money at usurious rates has engaged in the "collection of an unlawful debt" under RICO. Since he did not object on this basis in the trial court, we review only for plain error.

We see no plain error with respect to this instruction. RICO defines an unlawful debt as an unenforceable usurious one, and it looks to state or federal law to distinguish between enforceable and unenforceable interest rates. See 18 U.S.C. § 1961(6). Sovereign immunity, on the other hand, is simply a "common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). Tribal sovereign immunity thus limits how states can enforce their laws against tribes or arms of tribes, but, contrary to Neff s understanding, it does not transfigure debts that are otherwise unlawful under RICO into lawful ones. *See*, *e.g.*, Neff Br. 16 ("Tribal Sovereign immunity made those loans lawful."). A debt can be "unlawful" for RICO purposes even if tribal sovereign immunity might stymie a state civil enforcement action or consumer suit (or even a state usury prosecution,

although tribal sovereign immunity does not impede a state from "resort[ing] to its criminal law" and "prosecuting" offenders, *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014)). The possibility of a successful state lawsuit is not an element of a RICO offense. And so the tribal-immunity instruction was not plain error.

F.

Neff also challenges the sufficiency of the Government's evidence against him. When assessing challenges to the sufficiency of the evidence, we ask only whether some rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the prosecution. See, e.g., *United States v. Shaw*, 891 F.3d 441, 452 (3d Cir. 2018). The answer here is yes. For example, when Hallinan partnered with a new tribe in 2010, it was Neff who emailed the tribe to advise them that their payday-lending ordinance's cap on interest at a legally enforceable rate "would render the loan program unfeasible from the outset," U.S. Supp. App. 775, and would be "a deal killer, which would require us to immediately move on to another tribe," JA 2979. And it was Neff who suggested rewriting the faux contracts to nominally grant the tribe the majority of payday-lending revenues to make the "optics" of them "much better" without changing the actual negligible percentage the tribe received, but warned that assigning the tribe the lion's share of the revenue "would seem bogus on its face," would "invite a further inquiry into the details," and "would be very suspicious to people." JA 3091, 3094-95. A rational factfinder could have concluded that Neff knowingly conspired to collect unlawful debts.

G.

Neff's final challenge is to the District Court's loss calculation at his sentencing. The District Court found that the intended loss of Neff's fraud on the Indiana class-action plaintiffs was $10 million — but, finding this amount overstated the offense's seriousness, keyed the loss for purposes of the Guidelines to the $557,200 settlement offer instead. Neff argues that the Indiana plaintiffs did not actually lose $10 million, but that argument ignores that the District Court concluded "that the *intended* loss" — not the *actual* loss — "was $10 million," JA 7898, and that under the Guidelines the relevant "loss is the greater of actual loss or intended loss," U.S.S.G. § 2B1.1 note 3(A). And we see no clear error with the District Court's factual finding about the amount of loss Neff intended, which finds support in the record based on Neff s assertion in the June 2013 email about a possible $10 million award to the Indiana plaintiffs. See *United States v. Napier*, 273 F.3d 276, 278 (3d Cir. 2001). An error would have been harmless anyway, since the District Court used the settlement offer despite its intended-loss finding. See e.g., *United States v. Jimenez*, 513 F.3d 62, 87 (3d Cir. 2008).

We also reject Neff's contention that he intended no "loss" at all as that term is used in the Guidelines. He relies on our decision in *United States v. Free*, 839 F.3d 308, 323 (3d Cir. 2016), but there we merely rejected the "view that the concept of 'loss' under the Guidelines is broad enough to cover injuries like abstract harm to the judiciary." The "narrower meaning" of loss that we endorsed — "i.e., pecuniary harm suffered by or intended to be suffered by victims," *id.* — encompasses the loss in this case. So we will affirm the District Court's loss calculation.

H.

We now turn to Hallinan's individual challenges. He first contests the obstruction-of-justice enhancement applied at sentencing. See U.S.S.G. § 3C1.1. The District Court found that this enhancement applied to Hallinan due to the hiring of Mathewson (whom Hallinan paid) to assert privilege on behalf of Apex 1 — in the court's view, a defunct company that Hallinan claimed not to own, which would not have asserted privilege but for Hallinan's machinations — and his attempts to influence Mathewson after hiring her. This arrangement, the court concluded, amounted to "a sham organized to protect Hallinan, and to prevent the effective prosecution of this case." JA 8163. We review the factual finding that Hallinan willfully obstructed or attempted to obstruct justice for clear error. *Napier*, 273 F.3d at 278.

We are not left with the definite and firm conviction that a mistake has been made based on the facts and the reasonable inferences from them. *See*, *e.g.*, *United States v. Grier*, 475 F.3d 556, 570 (3d Cir. 2007). The trial evidence laid bare Hallinan's relationship with Apex 1. His own testimony in the Indiana case was that he sold the company to Ginger in 2008, he stopped being involved with it in 2009, and the company ceased doing business in 2010. Yet he funded and orchestrated its litigation defense in that case for years afterward, before eventually paying Ginger $10,000 a month to "step up to the plate" and assert ownership. JA 6391. It is a reasonable inference that Hallinan controlled Apex 1 through Ginger and that it was his decision to hire Mathewson to assert Apex 1's privilege in an attempt to impede the grand jury investigation. Or, as the District Court put it at the August 2017 motions hearing, it was "abundantly clear that Apex's reason for its existence is

only to assert this privilege." JA 326. Regardless of the validity of Apex l's privilege assertions, the evidence is sufficient to conclude that the District Court's factual finding that Hallinan willfully obstructed or attempted to obstruct justice was not clearly erroneous.

I.

Finally, we turn to Hallinan's challenges to the District Court's forfeiture order and calculation of the money judgment against him. Under 18 U.S.C. § 1963, RICO convictions carry mandatory forfeiture. The Government must prove the relationship between the property interest to be forfeited and the RICO violations beyond a reasonable doubt. *United States v. Pelullo*, 14 F.3d 881, 906 (3d Cir. 1994). Since the District Court conducted a bench trial on forfeiture after Hallinan waived his right to a jury trial, "we review [its] findings of facts for clear error and exercise plenary review over conclusions of law." *Norfolk S. Ry. Co. v. Pittsburgh & W. Va. R.R.*, 870 F.3d 244, 253 (3d Cir. 2017). Hallinan contests the forfeiture order and money judgment on three grounds. None is persuasive.

1.

First, Hallinan challenges the forfeiture of the funds in five bank accounts in his own name (identified as Properties 14-18 in the forfeiture order). The District Court found that "[t]he evidence at trial and at the forfeiture hearing establishes that the specific property listed as Properties 14 through 18 are funds received in bank accounts from Hallinan Capital Corp., which is part of the [RICO enterprise]," and so the properties "are forfeitable pursuant to 18 U.S.C. § 1963(a)(2)(A)." U.S. Supp. App. 622. Section 1963(a)(2)(A) provides: "Whoever violates any provision of section 1962 of this chapter . . . shall forfeit to the United States . . . any . . . interest in . . . any enterprise which the person

has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962."

We see no clear error with the District Court's finding that the money in these accounts was a part of Hallinan's interest in the RICO enterprise. The Government offered the affidavit and testimony of a financial analyst to support this finding. That evidence showed deposits from accounts owned by Hallinan Capital Corporation (HCC) into each of these accounts. The court found the lowest balance in each account after the HCC deposits to be forfeitable enterprise funds. This finding is therefore supported by the record.

Hallinan does not dispute this evidence, but argues only that identifying his interest in the enterprise in this way contravenes our decision in *United States v. Voigt*, 89 F.3d 1050 (3d Cir. 1996). He is incorrect. In *Voigt*, we considered how to identify "property traceable to [tainted] property" under 18 U.S.C. § 982, not the "interest in . . . any enterprise" under § 1963(a)(2)(A) or the meaning of "cannot be divided without difficulty" as used in substitute-asset provisions more broadly. While the RICO statute also requires that the Government proceed by way of the substitute-asset provision where property "has been commingled with other property which cannot be divided without difficulty," 18 U.S.C. § 1963(m)(5), the term "traceable to" appears nowhere in the statute. Rather, as we acknowledged in *Voigt*, "[t]he RICO forfeiture provision is by far the most far reaching" of the criminal-forfeiture provisions because it "is extremely broad and sweeping," encompassing forfeiture of "any interest the person has acquired or maintained in violation of [§] 1962, . . . any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over . . . any enterprise which the person has established,

operated, controlled, conducted, or participated in the conduct of in violation of [§] 1962[,] . . . [and] any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity . . . in violation of section 1962." *Voigt*, 89 F.3d at 1083-84 (quotation marks omitted) (quoting 18 U.S.C. § 1963(a)(1)—(3)). The District Court's determination of Hallinan's interest in the RICO enterprise under § 1963 therefore did not run afoul of our decision in *Voigt*.[2]

2.

Hallinan next argues that the District Court did not sufficiently exclude proceeds from the six states where payday lending is legal. This too is a factual finding that we review only for clear error. See *Norfolk S. Ry. Co.*, 870 F.3d at 253.

To account for those states, the District Court excluded 4.79% of Hallinan's gross proceeds, which was the percentage of "leads" (or payday-loan candidates identified with online data) that came from those states. Hallinan concedes that "the government can use reasonable extrapolations to calculate illegal proceeds." Hallinan Br. 60. And he gives no reason to think that the percentage of legal leads is not a reasonable

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[2] We acknowledge that the case on which the District Court relied also dealt with a different forfeiture provision with a different standard of proof *See United States v. Banco Cafetero Panama*, 797 F.2d 1154 (2d Cir. 1986). But even if we were to conclude that the District Court erred, the error would probably be harmless, since the Government had the authority to seek forfeiture under the substitute-asset provision and provided Hallinan ample notice it would do so, and the District Court had already found that substitute assets would be proper. *See United States v. Hallinan*, No. 16-130-01, 2018 WL 3141533, at *5, *12-13 (E.D. Pa. June 27, 2018).

approximation of the percentage of legal loans. He does not show, for example, that a lead from Delaware was meaningfully more likely to become a loan than a lead from California. With no evidence disrupting the reasonable inference that lead states correlate to loan states, we cannot conclude that the District Court's factual finding was clearly erroneous.

Hallinan's counterarguments rest on the fact that very few leads became loans — only .15%. From this, he asserts that "it was over 99% certain that there was no correlation between leads and loans." Hallinan Br. 61. But the fact that few leads became loans says nothing about whether the distribution of leads among the states correlates with that of the loans. Hallinan also contends that "the small sample size of the leads also make[s] any correlation statistically insignificant." *Id.* But the Government analyzed a*ll* the leads and then offered the reasonable inference that the distribution among states would be the same for the loans, which Hallinan has not rebutted. It did not rely on a sample of leads at all. So there was no clear error.

3.

Third, and finally, Hallinan contests the District Court's interpretation of what constitutes forfeitable RICO "proceeds" under 18 U.S.C. § 1963(a)(3). When determining Hallinan's RICO "proceeds," the District Court excluded "the costs the unlawful enterprise incurs as a result of performing the contracts" — that is, "the principal extended to borrowers" — but not the enterprise's "regular business expenses." U.S. Supp. App. 616-17 (emphasis omitted). Hallinan concedes that his "overhead such as office space, supplies, or taxes" is not deductible. Hallinan Br. 63. And the Government does not challenge on appeal the deduction of the principal of the loans (although it did before the District Court).

See Gov. Br. 150 & n.53. The issue on appeal is a narrow one: whether the District Court was wrong not to deduct certain operational expenses — for example, "marketing, credit fees, and salaries," Hallinan Br. 63 — when determining the RICO "proceeds" to be forfeited under § 1963(a)(3). Whether the term "proceeds" in § 1963(a)(3) excludes these expenses is a question of law over which we exercise plenary review. See *Norfolk S. Ry. Co.*, 870 F.3d at 253.

The District Court relied on the reasoning of the Court of Appeals for the Second Circuit in *United States v. Lizza Industries, Inc.*, 775 F.2d 492 (2d Cir. 1985). There, the court endorsed "deducting from the money received on the illegal contracts *only* the direct costs incurred in performing those contracts." *Id.* at 498. It explained:

> Forfeiture under RICO is a punitive, not restitutive, measure. Often proof of overhead expenses and the like is subject to bookkeeping conjecture and is therefore speculative. RICO does not require the prosecution to prove or the trial court to resolve complex computations, so as to ensure that a convicted racketeer is not deprived of a single farthing more than his criminal acts produced. RICO's object is to prevent the practice of racketeering, not to make the punishment so slight that the economic risk of being caught is worth the potential gain. Using net profits as the measure for forfeiture could tip such business decisions in favor of illegal conduct.

Id. at 498-99. In other words, the court interpreted "proceeds" in the RICO statute to mean gross profits — total revenues minus marginal costs, but not fixed costs.

The District Court did not err by adopting this reasoning to refuse to deduct the operational expenses such as marketing, credit processing, and collection fees from Hallinan's forfeitable RICO "proceeds." Our Court has not interpreted the meaning of "proceeds" in § 1963(a)(3), but many other Courts of Appeals have interpreted it to mean gross *receipts* — a broader definition than that adopted by the court in *Lizza Industries a*nd the District Court here. *See*, *e.g.*, *United States v. Christensen*, 828 F.3d 763, 822 (9th Cir. 2015) ("We agree with the view that 'proceeds' in the RICO forfeiture statute refers to gross receipts rather than net profits."); *United States v. Simmons*, 154 F.3d 765, 770-71 (8th Cir. 1998); *United States v. McHan*, 101 F.3d 1027, 1041-43 (4th Cir. 1996); *United States v. Hurley*, 63 F.3d 1, 21 (1st Cir. 1995); cf. *United States v. DeFries*, 129 F.3d 1293, 1315 (D.C. Cir. 1997) (concluding that taxes paid on illegal profits should not be deducted from the calculation of RICO "proceeds"). Only the Court of Appeals for the Seventh Circuit has interpreted "proceeds" in § 1963(a)(3) more narrowly than the District Court to mean net profits. See *United States v. Genova*, 333 F.3d 750, 761 (7th Cir. 2003) (explaining that proceeds in § 1963(a)(3) means "profits net of the costs of the criminal business"); *United States v. Masters*, 924 F.2d 1362, 1369-70 (7th Cir. 1991). The District Court did not err by taking a more conservative view than that adopted by the majority of the Courts of Appeals. Since the District Court excluded the principal of the loans and Hallinan does not contest the inclusion of his overhead and taxes, we need not and do not decide whether "proceeds" means, more broadly, gross receipts.

III.

For these reasons, we will affirm Neff's and Hallinan's judgments of conviction and sentence.

APPENDIX B

UNITED STATES DISTRICT COURT
Eastern District of Pennsylvania

Case Number: DPAE2: 16CR000130-001

USM Number:

Edwin Jacobs, Esq.
Defendant's Attorney

UNITED STATES OF AMERICA

v.

CHARLES HALLINAN

Filed July 06 2018

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

X was found guilty on count(s) after a plea of not guilty. 1s,2s,3s,4s,5s,6s,7s,8s,9s,10s,11s,12s,13s,14s,15s,16s & 17s

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18: 1962(d)	RICO Conspiracy.	December 2013	1s
18: 1962(d)	RICO Conspiracy.	December2013	2s
18: 371	Conspiracy.	December 2013	3s
18: 1341 & 2	Mail fraud.	December 2013	4s
18: 1341 & 2	Mail fraud.	December 2013	5s
18: 1343 & 2	Wire fraud.	December 2013	6s

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)_____

☐ Count(s)_____

☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

July 6, 2018
Date of Imposition of Judgment

/s/ Eduardo C. Robreno
Signature of Judge

Hon. Eduardo C. Robreno, U.S. District Judge
Name and Title of Judge

Date signed: 7/6/18

ADDITIONAL COUNTS OF CONVICTION

ADDITIONAL COUNTS OF CONVICTION			
Title & Section	Nature of Offense	Offense Ended	Count
18: 1343 & 2	Wire fraud.	December 2013	7s
18: 1343 & 2	Wire fraud.	December 2013	8s
18: 1956(a)(2)(A) &2	Money laundering.	December 2013	9s
18: 1956(a)(2)(A) &2	Money laundering.	December 2013	10s
18: 1956(a)(2)(A) &2	Money laundering.	December 2013	11s
18: 1956(a)(2)(A) &2	Money laundering.	December 2013	12s
18: 1956(a)(2)(A) &2	Money laundering.	December 2013	13s
18: 1956(a)(2)(A) &2	Money laundering.	December 2013	14s
18: 1956(a)(2)(A) &2	Money laundering.	December 2013	15s
18: 1956(a)(2)(A) &2	Money laundering.	December 2013	16s
18: 1956(a)(2)(A) &2	Money laundering.	December 2013	17s

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

168 MONTHS, This term consists of 168 months on counts 1, 2, and 4 through 17, and a term of 60 on counts 3, all such terms to run concurrently, to produce a total term of 168 months.

X The court makes the following recommendations to the Bureau of Prisons:
It is recommended that the Defendant be designated to FMC Butner.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

☐ at_____ ☐ a.m. ☐ p.m. on_____

☐ as notified by the United States Marshal.

X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

X before 2 p.m. on July 17, 2018

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows;

Defendant delivered on _____ to _____ at _____ , with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

By_____

DEPUTY UNITED STATES MARSHAL

_____

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 YEARS.

_____

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)

4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. X You must cooperate in the collection of DNA as directed by the probation officer. *(check if* applicable*)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as

the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions, available at:* www.uscourts.gov.

Defendant's Signature _____ Date _____

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall provide the U.S. Probation Office with full disclosure of his financial records to include yearly income tax returns upon the request of the U.S. Probation Office. The defendant shall cooperate with the probation officer in the investigation of his financial dealings and shall provide truthful monthly statements of his income, if so requested.

The defendant is prohibited from incurring any new credit charges or opening additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with a payment schedule for any fine or restitution obligation. The defendant shall not encumber or liquidate interest in any assets unless it is direct service of the fine or restitution obligation or otherwise has the express approval of the Court.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessments	Fine	Restitution
TOTALS	$ 1,700.00	$ 0.00	$ 2,500,000.00	$ 0.00

X The determination of restitution is deferred.

An *Amended Judgment in a Criminal Case (AO 245C)* will be entered until after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
TOTALS	$_____	$_____	

☐ Restitution amount ordered pursuant to plea agreement
$_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for
☐ fine ☐ restitution

☐ the interest requirement for
☐ fine ☐ restitution

is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A X Lump sum payment of $ 2,501,700.00 due immediately, balance due

☐ not later than _____, or

X in accordance with ☐ C ☐ D, ☐ E, or X ☐F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C ☐ D, or ☐ F below; or

C ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $_____over a period of _____*(e.g., months or years),* to commence _____*(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $_____over a period of _____*(e.g., months or years),* to commence _____*(e.g., 30 or 60 days))* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F X Special instructions regarding the payment of criminal monetary penalties:

The fine and special assessment are due immediately and shall be paid in full within 90 days of the date of this judgment.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number),* Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

X The defendant shall forfeit the defendant's interest in the following property to the United States: See exhibit A to this judgment and commitment order for the Court's ruling on forfeiture.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

FORFEITURE

1. As a result of the offenses charged in Counts One and Two of the Superseding Indictment, as to which the jury found Defendant Charles M. Hallinan guilty, and pursuant to 18 U.S.C. § 1963(a), Hallinan shall forfeit to the United States (1) any interest in, or property or contractual right of any kind affording a source of influence over any enterprise which Hallinan has established, controlled, conducted, or participated in the conduct of, in violation of 18 U.S.C. § 1962, see 18 U.S.C. § 1963(a)(2)(D); and (2) any property constituting, or derived from, any proceeds which Hallinan obtained, directly or indirectly, from unlawful debt collection, in violation of 18 U.S.C. § 1962, see 18 U.S.C. § 1963(a)(3).

2. Based on the record, the Court finds, beyond a reasonable doubt, that the value of any property constituting, or derived from, any proceeds which Hallinan obtained, directly or indirectly, from unlawful debt collection, in violation of 18 U.S.C. § 1962, as a result of the offenses charged in Counts One and Two of the Superseding Indictment, is $64,300,829.90.

3. Based on the record, the Court finds, beyond a reasonable doubt, that the Hallinan Payday Lending Enterprise ("HDPLE"), as described in Paragraph 8 of the Court's findings of fact, is an enterprise that Hallinan has established, controlled, conducted, or participated in the conduct of, in violation of 18 U.S.C. § 1962. Therefore, Hallinan shall forfeit to the United States any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over the HPDLE, pursuant to 18 U.S.C. § 1963(a)(2).

4. This sum is subject to forfeiture pursuant to 18 U.S.C. § 1963(a)(3).

5. Therefore, a money judgment in the amount of $64,300,829.90 is hereby entered and ordered against Hallinan.

6. As a result of the offenses charged in Counts Nine through Seventeen of the Superseding Indictment, as to which the jury found Hallinan guilty, and pursuant to 18 U.S.C. § 982(a)(1), Hallinan shall forfeit to the United States any property, real or personal, involved in the commission of the offenses charged in Counts Nine through Seventeen of the Superseding Indictment, or any property traceable to such property.

7. Based on the record, the Court finds, by a preponderance of the evidence, that the value of any property, real or personal, involved in the commission of the offenses charged in Counts Nine through Seventeen of the Superseding Indictment, or any property traceable to such property, is $90,000.

8. This sum is subject to forfeiture pursuant to 18 U.S.C. § 982(a) (1).

9. Therefore, a money judgment in the amount of $90,000 is hereby entered and ordered against Hallinan.

10. The money judgments ordered in Paragraphs 5 and 9 of this Order shall run concurrently.

11. The Court finds, by a preponderance of the evidence, that the Government has established that, as a result of Hallinan's acts and omissions, the proceeds that Hallinan obtained from the commission of the offenses charged in Counts One and Seventeen of the Superseding Indictment, that is, $64,300,829.90 in

proceeds, and the property involved in the money laundering offenses charged in Counts Nine through Seventeen, that is $90,000, cannot be located upon the exercise of due diligence, and have been commingled with other property that cannot be subdivided without difficulty.

12. Therefore, pursuant to 18 U.S.C. § 1963(m) and 21 U.S.C. § 853(p), the Government is entitled to forfeit substitute assets equal to the value of the proceeds that Defendant Neff obtained as a result of his commission of the offense charged in Counts One and Two of the Superseding Indictment, that is, $64,300,829.90, and the property involved in money laundering charged in Counts Nine through Seventeen of the Superseding Indictment, that is, $90,000.

13. The United States has identified the following specific substitute assets in which Hallinan has a right, title or interest which the Government seeks to forfeit pursuant to 18 U.S.C. § 1963(m), 21 U.S.C. § 853(p), and Federal Rule of Criminal Procedure 32.2(b)(2)(A):

> a. All right, title and interest in real property located at 641 N. Spring Mill Road, Villanova, Pennsylvania, with all improvements, appurtenances and attachments thereon.

14. Pursuant to 18 U.S.C. § 1963(m) and 21 U.S.C. § 853(p)(2), Hallinan's right, title and interest in the property identified in Paragraph 13(a) of this Order is hereby forfeited to the United States.

15. Upon entry of this Order, the United States is authorized to seize the property identified in Paragraph 12(a) of this Order.

16. The net proceeds from the forfeiture and sale of the property identified in Paragraph 13(a) of this Order shall be applied against the $64,300,829.90 and $90,000 forfeiture money judgments ordered in Paragraphs 5 and 8 of this Order, in partial satisfaction thereof.

17. Based on the record, the Court finds, beyond a reasonable doubt, that the following specific property is property that is an interest in the RICO enterprise, which Hallinan established, controlled, conducted, or participated in the conduct of, in violation of 18 U.S.C. § 1962, as charged in Counts One and Two of the Superseding Indictment:

a. All funds in account number 009418321146 in the name of Hallinan Capital Corp., at Bank of America;

b. All funds in account number 6236347844 in the name of Hallinan Capital Corp., at Citizens Bank;

c. All funds in account number 9943232101 in the name of Hallinan Capital Corp., at Vanguard;

d. All funds in account number 6236347690 in the name of Apex 1 Lead Generators, at Citizens Bank;

e. All funds in account number 6236347771 in the name of Blue Water Funding Group, LLC, at Citizens Bank;

f. All funds in account number 6236347879 in the name of Mill Realty Management, LLC, at Citizens Bank;

g. All funds in account number 88044257268 in the name of Apex 1 Processing, at Vanguard;

h. All funds in account number 271501789868 in the name of Apex 1 Processing, Inc., d/b/a Cash Advance Network, at Power Pay, EVO Payments International;

i. All funds in account number 271501796475 in the name of Apex 1 Processing, Inc., d/b/a Instant Cash USA, at Power Pay, EVO Payments International;

j. All funds in account number 271501796327 in the name of Apex 1 Processing, Inc., d/b/a Paycheck Today, at Power Pay, EVO Payments International;

k. All funds in account number 27150179590 in the name of Fifth Avenue Financial, Inc., d/b/a My Next Paycheck, at Power Pay, EVO Payments International;

l. All funds in account number 271501796665 in the name of Palmetto Financial, Inc., d/b/a My Payday Advance, at Power Pay, EVO Payments International;

m. All funds in account number 271501796707 in the name of Sabal Financial, Inc., d/b/a Your Fast Payday, at Power Pay, EVO Payments International;

n. Funds in the amount of $92,587.23 in account number 623021206, in the name of Charles Hallinan, at Morgan Stanley;

o. Funds in the amount of $58,461.62 in account number 009466692476, in the name of Charles Hallinan, at Bank of America;

p. Funds in the amount of $20,665.75 in account number 009001408711, in the name of Charles Hallinan, at Bank of America;

q. Funds in the amount of $100,930.00 in account number 7101622806, in the name of Charles M. Hallinan, at Bank of Leumi;

r. Funds in the amount of $211,648.99 in account number 4300263160, in the name of Charles Hallinan, at TD Bank;

s. One (1) 2014 Bentley Flying Spur bearing Vehicle Identification Number SCBEC9ZA7EC092 360;

t. One (1) 2015 Mercedes Benz S550 bearing Vehicle Identification Number WDDUG8FB3FA1 23337; and

u. One (1) 2015 Mercedes Benz S550V4, bearing Vehicle Identification Number WDDUG 8FB3FA123322.

18. Therefore, Hallinan's right, title, and interest in the property identified in Paragraph 17(a)-(u) of this Order is hereby forfeited to the United States.

19. Upon entry of this Order, the United States is authorized to conduct any discovery necessary to identify, locate or dispose of property subject to forfeiture, in accordance with Federal Rule of Criminal Procedure 32.2(b)(3).

20. The net proceeds from the forfeiture and sale of the property identified in Paragraphs 13(a) and 17(a)-(u) shall be applied against the $64,300,829.90 and $90,000 forfeiture money judgments, in partial satisfaction thereof.

21. Pursuant to 18 U.S.C. § 1963(1), the United States shall, upon entry of this Order, post on an official internet government forfeiture site (http://www.forfeiture.gov) for at least thirty consecutive days, notice of the Government's intent to dispose of

the property identified above in Paragraphs 13(a) and 17(a)-(u) of this Order in such manner as the Attorney General may direct. This notice shall state that any person, other than Hallinan, having or claiming a legal interest in any of the property subject to this Order must file a petition with the Court within sixty days after the first day of publication on the official internet government forfeiture site. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title or interest in each of the forfeited properties and any additional facts supporting the petitioner's claim, and the relief sought.

22. The United States shall also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property identified above in Paragraphs 13(a) and 17(a)-(u) of this Order, or to his or her attorney, if he or she is represented, as a substitute for published notice as to those persons so notified. If direct written notice is provided, any person having or claiming a legal interest in any of the property subject to this Order must file a petition with the Court within thirty (30) days after the notice is received.

23. Any person, other than Hallinan, asserting a legal interest in the property identified above in Paragraphs 13(a) and 17(a)-(u) of this Order may, within the time periods described above for notice by publication and for direct written notice, petition the court for a hearing, without a jury, to adjudicate the validity of his or her alleged interest in the subject property, and

for an amendment of the order of forfeiture, pursuant to 18 U.S.C. § 1963(1) and 21 U.S.C. § 853(n).

24. After disposition of any motion filed under Federal Rule of Criminal Procedure 32.2(c)(1)(A) and before a hearing on a petition filed under 18 U.S.C. § 1963(1) or 21 U.S.C. § 853(n)(2), discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues pursuant to Federal Rule of Criminal Procedure 32.2(c)(1)(B).

25. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Federal Rule of Criminal Procedure 32.2(b)(2)(C).

26. The Clerk of Court shall deliver a copy of this Judgment and Final Order of Forfeiture to the Federal Bureau of Investigation, the United States Marshal, and counsel for the parties.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

———

CRIMINAL NO. 16-130

———

UNITED STATES OF AMERICA

v.

CHARLES M. HALLINAN
WHEELER K. NEFF
RANDALL P. GINGER

———

DATE FILED:

VIOLATIONS:

18 U.S.C. § 1962(d) (RICO conspiracy – 2 counts)
18 U.S.C. § 371 (conspiracy -1 count)
18 U.S.C. § 1341 (mail fraud – 2 counts)
18 U.S.C. § 1343 (wire fraud – 3 counts)
18 U.S.C. § 1956(a)(2) (money laundering – 9 counts)
18 U.S.C. § 2 (aiding and abetting)
Notices of Forfeiture

———

SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times relevant to the indictment:

1. Defendant CHARLES M. HALLINAN was a part-time resident of Villanova, in the Eastern District of Pennsylvania.

2. Defendant WHEELER K. NEFF was a Delaware-licensed attorney who lived and worked in Wilmington, Delaware, and whose clients included defendant CHARLES M. HALLINAN.

3. Co-Conspirator No. 1, a person known to the grand jury, worked for defendant CHARLES M. HALLINAN until July 2011.

The Hallinan Payday Loan Companies

4. From at least 1997 until at least 2013, defendant CHARLES M. HALLINAN owned, operated, controlled, and financed numerous business entities based in Bala Cynwyd, in the Eastern District of Pennsylvania, which issued, serviced, funded, and collected debt from small, short-term, high-interest loans, commonly referred to as "payday loans" because they were supposed to be repaid when the borrower received his or her next paycheck or regular income payment, such as a social security check (the "Hallinan Payday Loan Companies").

5. Defendant CHARLES M. HALLINAN directed some of the Hallinan Payday Loan Companies to charge fees of approximately $30 for every $100 borrowed, which translated to annual percentage rates of interest of approximately 780 percent, given the short-term nature of the loans. Defendant HALLINAN also

directed these businesses to roll over any loans that were not repaid on time and charge additional fees, which resulted in many borrowers ultimately paying more money in fees than the entire amounts of their loans.

6. Among the Hallinan Payday Loan Companies were the following entities, each of which issued, serviced, and/or collected debt from payday loans:

a. TC Services Corp., d/b/a "Telecash" and "Tele-Ca$h" and formerly known as "Tele-Ca$h" and "RAC" ("TC Services");

b. CRA Services, d/b/a "Cashnet" ("CRA Services");

c. Main Street Services Corp. d/b/a "Easy Cash" ("Main Street");

d. Tahoe Financial Advisors, d/b/a "Axcess Cash" ("Tahoe");

e. National Money Service, Inc., a/k/a "NMS, Inc.," which did business under multiple trade names ("NMS");

f. First East, Inc., d/b/a "Xtra Cash," d/b/a "Fast Funding First East," d/b/a "Payday Loan Direct" ("First East");

g. Cheyenne Servicing Corp. ("Cheyenne");

h. CR Services Corp. ("CR Services");

i. Apex 1 Processing, Inc., d/b/a "Paycheck Today," "Cash Advance Network," and "Instant Cash USA" ("Apex 1 Processing");

j. Cash Advance Network, Inc. ("CANI");

k. Instant Cash, USA, Inc. ("ICU");

l. Fifth Avenue Financial, Inc., d/b/a "My Next Paycheck" ("Fifth Avenue");

m. Palmetto Financial, Inc., d/b/a "My Payday Advance" ("Palmetto");

n. Sabal Financial, Inc., d/b/a "Your Fast Payday" ("Sabal");

o. Tribal Lending Enterprises, Division A ("TLE-A");

p. Micro Loan Management, Division A ("MLM-A");

q. Sequoia Tribal Enterprises ("STE"); and

r. Sequoia Tribal Management Services ("STMS").

7. Also among the Hallinan Payday Loan Companies were the following entities that provided money for payday loans and received proceeds from the collection of debt arising from payday loans:

a. HL Funding, Inc. ("HL Funding");

b. HL Services, Inc. ("HL Services");

c. Blue Water Management Services, LLC ("Blue Water Management");

d. Blue Water Funding Group ("Blue Water Funding");

e. Hallinan Capital Corp. ("HCC"); and

f. Mill Realty Management, LLC ("Mill Realty").

8. Another Hallinan Payday Loan Company was Apex 1 Lead Generators, Inc., ("Apex 1 LG"), which was a lead generation company. Historically, there have been two types of payday loan businesses: storefronts and internet companies. With the former, a customer could walk into a payday loan store, meet

with a sales representative, sign a contract, and walk out with cash. Many states, however, prohibited storefront payday lending. A person living in such a state could apply for a payday loan over the internet by visiting a website operated by a "lead generator," such as Apex 1 LG, and providing personal information, such as his or her name, date of birth, and social security number. The website operator would then auction that "lead" to multiple internet payday lenders, and the highest bidder would win the right to contact the consumer and enter into a payday loan contract. The deals would then be finalized over the internet, and the lender would wire the requested funds into the borrower's bank account. From that time on, all the money would flow in the reverse direction, that is, from the borrower to the payday lender.

9. Another Hallinan Payday Loan Company was Clarity Services, Inc. ("Clarity"), which operated as a credit bureau for customers of the Hallinan Payday Loan Companies. On many occasions, employees of the Hallinan Payday Loan Companies would send Clarity information about a potential customer in order to determine whether the person was creditworthy enough to be trusted to pay back the payday loan. Defendant CHARLES M. HALLINAN owned approximately one-third of the equity of Clarity.

10. Defendant CHARLES M. HALLINAN identified his Florida residential address as the business address for many of the Hallinan Payday Loan Companies on numerous documents filed with federal and state governmental agencies.

11. Defendant WHEELER K. NEFF identified himself as an agent for many of the Hallinan Payday Loan Companies and identified his business and residential address as the address for service of process on

numerous documents filed with federal and state governmental agencies.

Usury Laws and Interest Rate Caps

12. More than a dozen states, including Pennsylvania, as well as the District of Columbia, effectively prohibited most forms of payday lending (the "Prohibited Payday Loan States"), as defendants CHARLES M. HALLINAN and WHEELER K. NEFF knew. For example, in Pennsylvania, the maximum interest rate permissible on most personal loans of less than $50,000 was 6 percent per year. An exception existed for lenders licensed with the Pennsylvania Department of Banking, as those lenders could charge up to approximately 24 percent annual interest on loans of up to $25,000. On or about October 19, 2010, the Pennsylvania Supreme Court ruled that those interest rate limits could be applied against out-of-state lenders, which made loans over the Internet to borrowers residing in Pennsylvania, even if the lender had no offices or employees located in Pennsylvania. Pennsylvania law also defined "criminal usury" as the collection of interest, fees, and other charges associated with a loan at a rate in excess of 36 percent per year.

13. Many states permitted some payday lending if the lenders obtained licenses from the states and complied with regulations that often limited the number of payday loans that could be made to particular borrowers and the terms of those payday loans (the "Regulated Payday Loan States").

14. Over a time period that exceeded 15 years, the Hallinan Payday Loan Companies extended payday loans to hundreds of thousands of customers across the country, often in violation of the laws of the Prohibited Payday Loan States and the Regulated

Payday Loan States, and these loans generated hundreds of millions of dollars in revenues for the Hallinan Payday Loan Companies.

The "Renting" of County Bank

15. In or around 1997 and 1998, defendant CHARLES M. HALLINAN and various business partners founded several of the Hallinan Payday Loan Companies, including TC Services, NMS, Main Street, Tahoe, CR Services, and CRA Services. Defendant HALLINAN and his partners knew that the Hallinan Payday Loan Companies could not lawfully make payday loans to customers in all 50 states because of some states' anti-usury laws and other restrictions on payday lending. However, defendant HALLINAN and his partners also discussed the notion that federally-insured banks could "export" the interest rates of the states in which they were incorporated.

16. Defendant CHARLES M. HALLINAN and his business partners met with L.S.G., an attorney for County Bank of Rehoboth, Delaware ("County Bank"), which was federally insured and licensed in Delaware, a state which did not restrict payday loans. L.S.G. set up sham arrangements between County Bank and the Hallinan Payday Loan Companies, pursuant to which the bank would act as a front for the payday lender, and the Hallinan Payday Loan Companies would claim to only "service" the loans. In actually, the Hallinan Payday Loan Companies provided nearly all of the funds for the payday loans, oversaw debt collection efforts, and received nearly all of the revenues from the loans.

17. The practice of a payday lender paying a bank to act as a front for the payday lending enterprise in order to evade state anti-usury laws was referred to by

payday lending industry insiders as "rent-a-bank." From approximately 1997 until approximately 2003, the Hallinan Payday Loan Companies effectively "rented" County Bank.

18. In or about September 2003, the Attorney General for the State of New York filed a lawsuit in New York state court against County Bank and two of the Hallinan Payday Loan Companies, TC Services and CRA Services, which accused them of violating New York anti-usury laws. The defendants wound up paying millions of dollars to settle the lawsuit.

19. In or about 2005, federal regulators ordered County Bank to end all dealings with payday lenders, including the Hallinan Payday Loan Companies. The "Renting" of Indian Tribes

20. Starting in or around 2003, defendant CHARLES M. HALLINAN and other payday lenders devised new methods to issue payday loans to customers across the country, including in the Prohibited Payday Lending States and the Regulated Payday Lending States. One method was to enter into sham business agreements with federally-recognized Indian tribes that were designed to make it appear that the tribes owned the payday lending entities. That way, whenever a state tried to enforce its laws against a payday lending company, the tribe would claim that it owned the entity and did not have to comply with such laws because it had "sovereign immunity."

21. In reality, the Indian tribes had very little connection to the day-to-day operations of the payday lending operations. Typically, the tribes did not provide the money advanced for the payday loans, service the loans, collect on the loans, or incur any losses if the borrowers defaulted. Those functions were conducted

solely by non-tribal payday lenders, such as defendant CHARLES M. HALLINAN and the Hallinan Payday Loan Companies. The tribes' sole function was to act as false fronts for the Hallinan Payday Loan Companies and assert "sovereign immunity" whenever necessary to evade the laws of the Prohibited Payday Lending States and the Regulated Payday Lending States.

22. This model was widely characterized throughout the payday lending industry as "rent-a-tribe," and it closely resembled the previous "rent-a-bank" model that the Hallinan Payday Loan Companies had employed with County Bank. Defendant CHARLES M. HALLINAN boasted to at least one other person that the rent-a-tribe model was his idea.

23. Defendant CHARLES M. HALLINAN, aided and abetted by defendant WHEELER K. NEFF, entered into multiple partnerships with Indian tribes, pursuant to which defendant HALLINAN paid the tribes at least $10,000 a month in return for the tribes' agreement to claim ownership of various Hallinan Payday Loan Companies and assert "sovereign immunity" whenever one of the Prohibited Payday Loan States or Regulated Payday Loan States, or residents of those states tried to enforce state laws against those companies.

24. In or around 2003 and 2004, defendant CHARLES M. HALLINAN, on behalf of various Hallinan Payday Loan Companies, executed contracts with representatives of a federally-recognized Indian tribe in Oklahoma that were designed to enable defendant HALLINAN and the Hallinan Payday Loan Companies to evade state anti-usury laws and other restrictions on payday lending. From approximately 2004 until at least late 2008, defendant HALLINAN paid this Oklahoma-based tribe to pretend that it issued payday loans,

which were actually funded, serviced, and collected upon by various Hallinan Payday Loan Companies.

25. In or around 2008, defendant CHARLES M. HALLINAN, counseled by defendant WHEELER K. NEFF, purported to transfer his payday lending operations from the Oklahoma-based tribe to a Canada-based tribe. Defendant HALLINAN executed a series of sham contracts, which had been drafted by defendant NEFF, with defendant RANDALL P. GINGER, charged in Counts Three through Seventeen, that were designed to enable defendant HALLINAN and the Hallinan Payday Loan Companies to evade state laws against usury and other restrictions on payday lending. From approximately 2009 until at least 2013, defendant HALLINAN paid defendant GINGER thousands of dollars every month to pretend that his Canada-based tribe issued payday loans, which were actually funded, serviced, and collected upon by various Hallinan Payday Loan Companies.

26. In or around 2011, defendant CHARLES M. HALLINAN, counseled by defendant WHEELER K. NEFF, purported to transfer most of his payday lending operations from the Canada-based tribe to a federally-recognized Indian tribe based in California. Defendant HALLINAN and representatives of the California tribe executed a series of sham contracts drafted by defendant NEFF, which were designed to enable defendant HALLINAN and the Hallinan Payday Loan Companies to evade state laws against usury and other restrictions on payday lending. From approximately 2011 until approximately 2013, Hallinan paid this California-based tribe to pretend that it issued payday loans, which were actually funded, serviced, and collected upon by various Hallinan Payday Loan Companies.

27. The Hallinan Payday Loan Companies generated enormous revenues and profits, many of which came from customers living in the Prohibited Payday Loan States such as Pennsylvania and the Regulated Payday Loan States, in violation of the laws of those states. In particular, from approximately 2007 through 2013, the Hallinan Payday Loan Companies issued payday loans to hundreds of thousands of customers across the country, including many who lived in Prohibited Payday Lending States and the Regulated Payday Lending States, and collected or authorized the collection of more than $688 million arising from those payday loans. Defendant CHARLES M. HALLINAN netted tens of millions of dollars in profits from these illegal loans and funneled much of this money into his personal bank accounts, the bank accounts of family members, and bank accounts for other businesses that defendant HALLINAN owned, operated, and controlled.

THE ENTERPRISE

28. In the Eastern District of Pennsylvania and elsewhere, defendants

CHARLES M. HALLINAN
and
WHEELER K. NEFF

and other persons and entities known and unknown by the Grand Jury, including Co-Conspirator No. 1, and the Hallinan Payday Loan Companies, including but not limited to TC Services, Main Street, Tahoe, NMS, First East, Cheyenne, CR Services, CRA Services, Apex 1 Processing, CANI, ICU, Fifth Avenue, Palmetto, Sabal, TLE-A, MLM-A, STE, STMS, HL Funding, HL Services, Blue Water Management, Blue Water Funding, HCC, Mill Realty, Apex 1 LG, and Clarity,

were members of the Hallinan Payday Lending Organization, which was an organization engaged in, and the activities of which affected, interstate and foreign commerce.

29. The Hallinan Payday Lending Organization was an "enterprise" as defined in Title 18, United States Code, Section 1961(4), that is, a group of individuals and entities associated in fact.

30. The Hallinan Payday Lending Organization was an organization whose members and associates derived income through the "collection of unlawful debt," as defined in Title 18, United States Code, Section 1961(6), that is, "a debt (A) . . . which is unenforceable under State . . . law in whole or in part as to the principal or interest because of the laws relating to usury, and (B) which was incurred in connection with . . . the business of lending money or a thing of value at a rate usurious under State . . . law, where the usurious rate is at least twice the enforceable rate."

31. The Hallinan Payday Lending Organization constituted an ongoing organization whose members and associates functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

THE PURPOSE OF THE ENTERPRISE

32. It was the purpose of the enterprise to obtain money for its members and associates through the collection of unlawful debt, that is, debt which was unenforceable in many of the states where the enterprise operated because the debts had arisen from payday loans that violated usury laws and other consumer protection statutes and regulations that had

been enacted and promulgated in the states where the borrowers lived.

33. It was also a purpose of the enterprise to maintain and expand the profits of the enterprise through the reinvestment of moneys received from the collection of unlawful payday loans into the enterprise.

THE RACKETEERING CONSPIRACY

34. From at least 2007 until at least early 2013, in the Eastern District of Pennsylvania and elsewhere, defendants

CHARLES M. HALLINAN
and
WHEELER K. NEFF

and other persons known and unknown to the Grand Jury, including Co-Conspirator No. 1, being persons employed by and associated with the Hallinan Payday Lending Organization, an enterprise, which engaged in, and the activities of which affected, interstate and foreign commerce, knowingly and intentionally conspired to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the Hallinan Payday Lending Organization through the collection of unlawful debt, as that term is defined by 18 U.S.C. § 1961(6). The collection of unlawful debt through which the defendants agreed to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise, consisted of the collection of debts which were unenforceable under the laws of the Commonwealth of Pennsylvania and other States in whole and in part as to principal and interest and which were incurred in connection with the business of lending money at a rate usurious under the laws of the United States, the Commonwealth of Pennsylvania and other States where the usurious

rate is at least twice the enforceable rate. It was part of the conspiracy that the defendants agreed that a conspirator would commit at least one collection of unlawful debt in the conduct of the affairs of the enterprise.

MANNER AND MEANS

Apex 1 Processing

It was part of the racketeering conspiracy that:

35. In or around July 2008, defendant CHARLES M. HALLINAN and Co-Conspirator No. 1 founded Apex 1 Processing in Florida and registered the company to do business in Pennsylvania. Defendant HALLINAN and Co-Conspirator No. 1 intended Apex 1 Processing to issue payday loans to customers residing in locations throughout the United States of America, including in states which, as defendant HALLINAN and Co-Conspirator No. 1 knew, were Prohibited Payday Loan States and Regulated Payday Loan States.

36. Defendant CHARLES M. HALLINAN, represented by defendant WHEELER K. NEFF, reached an agreement with defendant RANDALL P. GINGER, a person who claimed to be a "hereditary chief" of a Canadian tribe, pursuant to which defendant HALLINAN would pretend to sell Apex 1 Processing to a company owned by defendant GINGER so that if any of the Prohibited Payday Lending States or the Regulated Payday Lending States tried to enforce its laws against Apex 1 Processing, defendant GINGER would claim that his tribe owned Apex 1 Processing and had tribal sovereign immunity. Under their agreement, defendant HALLINAN promised to pay approximately $10,000 each month to defendant GINGER, and defendant GINGER promised to claim

that his tribe owned Apex 1 Processing whenever necessary to evade state laws and regulations that applied to payday lending.

37. Defendant WHEELER K. NEFF drafted a series of contracts purporting to memorialize the sham agreement between defendants CHARLES M. HALLINAN and RANDALL P. GINGER. One contract was a Common Stock Purchase Agreement, dated November 2008, which purported to memorialize defendant HALLINAN's sale of Apex 1 Processing to an entity called Aboriginal GR Financial, for $10,000. Defendant GINGER claimed to be the sole owner of Aboriginal GR Financial.

38. In or about February 2009, defendant CHARLES M. HALLINAN caused HL Funding, one of the Hallinan Payday Loan Companies, to send $10,000 by international wire transfer to a bank account for Aboriginal GR Financial. Then, in or about March 2009, defendant RANDALL P. GINGER caused Aboriginal GR Financial to send $10,000 by international wire transfer to a bank account for Apex 1 Processing, which was controlled by defendant HALLINAN. The effect of these two payments was that defendant HALLINAN provided defendant GINGER with the $10,000 that defendant GINGER supposedly used to buy Apex 1 from defendant HALLINAN.

39. From approximately December 2008 until at least May 2011, Apex 1 Processing, doing business under its own name and as "Paycheck Today," "Instant Cash USA," and "Cash Advance Network," issued, serviced, and collected debt from payday loans that were extended to customers living in Pennsylvania and other jurisdictions where, as defendants CHARLES M. HALLINAN and WHEELER K. NEFF knew, the collection of debt from such loans was unlawful.

40. Throughout this time period, Apex 1 Processing operated out of offices rented by defendant CHARLES M. HALLINAN in Bala Cynwyd, Pennsylvania. Defendant HALLINAN also controlled all of the finances for Apex 1 Processing and oversaw all of the company's operations. Defendant HALLINAN also repeatedly represented to the United States Internal Revenue Service ("IRS"), other governmental agencies, and third-party vendors that he was the sole owner of Apex 1 Processing.

Fifth Avenue, Sabal, and Palmetto

It was further part of the racketeering conspiracy that:

41. On or about October 26, 2009, defendant WHEELER K. NEFF incorporated Fifth Avenue, Sabal, and Palmetto in Delaware. Later in 2009, defendants NEFF and RANDALL P. GINGER represented to the IRS that defendant GINGER was the sole shareholder of all three companies.

42. In order to gain access to the United States banking system, however, defendant CHARLES M. HALLINAN and Co-Conspirator No. 1 repeatedly represented to third parties that defendant HALLINAN was the president and sole shareholder of Fifth Avenue, Sabal, and Palmetto, and that the companies were based in the United States.

43. From at least 2010 until at least 2012, Fifth Avenue, Sabal, and Palmetto issued, serviced, and collected debt from payday loans that were extended to customers living in Pennsylvania and other jurisdictions where, as defendants CHARLES M. HALLINAN and WHEELER K. NEFF knew, the collection of debt from such loans was unlawful.

44. Throughout this time period, Fifth Avenue, Sabal, and Palmetto operated out of offices rented by defendant CHARLES M. HALLINAN in Bala Cynwyd, Pennsylvania. Defendant HALLINAN also controlled all of the finances for Fifth Avenue, Sabal, and Palmetto, and he oversaw all of the companies' operations.

TLE, MLM, STE, and STMS

It was further part of the racketeering conspiracy that:

45. In late 2010 and early 2011, defendant WHEELER K. NEFF, representing defendant CHARLES M. HALLINAN, entered into negotiations with representatives of a California-based Indian tribe to establish new payday lending companies that would appear to be owned by the tribe but would be financed and operated almost exclusively by defendant HALLINAN.

46. The California-based tribe passed tribal ordinances creating Tribal Lending Enterprises, Division A ("TLE-A"), to act as a new payday lending company, and Micro Loan Management, Division A ("MLM-A"), to act as a "servicing" company for TLE-A.

47. On or about May 11, 2011, defendant CHARLES M. HALLINAN and representatives of the California-based tribe executed contracts drafted by defendant WHEELER K. NEFF, which purported to transfer defendant HALLINAN's payday lending operations from defendant RANDALL P. GINGER's Canada-based tribe to the California-based tribe. Under these contracts, defendant HALLINAN promised to pay the California-based tribe at least $20,000 every month to act as the new front for Hallinan's Payday Loan Companies and assert "sovereign immunity" whenever necessary to evade the laws of the Prohibited Payday

Lending States and the Regulated Payday Lending States.

48. As part of their sham arrangement with the California-based tribe, defendants CHARLES M. HALLINAN and WHEELER K. NEFF sent a computer server to the tribe for installation on tribal lands but prohibited the tribe from accessing any of the information on the server about the payday loan customers or the companies' operations.

49. From at least July 2011 until at least June 2012, TLE-A, doing business as "Your Fast Payday," "My Payday Advance," and "My Next Paycheck," and MLM-A issued, serviced, and collected debt from payday loans that were extended to customers living in Pennsylvania and other jurisdictions where, as defendants CHARLES M. HALLINAN and WHEELER K. NEFF knew, the collection of debt from such loans was unlawful.

50. Throughout this time period, the operations for TLE-A and MLM-A were conducted out of offices rented by defendant CHARLES M. HALLINAN and entities controlled by him in Bala Cynwyd, Pennsylvania. Defendant HALLINAN also controlled all of the finances for and operations of TLE-A and MLM-A, and he oversaw all of the companies' operations.

51. At some point in 2011, defendant CHARLES M. HALLINAN and representatives of the California-based tribe agreed to change the names of TLE-A and MLM-A to Sequoia Tribal Enterprises ("STE") and Sequoia Tribal Management Services ("STMS"), respectively.

52. From at least July 2012 until approximately February 2013, STE, d/b/a "Your Fast Payday," "My

Payday Advance," and "My Next Paycheck," and STMS issued, serviced, and collected debt from payday loans that were extended to customers living in Pennsylvania and other jurisdictions where, as defendants CHARLES M. HALLINAN and WHEELER K. NEFF knew, the collection of debt from such loans was unlawful.

53. Throughout this time period, the operations of STE and STMS were conducted out of offices rented by defendant CHARLES M. HALLINAN and entities controlled by him in Bala Cynwyd, Pennsylvania. Defendant HALLINAN also controlled all of the finances for STE and STMS, and he oversaw all of the companies' operations.

54. In sum, the Hallinan Payday Lending Organization, pretending to act as entities affiliated with Indian tribes, made payday loans and attempted to make payday loans to more than a quarter-million customers located across the country, including in Prohibited Payday Lending States and Regulated Payday Lending States, where, as defendants CHARLES M. HALLINAN and WHEELER K. NEFF knew, the collection of debt from such loans was unlawful, from at least 2008 until at least February 2013.

55. The Hallinan Payday Lending Organization continued to receive residual payments on outstanding payday loans until at least September 2013.

56. In total, the Hallinan Payday Lending Organization generated more than $490 million in revenues, from which defendant CHARLES M. HALLINAN received tens of millions of dollars in profits.

All in violation of Title 18, United States Code, Section 1962(d).

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1, 2, 4, 5, 6a, 6b, and 12-14 of Count One of this indictment are incorporated here.

2. At all times relevant to this indictment, Adrian Rubin, charged elsewhere, was a resident of Montgomery County, in the Eastern District of Pennsylvania. In 1997, Rubin pleaded guilty to federal charges of conspiracy to defraud the United States, tax evasion, and failing to file currency transfer reports, and was sentenced to a prison term of one year and one day.

3. Adrian Rubin had two sons, Blake Rubin and Chase Rubin, both of whom lived in the Eastern District of Pennsylvania and have been charged elsewhere with multiple federal crimes.

The "Renting of County Bank"

4. In or about 1998, defendant CHARLES M. HALLINAN entered into a partnership with Adrian Rubin and R.M., a person known to the grand jury, to form a new payday lending company called CRA Services.

5. Shortly after forming CRA Services, defendant CHARLES M. HALLINAN and Adrian Rubin bought out R.M.'s interest in CRA Services.

6. Defendant CHARLES M. HALLINAN knew that CRA Services could not lawfully make payday loans to customers in all 50 states because of some states' anti-usury laws and other restrictions on payday lending. However, defendant HALLINAN also understood that federally-insured banks could "export" the interest rates of the states in which they were incorporated.

7. Defendant CHARLES M. HALLINAN and Adrian Rubin met with L.S.G., an attorney for County Bank of Rehoboth, Delaware ("County Bank"), which was federally insured and licensed in Delaware, a state which did not restrict payday loans. L.S.G. set up sham arrangements between County Bank and CRA Services, pursuant to which the bank would act as a front for CRA Services, and CRA Services would claim to only "service" the loans. In actually, defendant HALLINAN and his partners at CRA Services provided nearly all of the funds for the payday loans, oversaw debt collection efforts, and received nearly all of the revenues from the loans.

8. The practice of a payday lender paying a bank to act as a front for the payday lending enterprise in order to evade state anti-usury laws was referred to by payday lending industry insiders as "rent-a-bank." From approximately 1998 until approximately 2003, CRA Services effectively "rented" County Bank to act as a front as CRA Services issued, serviced, and collected debt from customers across the country, including in Prohibited Payday Loan States and Regulated Payday Loan States.

9. In or around early 2000, officials at County Bank learned of Adrian Rubin's criminal record and sought to terminate the bank's contract with CRA Services as a result. With the knowledge and approval of defendant CHARLES M. HALLINAN, Rubin then pretended to transfer his interest in CRA Services to J.S., a man known to the grand jury. Once this cosmetic change occurred, County Bank resumed its business dealings with CRA Services, even though bank officials knew that Rubin was still running and helping to run CRA Services.

10. In or about September 2003, the Attorney General for the State of New York filed a lawsuit in New York state court against County Bank, CRA Services and another Hallinan Payday Loan Company called TC Services. The lawsuit accused the defendants of violating New York anti-usury laws. The defendants wound up paying millions of dollars to settle the lawsuit.

11. In or about 2005, federal regulators ordered County Bank to end all dealings with payday lenders, including the Hallinan Payday Loan Companies.

Defendant Neff Advises Rubin to Relocate to a "Usury Friendly" State

12. In or around late 2002, defendant CHARLES M. HALLINAN introduced Adrian Rubin to defendant WHEELER K. NEFF.

13. Defendant WHEELER K. NEFF advised Adrian Rubin to relocate his payday lending operations overseas or to one of three states that defendant NEFF described as "usury friendly," which meant that they permitted payday lenders registered in those states to issue loans to customers across the county. Defendant NEFF identified the "usury friendly" states as Delaware, Utah, and New Mexico. On or about January 29, 2003, Rubin incorporated a payday lending company in Utah, which he called Global Pay Day Loan ("Global"), and opened offices in Salt Lake City, Utah, and Philadelphia, Pennsylvania. To hide his criminal record, Rubin falsely represented that J.S. owned Global.

14. From approximately 2004 until approximately December 2006, Adrian Rubin caused Global to issue, service, and collect debt from payday loans issued to customers across the country, including in the Prohibited

Payday Loan States and the Regulated Payday Loan States.

15. In or around 2006, the Utah Banking Commission investigated Global after receiving numerous complaints about the company from customers and from agencies of other states, complaining that Utah was allowing a business to extend usurious loans to its residents. As a result, Global went out of business in or around December 2006.

Rubin's Payday Lending Without Any Licenses

16. In or around November 2006, Adrian Rubin incorporated First National Services, LLC ("FNS") in Delaware. To avoid problems stemming from his criminal record, Rubin hid his identity as the owner and principal of FNS and registered the company under the name of a close family friend, "V.V.," a person known to the grand jury.

17. Beginning in or around 2007, FNS, doing business as "Payday Loan Yes" and "Fast-Cash.com," issued, serviced, and collected debt from payday loans that had been issued to customers across the country, including people who lived in the Prohibited Payday Loan States and the Regulated Payday Loan States.

18. From about 2007 until on or about December 31, 2011, Adrian Rubin operated FNS without any state or federal license and without any attempt to comply with the laws of any state where FNS did business.

The "Renting" of Indian Tribes

19. Paragraphs 20 through 22 of Count One of the Indictment are incorporated here.

20. At some point in the mid-2000s, Adrian Rubin learned of the "rent-a-tribe" model that defendant CHARLES M. HALLINAN and other payday lenders

were using to make payday loans to customers in the Prohibited Payday Loan States and the Regulated Payday Loan States. Rubin wanted to enter into a similar arrangement with an Indian tribe, but he did not have any contacts at any tribes.

21. Adrian Rubin repeatedly asked defendant CHARLES M. HALLINAN to introduce him to one of defendant HALLINAN's tribal contacts, but defendant HALLINAN repeatedly refused to do so.

22. However, in late 2010 or early 2011, defendant WHEELER K. NEFF told Adrian Rubin that defendant CHARLES M. HALLINAN was transitioning from a Canadian tribe to a California tribe and would introduce Rubin to defendant HALLINAN's contact at the California tribe in return for a fee. Defendant NEFF brokered a deal between Rubin and defendant HALLINAN, pursuant to which Rubin and his sons agreed to pay $100,000 in return for defendant HALLINAN's agreement to let them "rent" the California tribe for its "sovereign immunity" defense.

23. Defendant WHEELER K. NEFF then drafted a series of sham contracts between and among FNS and two "wholly-owned, unincorporated entities of the Tribe," which were called Tribal Business Ventures ("TBV") and Tribal Business Management ("TBM"). From approximately January 1, 2012, through March 31, 2012, TBV pretended to issue payday loans that were actually funded, serviced, and collected upon by Adrian Rubin and his two sons, Blake Rubin and Chase Rubin. Many of the loan customers lived in Prohibited Payday Loan States and Regulated Payday Loan States.

THE ENTERPRISE

24. In the Eastern District of Pennsylvania and elsewhere, defendants

CHARLES M. HALLINAN
and
WHEELER K. NEFF

and other persons known and unknown by the grand jury, including Adrian Rubin, were members of the Rubin Payday Lending Organization, which was an organization engaged in, and the activities of which affected interstate and foreign commerce.

25. The Rubin Payday Lending Organization was an "enterprise" as defined in Title 18, United States Code, Section 1961(4), that is, "a group of individuals associated in fact."

26. The Rubin Payday Lending Organization was an organization whose members and associates derived income through the "collection of unlawful debt," as defined in Title 18, United States Code, Section 1961(6), that is, "a debt (A) . . . which is unenforceable under State . . . law in whole or in part as to the principal or interest because of the laws relating to usury, and (B) which was incurred in connection with . . . the business of lending money or a thing of value at a rate usurious under State . . . law, where the usurious rate is at least twice the enforceable rate."

27. The Rubin Payday Lending Organization constituted an ongoing organization whose members and associates functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

THE PURPOSE OF THE ENTERPRISE

28. It was the purpose of the enterprise to obtain money for its members and associates through the

collection of unlawful debt, that is, debt which was unenforceable in many of the states where the enterprise operated because the debts had arisen from payday loans that violated usury laws and other consumer protection statutes and regulations that had been enacted and promulgated in the states where the borrowers lived.

29. It was also a purpose of the enterprise to maintain and expand the profits of the enterprise through the reinvestment of moneys received from the collection of unlawful payday loans into the enterprise.

THE RACKETEERING CONSPIRACY

30. From at least November 2011 until at least March 2012, in the Eastern District of Pennsylvania and elsewhere, defendants

CHARLES M. HALLINAN
and
WHEELER K. NEFF

and other persons known and unknown by the grand jury, including Adrian Rubin, being persons employed by and associated with the Rubin Payday Lending Organization, an enterprise, which engaged in, and the activities of which affected, interstate and foreign commerce, knowingly and intentionally conspired to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the Rubin Payday Lending Organization through the collection of unlawful debt, as that term is defined by 18 U.S.C. § 1961(6). The collection of unlawful debt through which the defendants agreed to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise, consisted of the collection of unlawful debt, that is, debts which were unenforceable under the laws of the Commonwealth of

Pennsylvania and other States in whole and in part as to principal and interest and which were incurred in connection with the business of lending money at a rate usurious under the laws of the United States, the Commonwealth of Pennsylvania and other States where the usurious rate is at least twice the enforceable rate. It was part of the conspiracy that the defendant agreed that a conspirator would commit at least one collection of unlawful debt in the conduct of the affairs of the enterprise.

MANNER AND MEANS

It was part of the racketeering conspiracy that:

31. In late 2010 or early 2011, defendant WHEELER K. NEFF brokered a deal between Adrian Rubin and defendant CHARLES M. HALLINAN pursuant to which Rubin would pay $100,000 to defendant HALLINAN for permission to "rent" the same California-based tribe that defendant HALLINAN was "renting" to cloak the Hallinan Payday Loan Companies with a sham sovereign immunity defense to state lawsuits.

32. Defendant WHEELER K. NEFF drafted a series of contracts between and among FNS, TBV, and TBM. Some of the contracts purported to effectuate a transfer of FNS's entire loan portfolio and lending infrastructure to the California tribe and its affiliated entities. Other contracts, however, undermined that supposed transfer, and collectively, the agreements, most of which were dated November 10, 2011, had the effect of nullifying each other. While some documents gave the appearance that FNS was selling its entire payday lending operation to the Tribe, others made it clear that FNS was providing all the funds for the loans, providing all the employees to service the loans,

and incurring all of the risks of defaulting on the loans. The only role of the Tribe, through TBV and TBM, was to give the appearance that it owned and operated the payday lending organization and assert "sovereign immunity" if anyone complained that the loans violated state laws.

33. In return for this service, FNS agreed to pay the Tribe, through its affiliates, a monthly commission equal to $20,000 or 1 percent of gross revenues minus bad debt, whichever was greater. FNS also agreed to indemnify the Tribe for any legal expenses it incurred in connection with the business.

34. Adrian Rubin's name did not appear on any of these documents. Instead, to hide Rubin's involvement in the transactions, defendant WHEELER K. NEFF listed V.V. as the principal of FNS.

35. Adrian Rubin signed V.V.'s name on behalf of FNS on many of the contracts.

36. M.D., the Chief Executive Officer of an affiliate of the California tribe, signed most of the contracts on behalf of TBV and TBM. M.D. knew or was willfully blind to the fact that V.V. was not really the principal of FNS.

37. On or about January 3, 2012, the Rubin Payday Lending Organization began making payday loans as TBV. In fact, the Rubin Payday Lending Organization actually set up three different divisions of TBV: one run by Adrian Rubin and others run by his two sons, Blake Rubin and Chase Rubin, both charged elsewhere.

38. Between December 30, 2011, and January 10, 2012, Adrian Rubin paid and caused others to pay three checks with a total value of $100,000 to

defendant CHARLES M. HALLINAN, as payment for defendant HALLINAN's arrangement of the deal between the Rubin Payday Lending Organization and the Tribe. Rubin fraudulently signed one of the checks, for $70,000, as "V.V." on behalf of FNS. Blake Rubin and Chase Rubin made out separate checks, for $15,000 each, to a company controlled by defendant HALLINAN.

39. The Rubin Payday Lending Organization, purporting to act as TBV, made payday loans and attempted to make payday loans to customers located across the country, including in Prohibited Payday Loan States and Regulated Payday Loan States until about March 2012, when Adrian Rubin learned he was under a federal criminal investigation.

40. The Rubin Payday Lending Organization continued to receive residual payments on outstanding payday loans for several additional months after March 2012.

41. In total, the Rubin Payday Lending Organization, purporting to act as TBV, collected more than $2 million in unlawful debt in 2012. All in violation of Title 18, United States Code, Section 1962(d).

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1, 2, and 4 through 27 of Count One of this indictment are incorporated here.

2. Defendant RANDALL P. GINGER identified himself as a "hereditary chief" of an Indian tribe based in British Columbia, Canada.

3. On or about July 15, 2008, defendant CHARLES M. HALLINAN incorporated Apex 1 Processing, Inc. ("Apex 1 Processing") in Florida. From the beginning, defendant HALLINAN held himself out as the owner and principal of Apex 1 Processing. For example:

a. The articles of incorporation for Apex 1 Processing listed defendant HALLINAN's residential address in Florida as the company's principal office and mailing address;

b. On July 24, 2008, defendant HALLINAN's chief financial officer, G.G., directed an accountant to add Apex 1 Processing to the list of companies owned by defendant HALLINAN for which it should prepare annual tax returns to be sent to the IRS;

c. On July 29, 2008, when Apex 1 applied to the City of Philadelphia for a Philadelphia Business Tax Account Number, defendant HALLINAN was identified as the "sole proprietor" of Apex 1 Processing, and his Florida residence was listed as Apex 1 Processing's business address;

d. On December 2, 2008, when Apex 1 Processing applied to do business with Intercept EFT, a payment processing company, defendant HALLINAN signed multiple application forms as the president and 100% owner of Apex 1 Processing, and he gave

his Florida address as the business address for Apex 1 Processing;

e. On January 19, 2009, and January 11, 2010, when annual reports for Apex 1 Processing were filed with the Florida Secretary of State's Office, Hallinan's Florida residence was again listed as the company's business address, and defendant HALLINAN was the only director identified for Apex 1;

f. On May 21, 2012, Apex 1 Processing, represented by defendant WHEELER K. NEFF, filed a "2012 For Profit Corporation Reinstatement" form with the Florida Secretary of State's Office, and the form indicated that the company's business address had changed from defendant HALLINAN's Florida residence to defendant HALLINAN's offices in Bala Cynwyd; and

g. Defendant HALLINAN repeatedly represented to the IRS that he was the sole owner of Apex 1 Processing on both his personal tax returns and the corporate tax returns for Apex 1 Processing, which he filed and directed his accountants to file for tax years 2008 through 2012.

4. In or about November 2008, defendant CHARLES M. HALLINAN, with the help of defendant WHEELER K. NEFF, pretended to sell Apex 1 Processing to an entity owned by defendant RANDALL P. GINGER, so that if any state tried to enforce its laws against Apex 1 Processing, all the defendants could claim that Apex 1 Processing was a tribal-owned entity that had sovereign immunity to those state laws.

5. As part of their agreement, defendant CHARLES M. HALLINAN promised to pay approximately $10,000 each month to defendant RANDALL P. GINGER, and

defendant GINGER promised to claim that his tribe owned Apex 1 Processing whenever necessary to evade state laws and regulations that applied to payday lending.

6. Defendant WHEELER K. NEFF drafted a series of contracts executed by defendants CHARLES M. HALLINAN and RANDALL P. GINGER. One contract was a Common Stock Purchase Agreement, dated November 2008, which purported to memorialize defendant HALLINAN's sale of Apex 1 Processing to an entity called Aboriginal GR Financial, which defendant GINGER claimed to own, for $10,000.

7. A few months after signing this Common Stock Purchase Agreement, defendant CHARLES M. HALLINAN caused one of the Hallinan Payday Loan Companies to send $10,000 by international wire transfer to a bank account for Aboriginal GR Financial, which defendant RANDALL P. GINGER then caused to be wired into a bank account for Apex 1 Processing, which was controlled by defendant HALLINAN. In other words, defendant HALLINAN provided the $10,000 that defendant GINGER supposedly paid to defendant HALLINAN as the purchase price for Aboriginal GR Financial.

8. From approximately December 2008 until at least May 2011, Apex 1 Processing, doing business as "Paycheck Today," "Instant Cash USA," and "Cash Advance Network," issued, serviced, and collected debt from payday loans that were extended to customers living in Pennsylvania and other jurisdictions where, as defendants CHARLES M. HALLINAN and WHEELER K. NEFF knew, the collection of debt from such loans was unlawful.

9. Throughout this time period, Apex 1 Processing operated out of offices rented by defendant CHARLES

M. HALLINAN in Bala Cynwyd, Pennsylvania. Defendant HALLINAN also controlled all of the finances for Apex 1 Processing and oversaw all of the company's operations.

10. Consistent with their agreement, defendant CHARLES M. HALLINAN caused at least $10,000 to be sent by international wire transfer each month from a bank account for one of the Hallinan Payday Loan Companies to a bank account controlled by defendant RANDALL P. GINGER. These $10,000 monthly payments began in or about November 2008 and continued until in or about February 2013.

11. In or about March 2013, the size of the monthly payments from defendant CHARLES M. HALLINAN to defendant RANDALL P. GINGER shrank from $10,000 to $5,000. By March 2013, defendant HALLINAN had transferred most of his payday lending activity from defendant GINGER's tribe to a California-based tribe. Defendant HALLINAN made $5,000 payments to defendant GINGER every month from March 2013 through August 2013.

12. On March 23, 2010, a class action lawsuit was filed in Indiana state court against Apex 1 Processing, Inc., d/b/a Paycheck Today a/k/a Paychecktoday.com (the "Indiana Lawsuit"). The Indiana Lawsuit alleged that Apex 1 Processing had violated the Indiana Consumer Credit Code's Small Loans Act and the Indiana Deceptive Consumer Sales Act by issuing payday loans with outrageous finance charges to Indiana residents.

13. For approximately the next three years, defendant CHARLES M. HALLINAN paid and caused the Hallinan Payday Loan Companies to pay a

Pennsylvania law firm, "W&P," to defend Apex 1 Processing in the Indiana Lawsuit.

14. During that time, Apex 1 Processing informed the plaintiffs' lawyers, through a sworn statement by G.G., that approximately 1,393 Indiana residents had obtained payday loans from Apex 1 Processing, d/b/a Paycheck Today.

15. On or about May 8, 2013, the Indiana trial court certified a class of 1,393 plaintiffs in the Indiana Lawsuit (the "Indiana Plaintiffs"). Shortly thereafter, an attorney from W&P, known to the grand jury, informed defendants CHARLES M. HALLINAN and WHEELER K. NEFF that she would have to start providing civil discovery to the attorneys for the Indiana Plaintiffs. Defendants HALLINAN and NEFF told this attorney not to provide any discovery and instead to let the Indiana Plaintiffs obtain a default judgment against Apex 1 Processing and then try to collect on that judgment against defendant RANDALL P. GINGER. The attorney told defendants HALLINAN and NEFF that she would not follow that instruction because it would violate her professional obligations as an attorney. Defendants HALLINAN and NEFF decided to terminate this attorney's employment as counsel for Apex 1 Processing.

16. In or about July 2013, defendant WHEELER K. NEFF warned defendant CHARLES M. HALLINAN that the Indiana Lawsuit was "potentially dangerous" to him, and that if the Indiana Plaintiffs prevailed, defendant HALLINAN could face personal exposure of up to $10 million, especially if the Indiana Plaintiffs could establish that defendant HALLINAN had not actually sold Apex 1 Processing to defendant RANDALL P. GINGER.

17. From at least May 2013 until at least April 2014, defendants

CHARLES M. HALLINAN,
WHEELER K. NEFF, and
RANDALL P. GINGER

conspired and agreed with each other and other persons, known and unknown to the grand jury, to commit offenses against the United States, that is: (a) the intentional devising and executing of a scheme to defraud the Indiana Plaintiffs out of money and property, involving the United States mails, in violation of Title 18, United States Code, Section 1341; (b) the intentional devising and executing of a scheme to defraud the Indiana Plaintiffs out of money and property, involving interstate wires, in violation of Title 18, United States Code, Section 1343; and (c) the international transportation, transmittal, and transfer of monetary instruments and funds with the intent to promote mail fraud and wire fraud, in violation of Title 18, United States Code, Section 1956(a)(2)(A).

MANNER AND MEANS

It was part of the conspiracy that:

18. In or about July 2013, defendants CHARLES M. HALLINAN and WHEELER K. NEFF, and RANDALL P. GINGER conspired and agreed to deceive the Indiana Plaintiffs into believing that Apex 1 Processing was effectively judgment proof so they should accept a discounted settlement offer on their claims in the Indiana Lawsuit. More specifically, defendants HALLINAN and NEFF conspired and agreed to defraud the Indiana Plaintiffs into believing that defendant GINGER was the sole owner of Apex 1 Processing; that defendant GINGER was a Canadian Indian chief who lived on tribal lands in Canada; and

that Apex 1 Processing had few if any assets that could be recovered if the Indiana Plaintiffs prevailed in their lawsuit. The defendants also conspired and agreed to hide the fact that defendant HALLINAN exercised managerial control over Apex 1 Processing after being advised by an attorney from W&P, known to the grand jury, that if the plaintiffs knew of defendant HALLINAN's control over Apex 1 Processing, they might want to add him as a defendant in the Indiana Lawsuit and try to collect a judgment directly from defendant HALLINAN.

19. In or about July 2013, defendant CHARLES M. HALLINAN offered to pay defendant RANDALL P. GINGER approximately $10,000 a month if defendant GINGER would claim that he was the sole owner of Apex 1 Processing and hire a Canadian lawyer to terminate W&P's employment as counsel for Apex 1 Processing in the Indiana Lawsuit and to inform the Indiana Plaintiffs' lawyers that defendant GINGER was the 100 percent owner of Apex 1 Processing, through Aboriginal GR Financial. Defendant GINGER accepted defendant HALLINAN's offer.

20. In or about July 2013, defendant RANDALL P. GINGER purported to hire R.B., a Canadian attorney known to the grand jury, on behalf of Apex 1 Processing. R.B. then purported to fire W&P as counsel for Apex 1 Processing in the Indiana lawsuit. W&P then withdrew as counsel for Apex 1 Processing in the Indiana Lawsuit.

21. On or about September 24, 2013, R.B. contacted the attorneys for the Indiana Plaintiffs and stated: that he represented defendant RANDALL P. GINGER, whom R.B. identified as a hereditary chief of a Canadian Indian tribe; that defendant GINGER was the owner and principal of Aboriginal GR Financial,

which in turn owned Apex 1 Processing; that Apex 1 Processing was not operational and had not done business for several years; and that Apex 1 Processing had few, if any, assets.

22. Additionally, on or about August 2, 2013, acting on the advice of defendant WHEELER K. NEFF, defendant RANDALL P. GINGER sent emails to W&P, defendant CHARLES M. HALLINAN, and M.K., a top employee of Apex 1 Processing known to the grand jury, purporting to terminate their employment at Apex 1 Processing.

23. In return for defendant RANDALL P. GINGER's actions, defendant CHARLES M. HALLINAN caused one of the Hallinan Payday Loan Companies to pay $10,000 by international wire transfer to a bank account in Canada controlled by defendant RANDALL P. GINGER in August 2013. This $10,000 payment was in addition to the $5,000 payment that defendant HALLINAN already had paid to defendant GINGER in August 2013.

24. Additionally, in each month from September 2013 through at least April 2014, defendant CHARLES M. HALLINAN caused $15,000 to be sent each month by international wire transfer to a bank account in Canada controlled by defendant RANDALL P. GINGER or a woman that defendant GINGER identified as his wife.

25. Throughout this time period, defendant CHARLES M. HALLINAN continued to pay or caused one of the Hallinan Payday Loan Companies to pay all of the legal bills for Apex 1 Processing in its defense of the Indiana Lawsuit. Some of those legal bills had been generated by K.D., an attorney known to the grand jury who worked for "TCLO" in Philadelphia. K.D. sent some of the invoices for his legal services to defendant

HALLINAN and other invoices to the offices of R.B. in Canada, but defendant HALLINAN paid all the bills.

26. In or about February 2014, defendant CHARLES M. HALLINAN knowingly and intentionally gave false sworn testimony at a deposition in the Indiana Lawsuit in order to further convince the Indiana Plaintiffs that Apex 1 Processing was effectively judgment proof and to hide his personal involvement in Apex 1 Processing.

27. In or about April 2014, lawyers for the Indiana Plaintiffs agreed to settle their claims against Apex 1 Processing in the Indiana Lawsuit for approximately $260,000. The lawyers for the Indiana Plaintiffs had valued their clients' cause of action at greater than $2.6 million, but they agreed to accept a discounted settlement offer because they had been convinced by defendants CHARLES M. HALLINAN, WHEELER K. NEFF, and RANDALL P. GINGER, and other persons known to the grand jury that it would be nearly impossible to collect on a full judgment against Apex 1 Processing.

28. Although defendant RANDALL P. GINGER claimed to be the owner of Apex 1 Processing, defendant CHARLES M. HALLINAN caused one of the Hallinan Payday Loan Companies, which he had funded, to pay the entirety of the $260,000 settlement payment to the Indiana Plaintiffs.

OVERT ACTS

In furtherance of the conspiracy and to accomplish its objects, defendants CHARLES M. HALLINAN, WHEELER K. NEFF, and RANDALL P. GINGER, and others, known and unknown to the grand jury, committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere.

1 . On or about July 12, 2013, defendant WHEELER K. NEFF sent an email from Delaware to defendant CHARLES M. HALLINAN in Pennsylvania, in which defendant NEFF advised defendant HALLINAN to: (a) contact his accountant for the purpose of submitting "corrected" tax returns to the IRS, which would indicate that Apex 1 Processing was owned by defendant RANDALL P. GINGER instead of defendant HALLINAN; and (b) "retroactively" transfer all business activity from Apex 1 Processing to one of the other Hallinan Payday Loan Companies in order to make it appear like Apex 1 Processing had very few assets with which it would be able to pay a settlement or judgment in the Indiana Lawsuit.

2. On or about July 16, 2013, defendant CHARLES M. HALLINAN forwarded the email he had received from defendant WHEELER K. NEFF on July 12, 2013, from Pennsylvania to defendant HALLINAN's accountant in Colorado and directed the accountant's attention to defendant NEFF's advice about submitting amended tax returns to the IRS.

3. On or about July 22, 2013, defendant RANDALL P. GINGER caused R.B. to transmit a letter through the United States mails to an attorney at W&P, in which R.B. stated that he represented defendant GINGER; that defendant GINGER indirectly owned Apex 1 Processing; and that Apex 1 Processing was terminating W&P's representation of the company in the Indiana Lawsuit.

4. On or about August 2, 2013, defendant WHEELER K. NEFF transmitted an email from Delaware to defendant RANDALL P. GINGER in Canada in which defendant NEFF advised defendant GINGER to send emails to an attorney at W&P, defendant HALLINAN,

and M.K., purporting to terminate each person's employment by Apex 1 Processing.

5. On or about August 9, 2013, defendant CHARLES M. HALLINAN caused $10,000 to be transmitted by international wire from a bank account for a Hallinan Payday Loan Company in the United States to a bank account for Aboriginal GR Financial in Canada, which was controlled by defendant RANDALL P. GINGER.

6. On or about September 11, 2013, defendant CHARLES M. HALLINAN caused $15,000 to be transmitted by international wire from a bank account for a Hallinan Payday Loan Company in the United States to a bank account for Aboriginal GR Financial in Canada, which was controlled by defendant RANDALL P. GINGER. This wire transfer included approximately $10,000 that defendant HALLINAN had promised to pay to defendant GINGER in return for defendant GINGER'S agreement to claim ownership of Apex 1 Processing in the Indiana Lawsuit.

7. On or about September 24, 2013, defendant RANDALL P. GINGER caused R.B. to transmit a letter through the United States mails to an attorney for the Indiana Plaintiffs, in which R.B. stated that he represented defendant GINGER; that defendant GINGER was the owner and principal of Aboriginal GR Financial, which in turn owned Apex 1 Processing; that Apex 1 Processing was not operational and had not done business for several years; and that Apex 1 Processing had few, if any, assets.

8. On or about October 1, 2013, defendant CHARLES M. HALLINAN caused $15,000 to be transmitted by international wire from a bank account for a Hallinan Payday Loan Company in the United States to a bank account for Aboriginal GR Financial in Canada, which

was controlled by defendant RANDALL P. GINGER. This wire transfer included approximately $10,000 that defendant HALLINAN had promised to pay to defendant GINGER in return for defendant GINGER's agreement to claim ownership of Apex 1 Processing in the Indiana Lawsuit.

9. On or about November 1, 2013, defendant CHARLES M. HALLINAN caused $15,000 to be transmitted by international wire from a bank account for a Hallinan Payday Loan Company in the United States to a bank account in Canada, which was controlled by the wife of defendant RANDALL P. GINGER. This wire transfer included approximately $10,000 that defendant HALLINAN had promised to pay to defendant GINGER in return for defendant GINGER's agreement to claim ownership of Apex 1 Processing in the Indiana Lawsuit.

10. On or about December 2, 2013, defendant CHARLES M. HALLINAN caused $15,000 to be transmitted by international wire from a bank account in the United States to a bank account in Canada, which was controlled by the wife of defendant RANDALL P. GINGER. This wire transfer included approximately $10,000 that defendant HALLINAN had promised to pay to defendant GINGER in return for defendant GINGER's agreement to claim ownership of Apex 1 Processing in the Indiana Lawsuit.

11. On or about January 2, 2014, defendant CHARLES M. HALLINAN caused $15,000 to be transmitted by international wire from a bank account in the United States to a bank account in Canada, which was controlled by the wife of defendant RANDALL P. GINGER. This wire transfer included approximately $10,000 that defendant HALLINAN had promised to pay to defendant GINGER in return for defendant

GINGER's agreement to claim ownership of Apex 1 Processing in the Indiana Lawsuit.

12. On or about February 3, 2014, defendant CHARLES M. HALLINAN caused $15,000 to be transmitted by international wire from a bank account in the United States to a bank account in Canada, which was controlled by the wife of defendant RANDALL P. GINGER. This wire transfer included approximately $10,000 that defendant HALLINAN had promised to pay to defendant GINGER in return for defendant GINGER's agreement to claim ownership of Apex 1 Processing in the Indiana Lawsuit.

13. On or about March 3, 2014, defendant CHARLES M. HALLINAN caused $15,000 to be transmitted by international wire from a bank account in the United States to a bank account in Canada, which was controlled by the wife of defendant RANDALL P. GINGER. This wire transfer included approximately $10,000 that defendant HALLINAN had promised to pay to defendant GINGER in return for defendant GINGER's agreement to claim ownership of Apex 1 Processing in the Indiana Lawsuit.

14. On or about April 2, 2014, defendant CHARLES M. HALLINAN caused $15,000 to be transmitted by international wire from a bank account in the United States to a bank account in Canada, which was controlled by the wife of defendant RANDALL P. GINGER. This wire transfer included approximately $10,000 that defendant HALLINAN had promised to pay to defendant GINGER in return for defendant GINGER's agreement to claim ownership of Apex 1 Processing in the Indiana Lawsuit.

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

COUNTS FOUR AND FIVE

THE GRAND JURY FURTHER CHARGES THAT

1. Paragraphs 1-16 of Count Three of this Indictment are re-alleged here.

2. From at least July 2013 until at least April 2014, in the Eastern District of Pennsylvania and elsewhere, defendants

CHARLES M. HALLINAN,
WHEELER K. NEFF, and
RANDALL P. GINGER

devised and intended to devise and aided and abetted the devising of a scheme to defraud the Indiana Plaintiffs out of a cause of action that the defendants believed could be worth as much as $10 million, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

3. Defendants CHARLES M. HALLINAN, WHEELER K. NEFF, and RANDALL P. GINGER engaged in the manner and means described in paragraphs 18 through 28 of Count Three of this Indictment.

4. On or about each of the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendants

CHARLES M. HALLINAN,
WHEELER K. NEFF, and
RANDALL P. GINGER

for the purpose of executing the scheme described above, and aiding and abetting its execution, knowingly caused to be transmitted by United States mail and

private and commercial carriers the following documents, each mailing constituting a separate count:

COUNT	DATE	DESCRIPTION
4	July 22, 2013	A letter from R.B., an attorney in Canada, to an attorney for W&P in Philadelphia, Pennsylvania.
5	September 24, 2013	A letter from R.B., an attorney in Canada, to an attorney for the Indiana Plaintiffs in Indiana.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS SIX, SEVEN, AND EIGHT

THE GRAND JURY FURTHER CHARGES THAT

1. Paragraphs 1-16 of Count Three of this Indictment are re-alleged here.

2. From at least July 2013 until at least April 2014, in the Eastern District of Pennsylvania and elsewhere, defendants

CHARLES M. HALLINAN,
WHEELER K. NEFF, and
RANDALL P. GINGER

devised and intended to devise and aided and abetted the devising of a scheme to defraud the Indiana Plaintiffs out of a cause of action that the defendants believed could be worth as much as $10 million, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

3. Defendants CHARLES M. HALLINAN, WHEELER K. NEFF, and RANDALL P. GINGER engaged in the manner and means described in paragraphs 18 through 28 of Count Three of this Indictment.

4. On or about each of the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendants

CHARLES M. HALLINAN,
WHEELER K. NEFF, and
RANDALL P. GINGER

for the purpose of executing the scheme described above, and aiding and abetting its execution, knowingly caused to be transmitted by means of wire

communication in interstate commerce the signals and sounds described below for each count, each transmission constituting a separate count:

COUNT	DATE	DESCRIPTION
6	July 12, 2013	An email from defendant WHEELER K. NEFF in Delaware to defendant CHARLES M. HALLINAN in Pennsylvania
7	July 16, 2013	An email from defendant CHARLES M. HALLINAN in Pennsylvania to an accountant in Colorado.
8	August 2, 2013	An email from defendant WHEELER K. NEFF in Delaware to defendant RANDALL P. GINGER in Canada.

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

COUNTS NINE THROUGH SEVENTEEN THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 16 and 18 through 28 of Count Three of this indictment are incorporated here.

2. On or about the dates set forth in the chart below, in Bala Cynwyd, in the Eastern District of Pennsylvania, Wilmington, Delaware, Canada, and elsewhere, defendants

CHARLES M. HALLINAN
and
RANDALL P. GINGER

knowingly transmitted and transferred, and aided and abetted and willfully caused, the transmission and transferring of, a monetary instrument and funds, from a place in the United States to a place outside the United States, that is, Canada, with the intent to promote the carrying on of a specified unlawful activity, that is, the intentional devising and executing of a scheme to defraud the Indiana Plaintiffs out of money and property, involving the United States mails, in violation of Title 18, United States Code, Section 1341, and the intentional devising and executing of a scheme to defraud the Indiana Plaintiffs out of money and property, involving interstate wires, in violation of Title 18, United States Code, Section 1343:

COUNT	DATE	DESCRIPTION OF WIRE TRANSFER
9	August 9, 2013	$10,000 from Pennsylvania to Canada
10	September 11, 2013	$10,000 from Pennsylvania to Canada
11	October 1, 2013	$10,000 from Pennsylvania to Canada

12	November 1, 2013	$10,000 from Pennsylvania to Canada
13	December 2, 2013	$10,000 from Pennsylvania to Canada, via Delaware
14	January 2, 2014	$10,000 from Pennsylvania to Canada, via Delaware
15	February 3, 2014	$10,000 from Pennsylvania to Canada, via Delaware
16	March 3, 2014	$10,000 from Pennsylvania to Canada, via Delaware
17	April 2, 2014	$10,000 from Pennsylvania to Canada, via Delaware

All in violation of Title 18, United States Code, Sections 1956(a)(2)(A) and 2.

NOTICE OF FORFEITURE NO. 1

(RACKETEERING FORFEITURE, COUNT ONE)

1. The allegations contained in Count One of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 1963 and Title 28, United States Code, Section 2461(c). Pursuant to Rule 32.2, Fed. R. Crim. P., notice is hereby given to the defendants that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Section 1963 in the event of any defendant's conviction under Count One of this Indictment.

2. The defendants,

CHARLES M. HALLINAN
And
WHEELER K. NEFF

i. have acquired and maintained interests in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1);

ii. have an interest in, security of claims against, and property and contractual rights which afford a source of influence over, the enterprise named and described herein which the defendants established, operated, controlled, conducted, and participated in the conduct of, in violation of Title 18, United States Code, Section 1962, which interests, securities, claims, and rights are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963 (a)(2);

iii. have property constituting and derived from proceeds obtained, directly and indirectly, from racketeering activity, in violation of Title 18, United States Code, Section 1962, which property is subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(3).

3. The interest of the defendants subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1), (a)(2), and (a)(3), include but are not limited to at least $490,000,000 and all interests and proceeds traceable thereto, including but not limited to the following assets:

a. Any and all funds in account number 009419321146, in the name of Hallinan Capital Corp., at Bank of America, and any and all funds traceable thereto;

b. Any and all funds in account number 6236347844, in the name of Hallinan Capital Corp., at Citizens Bank, and any and all funds traceable thereto;

c. Any and all funds in account number 9943232101, in the name of Hallinan Capital Corp., at Vanguard, and any and all funds traceable thereto;

d. Any and all funds in account number 6236347690, in the name of Apex 1 Lead Generators, at Citizens Bank, and any and all funds traceable thereto;

e. Any and all funds in account number 6236347771, in the name of Blue Water Funding Group LLC, at Citizens Bank, and any and all funds traceable thereto;

f. Any and all funds in account number 6236347879, in the name of Mill Realty Management, LLC, at Citizens Bank, and any and all funds traceable thereto;

g. Any and all funds in account number 88044257268, in the name of Apex 1 Processing, at Vanguard, and any and all funds traceable thereto;

h. Any and all funds in account number 271501789869, in the name of Apex 1 Processing Inc., d/b/a Cash Advance Network, at Power Pay, EVO Payments International, and any and all funds traceable thereto;

i. Any and all funds in account number 271501796475, in the name of Apex 1 Processing Inc., d/b/a Instant Cash USA, at Power Pay, EVO Payments International, and any and all funds traceable thereto;

j. Any and all funds in account number 271501796327, in the name of Apex 1 Processing Inc., d/b/a Paycheck Today, at Power Pay, EVO Payments International, and any and all funds traceable thereto;

k. Any and all funds in account number 271501796590, in the name of Fifth Avenue Financial, Inc., d/b/a My Next Paycheck, at Power Pay, EVO Payments International, and any and all funds traceable thereto;

l. Any and all funds in account number 271501796665, in the name of Palmetto Financial, Inc., d/b/a My Payday Advance, at Power Pay, EVO Payments International, and any and all funds traceable thereto;

m. Any and all funds in account number 271501796707, in the name of Sabal Financial, Inc., d/b/a Your Fast Payday, at Power Pay, EVO Payments International, and any and all funds traceable thereto;

n. Any and all funds in account number 623-021206, in the name of Charles Hallinan, at Morgan Stanley, and any and all funds traceable thereto;

o. Any and all funds in account number 7101622806, in the name of Charles M. Hallinan, at Bank of Leumi, and any and all funds traceable thereto;

p. Any and all funds in account number 009001408711, in the name of Charles Hallinan, at Bank of America, and any and all funds traceable thereto;

q. Any and all funds in account number 009466692476, in the name of Charles Hallinan, at Bank of America, and any and all funds traceable thereto;

r. Any and all funds in account number 430-0263160, in the name of Charles Hallinan, at TD Bank, and any and all funds traceable thereto;

s. All right, title and interest in real property located at 400 S. E. 5th Ave, Apt. 304N, Boca Raton, FL, with all improvements, appurtenances, and attachments thereon;

t. All right, title and interest in real property located at 118 School Road, Wilmington, DE, with all improvements, appurtenances, and attachments thereon;

u. All right, title and interest in real property located at 641 N. Spring Mill Road, Villanova,

PA, with all improvements, appurtenances, and attachments thereon;

v. One 2014 Bentley Flying Spur bearing VIN: SCBEC9ZA7EC092360 (the "2014 Bentley"); and

w. One 2015 Mercedes S550 bearing VIN: WDDUG8FB5FA123337 (the "2015 Mercedes").

4. If any of the property described in paragraphs 2 and 3 above, as a result of any act or omission of a defendant –

(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 court shall order the forfeiture of any other property of the defendants up to the value of any property set forth in paragraphs 2 and 3 above.

5. As set forth in paragraph 4 above, the following assets have been identified as substitute assets and would be subject to forfeiture upon conviction and a finding by the court that the defendants are liable for a forfeiture money judgment representing the proceeds of the charged conduct:

a. All right, title and interest in real property located at 2704 W. 6th Street, Wilmington, DE,

with all improvements, appurtenances, and attachments thereon;

b. All right, title and interest in real property located at assessor's parcel number 075210000000500, Walnut Creek, Glen Elder, KS, with all improvements, appurtenances, and attachments thereon.

6. The above-named defendants, and each of them, are jointly and severally liable for the forfeiture obligations as alleged above.

All pursuant to Title 18, United States Code, Section 1963.

NOTICE OF FORFEITURE NO. 2

(RACKETEERING FORFEITURE, COUNT TWO)

1. The allegations contained in Count Two of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 1963 and Title 28, United States Code, Section 2461(c). Pursuant to Rule 32.2, Fed. R. Crim. P., notice is hereby given to the defendants that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Section 1963 in the event of any defendant's conviction under Count One of this Indictment.

2. The defendants,

CHARLES M. HALLINAN
And
WHEELER K. NEFF

i. have acquired and maintained interests in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1);

ii. have an interest in, security of, claims against, and property and contractual rights which afford a source of influence over, the enterprise named and described herein which the defendants established, operated, controlled, conducted, and participated in the conduct of, in violation ofTitle 18, United States Code, Section 1962, which interests, securities, claims, and rights are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963 (a)(2);

iii. have property constituting and derived from proceeds obtained, directly and indirectly, from racketeering activity, in violation of Title 18, United States Code, Section 1962, which property is subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(3).

3. The interest of the defendants subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1), (a)(2), and (a)(3), include but are not limited to at least $100,000 and all interests and proceeds traceable thereto.

4. If any of the property described in paragraphs 2 and 3 above, as a result of any act or omission of a defendant –

(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 court shall order the forfeiture of any other property of the defendants up to the value of any property set forth in paragraphs 2 and 3 above.

5. The above-named defendants, and each of them, are jointly and severally liable for the forfeiture obligations as alleged above.

All pursuant to Title 18, United States Code, Section 1963.

NOTICE OF FORFEITURE NO. 3

(CONSPIRACY TO COMMIT FRAUD AND MONEY LAUNDERING FORFEITURE)

1. As a result of the violations of Title 18, United States Code, Sections 371, 1341, 1343, and 1956(a)(2)(A), described in Counts Three through Eight, and Counts Nine through Seventeen, defendants

CHARLES M. HALLINAN,
WHEELER K. NEFF, and
RANDALL P. GINGER

shall forfeit to the United States of America, any property, real or personal, which constitutes or is derived from proceeds traceable to any offense constituting "specified unlawful activity," that is, mail fraud and wire fraud, and any property, real or personal, involved in and traceable to, violations of 1956(a)(2)(A), that is, money laundering, including, but not limited to the following:

(a) The sum of $90,000 in United States currency (forfeiture money judgment).

2. If any of the property subject to forfeiture, 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 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 the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), 982 and Title 28, United states Code, Section 2461(c).

A TRUE BILL:

_____

GRAND JURY FOREPERSON

_____

ZANE DAVID MEMEGER
United States Attorney

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 18-2282 &18-2539

UNITED STATES OF AMERICA

v.

WHEELER K. NEFF,

Appellant in No. 18-2282

UNITED STATES OF AMERICA

v.

CHARLES M. HALLINAN,

Appellant in No. 18-2539

On Appeal from the United States District Court
for the Eastern District of Pennsylvania

(D.C. Nos. 2-16-cr-00130-001 & 2-16-cr-00130-002)

SUR PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS and *GREENBERG, *Circuit Judges*

The petition for rehearing filed by Appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Michael A. Chagares
Circuit Judge

Dated: November 5, 2019
Lmr/cc: All Counsel of Record

* Hon. Morton I. Greenberg's vote is limited to panel rehearing

APPENDIX E

Section 1341 of Title 18 of the United States Code Annotated provided in pertinent part:

§ 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institu-

tion, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C.A, § 1341 (Jan. 7, 2008).

APPENDIX F

Section 1343 of Title 18 of the United States Code Annotated provided in pertinent part:

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C.A. § 1343 (Jan. 7, 2008).

APPENDIX G

Section 1962 of Title 18 of the United States Code Annotated provided in pertinent part:

§ 1962. Prohibited Activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C.A. § 1962 (Nov. 8, 1988).

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

CRIMINAL NOS. 16-130-1, 2

UNITED STATES OF AMERICA

v.

CHARLES M. HALLINAN (1)
WHEELER K. NEFF (2)

Philadelphia, Pennsylvania
November 10, 2017
12:04 o'clock p.m.

EXCERPT OF JURY CHARGE CONFERENCE
BEFORE THE HONORABLE EDUARDO C.
ROBRENO UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	MARK B. DUBNOFF, ESQUIRE JAMES A. PETKUN, ESQUIRE U.S. ATTORNEY'S OFFICE 615 Chestnut Street
For the Defendant Charles M. Hallinan:	EDWIN J. JACOBS, JR., ESQUIRE JACOBS AND BARBONE 1125 Pacific Avenue Atlantic City, NJ 08401

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* * *

[19] THE COURT: Okay –

MR. DUBNOFF: – between mine –

THE COURT: – 189, "However"?

MR. DUBNOFF: The – I'm sorry, on page –

THE COURT: No, don't give me the page, I need to know the line in 189.

MR. DUBNOFF: Line 6 of 189, it starts, "Circumstances," period. And then, "Thus, to determine a defendant's state of mind" –

THE COURT: Yes.

MR. DUBNOFF: – "as to" –

THE COURT: Okay. Yeah, I think you're right

MR. DUBNOFF: And then we're going to object to a willful instruction. I have a sense where the Court's

going, but when we get to it, I'd like to be heard on that.

THE COURT: Okay. 189 is fine with the edit. 190? Okay. 191, 192, 193, 194. Okay. 195?

MR. DUBNOFF: Yes, your Honor.

THE COURT: Okay. Tell me.

MR. DUBNOFF: All right. So this – this is not – I understand this was one of the two key requests the defense made, we don't think this is consistent with the Third Circuit model instructions. The Third Circuit model instructions do not require willfulness, we think it's a little confusing here. We would ask the Court simply to [20] follow what the Third – the Third Circuit hasn't written instructions for all of the crimes that could be charged, this happens to be one they took a fair amount of time, we respectfully would ask the Court to follow it.

THE COURT: So you don't want 195 and 196?

MR. DUBNOFF: Yes, your Honor.

THE COURT: Nothing, delete?

MR. DUBNOFF: Willfully is not the standard –

THE COURT: Okay.

MR. DUBNOFF: – under the Third Circuit's model instructions.

MR. JACOBS: Judge, I think you're 100-percent correct. If you look at the comment to – Mr. Dubnoff is correct, it does say in the pattern point for charge for RICO "knowing," but it doesn't define it in the RICO charges itself. So you go to the pattern point for knowing and when you read that there, it specifically talks about situations where you have to basically read a

mental state into the statute. And when they talk about the type of knowledge that's required of this type of case, they make a specific – they being the Third Circuit make a specific cross-reference to willfully.

And I think you are – this is 100-percent correct. I think it is almost based on that memo we submitted back August 4th that willfulness does have to be shown here and I [21] think it's correct.

THE COURT: Okay. We'll take it under advisement.

MR. DUBNOFF: All right. And if I could just direct your attention to what I believe my colleague is suggesting. In the definition of knowing, it is within a different chapter, it's the mental state chapter. I know my good friend Mr. Warren has cited the *Liparota* case. There is a description in that paragraph, we would ask your Honor just to take a look at the notations there and we trust your discretion.

THE COURT: Okay. 197?

MR. DUBNOFF: Uh – oh, no.

THE COURT: 198? 199? Okay. 200?

MR. DUBNOFF: So, obviously we object to the good faith instruction. I think your Honor knows our position on this. Your Honor correctly noted, it was not given in New York. It is in the Court's discretion as to how to give it, so the Government, for reasons stated earlier, would like the Court to consider our objections to a good faith instruction.

THE COURT: Now, take into account that I did include a willful blindness, which you did not have, because of course if you didn't have good faith, you didn't need willful blindness. Do you agree that if good

faith is given in some sort, willful blindness should also be given?

MR. DUBNOFF: Yeah, they have to – it has to be, [22] your Honor.

THE COURT: Okay –

MR. WARREN: And obviously –

THE COURT: – the big picture.

MR. WARREN: – obviously, I can't have it – I can't have my cake and eat it too, if I get good faith, they get willful blindness.

THE COURT: Okay.

MR. WARREN: I mean –

THE COURT: So let's now with that in mind run through the specific language. 200? 201? 202? 203? 204? 205? 206? 207? 208? 209? 210? 211? 212? 213? 214? 215? 216? 217? 218? 219? 220? 221? 222? 223?

(Pause.)

THE COURT: 224? 225? 226?

MR. DUBNOFF: Yes, your Honor.

THE COURT: Okay.

MR. DUBNOFF: All right. So there are a couple places here. For the mail fraud and the wire fraud, it's "the defendant knowingly devised or willfully participated in a scheme." And it will be here in paragraph 226, it's – you have it correct a little later in the charge and our position wold be to add those words here, "or willfully participated in."

MR. WARREN: I have no objection whatsoever –

[23] THE COURT: Okay.

MR. WARREN: – Judge.

THE COURT: It's added to it on 226.

MR. DUBNOFF: Yeah.

THE COURT: Point it out as we go through it if it needs to be added somewhere else.

227? 228? 229? 230? 231?

MR. DUBNOFF: And here's another one, your Honor. That's –

THE COURT: Okay, tell me how –

MR. DUBNOFF: After "devised," the words, "or willfully participated in."

THE COURT: Okay.

MR. DUBNOFF: And our position is that obviously there is a reference to willfully there and that is where we believe the willfully charge should go. We don't believe willfully applies to the RICO conspiracy charges in Counts 1 or 2, we do think that it applies –

THE COURT: Okay.

MR. DUBNOFF: – in the later charges and that's where we believe a willfully instruction should be given.

MR. WARREN: You know what our position is –

THE COURT: Okay.

MR. WARREN: – it applies to RICO and mail fraud, Judge.

[24] THE COURT: 232? Now, Mr. Dubnoff, why would it apply to one and not to the other? What's the policy involved here?

MR. DUBNOFF: Well, they're different statutes. The RICO conspiracy charge is not a specific-intent statute, it's a general-intent statute. There is the line of cases that we cited, I know Mr. Warren cited contrary cases. This is what we litigated back in August with the briefs that we submitted, your Honor.

On the other hand, we agree with Mr. Warren that mail fraud and wire fraud are specific-intent statutes. We have to prove an intent to defraud –

THE COURT: Okay –

MR. DUBNOFF: – and so it's just –

THE COURT: – I get it.

MR. DUBNOFF: – it's a different situation.

THE COURT: Thank you. 232? 233? 234? 235? 236? 237? 238? 239? 240? 241? 242? 243? 244? 245? 246? 247? 248? 249? 250? 251? 252? 253? 254?

MR. DUBNOFF: Your Honor, there's a typo in this one.

THE COURT: Okay.

MR. DUBNOFF: The third line it says, "whether the he acted," the word "the" should be stricken.

THE COURT: Very good. Thank you. It will be.

APPENDIX I

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

———

CRIMINAL NOS. 16-130-1, 2

———

UNITED STATES OF AMERICA

v.

CHARLES M. HALLINAN (1)
WHEELER K. NEFF (2)

———

Philadelphia, Pennsylvania
November 20, 2017
9:54 o'clock a.m.

———

JURY TRIAL
BEFORE THE HONORABLE
EDUARDO C. ROBRENO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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* * *

[33] In order to convict a defendant on the racketeering conspiracy offense charged in Counts 1 and 2, the Government must prove each defendant knowingly agreed that a conspirator, which may include the defendant himself, would commit a violation of Title 18 United States Code section 1962(c).

Section 1962(c) is commonly referred to as a RICO statute, R-I-C-O, which stands for, is a short moniker for Racketeering and Corrupt Organizations Act.

The relevant provision of the RICO statute provides as follows, and I quote: "It shall be unlawful for any person employed by or associated with any enterprise

engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through," in this case, "the collection of unlawful debt," close quote.

It is a Federal crime for two or more persons to agree or to conspire to commit any offense against the United States, even if they never actually achieve their objective.

A conspiracy is kind of a criminal partnership. In order for you to find a defendant guilty of conspiracy to conduct or to participate in the conduct of an enterprise's affairs through the collection of unlawful debt, you must find that the Government proved beyond a reasonable doubt each of the following three elements: first, that two or [34] more persons agreed to conduct or to participate, directly or indirectly, in the conduct of an enterprise's affairs through the collection of unlawful debt; second, that the defendant was a party to or a member of that agreement; and, third, that the defendant joined the agreement or conspiracy knowing of its objectives to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through the collection of unlawful debt, and intending to join with at least one other alleged conspirator to achieve that objective. That is, that the defendant and at least one other alleged conspirator shared a unity of purpose and the intent to achieve the objective of conducting or participating in the conduct of an enterprise's affairs through the collection of unlawful debt.

Let me explain. The Government is not required to prove that the alleged enterprise was actually established; that the defendant was actually employed by or associated with the enterprise; that the enterprise was

actually engaged in, or its activities actually affected, interstate or foreign commerce; or that the defendant actually collected an unlawful debt. Indeed, it is not necessary for you to find that the objective or purpose of the conspiracy was achieved at all. However, the evidence must establish that a defendant knowingly agreed to facilitate or further the scheme, which, if completed, would include the collection of [35] an unlawful debt committed by at least one other conspirator.

In short, to find Charles M. Hallinan and Wheeler K. Neff guilty of either RICO conspiracies, the conspiracy charged in Counts 1 and 2 of the indictment, you must find that the Government proved beyond a reasonable doubt that the Defendant joined in an agreement or conspiracy with another person or persons knowing that the objective or purpose was to conduct or to participate, directly or indirectly, in the conduct of the affairs of an enterprise through the collection of unlawful debt, and intended to join with other person or persons to achieve that objective.

Let's break this down by elements now. I will now instruct you to some of the general principles applicable to the law of conspiracy. These principles apply to the RICO conspiracy charged in Counts 1 and 2, and they also apply to the other conspiracies charged in the indictment.

The first element of the crime of conspiracy is the existence of an agreement. The Government must prove beyond a reasonable doubt that two or more persons knowingly and intentionally arrived at a mutual understanding or agreement, either spoken or unspoken, to work together to achieve the overall objective of the conspiracy, which is to conduct or to participate, directly or indirectly, in the conduct of the

affairs of an enterprise through the collection of unlawful debt.

[36] The Government does not have to prove the existence of a formal or written agreement, or an express oral agreement spelling out the details of the understanding. The Government also does not have to prove that all of the members of the conspiracy directly met or discussed between themselves their unlawful objective, or agreed to all of the details, or agreed to what the means were by which the objective would be accomplished. The Government is not even required to prove that all of the people named in the indictment were in fact parties to the agreement, or that all members of the alleged conspiracy were named or that all members of the conspiracy are even known.

What the Government must prove beyond a reasonable doubt is that two or more persons in some way or manner arrived at some type of agreement, mutual understanding or meeting of the minds to try to accomplish a common and unlawful objective.

You may consider both direct evidence and circumstantial evidence in deciding whether the Government has proved beyond a reasonable doubt that an agreement or mutual understanding existed. You may find the existence of a conspiracy based on reasonable inferences drawn from the actions and statements of the alleged members of the conspiracy, from the circumstances surrounding the scheme, and from evidence of related facts and circumstances which

* * *

[51] You may find that the defendant participated, indirectly or directly, in the conduct of the affairs of the enterprise if you find that he was a lower-level participant who acted under the direction of upper

management, knowingly furthering the aims of the enterprise by implementing a management decision or carrying out the instruction of those in control, or that the defendant knowingly performed acts, functions or duties that were necessary to or helpful in the operation of the enterprise.

In order to prove RICO conspiracy, the Government must prove that the defendant agreed that a conspirator, which could be the defendant himself or any other conspirator, would commit a collection of an unlawful debt. The Government is not required that the defendant personally collected or agreed to personally collect any unlawful debt. Indeed, it is not necessary for you to find that the objective or purpose of the conspiracy was achieved at all. However, the evidence must establish that the defendant knowingly agreed to facilitate or further a scheme, which, if completed, would include the collection of unlawful debt committed by at least one other conspirator.

A collection of unlawful debt is defined as follows. The term unlawful debt means that; one, the debt was unenforceable in whole or in part under Federal or state law because of the laws relating to usury; and, two, was incurred [52] in connection with the business of lending money or anything of value at a rate that was usurious under Federal or state law where the rate was at least twice the legally enforceable rate.

Usury is the lending of money at an illegally high rate of interest. Pennsylvania has a legally enforceable rate of interest; any higher rate of interest is illegal. Specifically, in Pennsylvania the enforceable rate of interest on consumer loans of up to $25,000 is six percent for unlicensed lenders and approximately 24 percent for lenders who are licensed with the Pennsylvania Department of Banking.

Pennsylvania also has a law which makes it a crime to charge a rate of interest higher than 25 percent per year on most loans to individuals.

The term, quote, "rate of interest," close quote, includes fees, charges and any other costs associated with the loan. These Pennsylvania laws on interest limits apply to all loans made to Pennsylvania borrowers even if the lenders are physically located outside of Pennsylvania and have no offices in Pennsylvania, and even if the borrower signs a contract agreeing that Pennsylvania law does not apply and that the borrower is willing to pay an interest rate higher than the enforceable rate of interest.

Therefore, if you believe the Government has [53] presented evidence demonstrating that the Defendants agreed to collect debt from loans to borrowers living in Pennsylvania with loans at interest rates that exceeded twice the enforceable rate of interest, you may consider such evidence as evidence that the Defendant agreed to collect unenforceable debt.

Some states other than Pennsylvania also has interest rate limits on consumer loans that are either 36 percent per year or less. These states include Connecticut, Georgia, Maine, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Vermont, and West Virginia. Washington, DC has an interest rate limit of 24 percent.

If you believe the Government has presented evidence demonstrating that the Defendant agreed to collect debt from loans to borrowers living in these states where the loan had interest rates that exceeded twice the enforceable rate of interest in those states, you may consider such evidence as evidence that the Defendants agreed to collect unenforceable debt.

Other states permitted some payday lending if the lenders obtained licenses from the states and complied with their regulations. If you believe the Government has presented evidence demonstrating that the Defendants agreed to collect debt from loans to borrowers living in any of [54] those states without complying with the law of those states, you may consider such evidence as evidence that the Defendants agreed to collect unenforceable debt.

To convict a defendant of conspiracy to violate RICO, the Government is not required to prove that a defendant knew that his acts were against the law. Instead, a defendant must generally know the facts that make his conduct fit into the definition of the charged offense, even if the defendant did not know that those facts gave rise to a crime. Ignorance of the law is no excuse.

To prove a defendant guilty of conspiracy to collect unlawful debt, the Government is not required to prove that a defendant knew that the usury rates were in the states where the borrowers lived. For example, in the case of a Pennsylvania, the Government does not need to prove that the Defendant Charles M. Hallinan or Wheeler K. Neff knew that the criminal usury rate was 25 percent or that the enforceable rate of interest was six percent for a licensed lender, nor does the Government have to prove that the Defendant knew the usury laws or the enforceable rates of interest in any other state.

Now, throughout the trial you heard testimony and evidence regarding the concept of, quote, "tribal sovereign immunity," close quote. Tribal sovereign immunity is a legal rule that protects federally recognized Indian tribes from

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

CRIMINAL NO. 16-130-01

UNITED STATES OF AMERICA

v.

CHARLES M. HALLINAN

AFFIDAVIT

I, Richard Batezel, being duly sworn, depose and state as follows

1. I am a United States Postal Inspector assigned to the Philadelphia Division of the United States Postal Inspection Service, and have been so employed since 2001. I am one of the case agents in the above-captioned case and was part of the investigative team. I attended the jury trial in this case, which occurred from September to November 2017.

2. During the investigation of this case, the government received a copy of a letter dated August 26, 2014, from defendant Wheeler K. Neff to Jason Hatch as the Supervisor of Loss Prevention at PowerPay in Portland, Maine, in which defendant Neff sought reimbursement of money held in reserve accounts for Apex 1 Processing, Inc. ("Apex 1"), Fifth Avenue Financial, Inc. ("Fifth Avenue"), Palmetto Financial, Inc., ("Palmetto"), and Sabal Financial, Inc. ("Sabal").

It is my understanding that this letter was admitted into evidence at trial as Government Exhibit 671.

3. After receiving this letter, the investigative team served grand jury subpoenas upon PowerPay, which I understand has since changed its name to EVO Payments International ("EVO"), for records relating to the accounts of Apex 1, Fifth Avenue, Palmetto, and Sabal. In response, EVO representatives provided the investigative team with documents relating to accounts that had been held in the name of six different entities: (1) Apex 1, d/b/a "Paycheck Today," (2) Apex 1 d/b/a "Cash Advance Network," (3) Apex 1, d/b/a "Instant Cash USA," (4) Fifth Avenue, d/b/a "My Next Paycheck," (5) Palmetto, d/b/a My Payday Advance, and (6) Sabal, d/b/a "Your Fast Payday."

4. Many of those documents were introduced as exhibits during the trial and admitted into evidence. It is my understanding that those exhibits include Exhibits 651 – 656, 665 – 669, and 671 – 677.

5. Mr. Hatch also testified during the trial as did former PowerPay employee Barbara Youngblood, and they explained that PowerPay processed credit card payments from customers of Apex 1, Fifth Avenue, Palmetto, and Sabal into those six accounts.

6. Some of the documents the investigative team received from EVO were not introduced as trial exhibits, although it is my understanding that they were produced to the defense attorneys in 2016. These documents include monthly account statements for the six different accounts. These account statements contain information about the amount of money that PowerPay deposited into each of the six accounts as credit card payments from customers to the six aforementioned

entities, and the amount of fees charged on the transactions.

7. My office has reviewed the statements, and although most of the information contained on the statements is self-explanatory, we also have received clarification from an EVO representative that the term "settled amount" refers to the amount collected from the customers; that fees and charges were assessed on the accounts; and that the remaining amounts were forwarded to the merchant.

8. Attached as Exhibit 1 to this affidavit is a true and accurate copy of a chart that summarizes the information contained in these monthly account statements. It is my understanding that the chart has been marked as Government Exhibit 2216 for the forfeiture hearing.

9. As the chart indicates, the total amount deposited into the six accounts was $2,336,857; the total amount of fees and charges incurred by those six accounts was $14,035.07; and the total amount of money transmitted to the account holders (defendant Hallinan and/or his employees) was $2,322,822.54.

10. Attached as Exhibit 2 to this affidavit is a true and accurate copy of pages 30 through 35 of the trial transcript of Michael Kevitch's testimony on October 10, 2017.

11. In his testimony, Kevitch identified Government Exhibit 297-R as a ledger of 65,820 leads that Apex 1 Lead Generators sold to Your Fast Payday between June 16, 2010, and February 23, 2013. Tr. 30:2-31:25. Kevitch identified Exhibit 298-R as a ledger of approximately 41,427 leads that were passed through Apex 1 Lead Generators for scoring between September 24, 2012, and August 9, 2013. Tr. 32:1-12.

Kevitch identified Exhibit 299R as a list of 75,763 leads purchased by My Payday Advance between June 30, 2010, and February 23, 2013. Tr. 33:13-34:12. Kevitch identified Exhibit 300-R as a list of 120,807 leads purchased by "Paycheck Today, which eventually became My Next Paycheck" between May 20, 2010 and February 22, 2013. Tr. 34:13-35:9. Kevitch then added that Apex 1 Lead Generators "didn't sell that many leads," and he didn't know whether Apex 1 "underwrote them or scored them, but that's a ton of leads." Tr. 35:11-22.

12. Attached as Exhibit 3 to this affidavit is a true and accurate copy of the government's letter to defense counsel, dated June 15, 2016, in which the government identified 17 states, including Pennsylvania, plus the District of Columbia that effectively prohibited payday lending (the "Prohibited Payday Loan States"), 27 states that permitted some payday lending if the lenders obtained licenses and complied with certain regulations (the "Regulated Payday Loan States"), and six states that permitted payday lending (the "Permitted Payday Loan States").

13. My office has reviewed Exhibits 297-R, 298-R, 299-R, and 300-R. Each entry on each spreadsheet contains a person's name and address, among other information for that "lead." We have sorted the entries on each document by the states identified for each "lead." We then determined how many of those "leads" resided in Prohibited Payday Loan States, Regulated Loan States, and Permitted Payday Loan States.

14. Of the 65,819 leads identified in Exhibit 297-R, 16,056 had an address in a Prohibited Payday Loan State; 46,318 had an address in a Regulated Payday Loan State; and 3,445 had an address in a Permitted Payday Loan State.

15. Of the 41,427 leads identified in Exhibit 298-R, 11,695 had an address in a Prohibited Payday Loan State; 27,905 had an address in a Regulated Payday Loan State; and 3,445 had an address in a Permitted Payday Loan State.

16. Of the 75,763 leads identified in Exhibit 299-R, 19,914 had an address in a Prohibited Payday Loan State; 52,455 had an address in a Regulated Payday Loan State; and 3,394 had an address in a Permitted Payday Loan State.

17. Of the 120,807 leads identified in Exhibit 300-R, 29,791 had an address in a Prohibited Payday Loan State; 85,126 had an address in a Regulated Payday Loan State; and 5,890 had an address in a Permitted Payday Loan State.

18. In total, there were 303,816 leads identified on Exhibits 297-R, 298-R, 299-R, and 300-R. Of that total, 77,456 (approximately 25.49 percent) had an address in a Prohibited Payday Loan State.; 211,804 (approximately 69.71 percent) had an address in a Regulated Payday Loan State; and 14,556 (approximately 4.79 percent) had an address in a Permitted Payday Loan State.

19. Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted,

/s/ Richard Batezel

RICHARD BATEZEL
Postal Inspector
United States Postal Inspection Service

April 2, 2018

U.S. Department of Justice
United States Attorney
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June 15, 2016

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RE: United States v. Hallinan, et al., Criminal No. 16-130; Expert Witnesses

Dear Counsel:

I am writing to follow up on my prior communications to all of you regarding the possibility that the government will present expert testimony in the above-captioned trial. As I mentioned in my initial discovery letter, dated May 5, 2016, and during our May 25, 2016 telephone conference with the Court, it is the government's intention to present the jury with information regarding certain laws and regulations that were applicable to payday lending and the federal

tax code at all times relevant to the indictment (i.e., 1997-2013). As I further indicated, I do not believe we need expert testimony to present these "legal facts" to the jury and instead could present them either through fact witness or by asking the Court either to take judicial notice of them or to include them as instructions on the law. However, in case you believe we would need expert opinion testimony on such matters, I am outlining the information we would seek to present to the jury, with citations to the applicable laws.

A. Pennsylvania Laws Applicable to Payday Lending

It is our intention to present a witness from the Pennsylvania Department of Banking, who would testify to the following:

- Under the Pennsylvania Loan Interest and Protection Law ("LIPL"), the maximum rate of interest that could be charged on general consumer loans (i.e., nonmortgage loans to individuals) of up to $50,000 was 6 percent per year, 41 P.S. § 201(a); *Cash America Net of Nevada, LLC v. Commonwealth Dep't of Banking,* 607 Pa. 432, 437 (Pa. 2010).
- Additionally, the Consumer Discount Company Act ("CDCA") prohibited lenders from charging, collecting, or contracting to receive interest, fees, commissions, charges, or other money in excess of 6 percent on any loans of up to $25,000, unless the lenders were licensed with the Pennsylvania Department of Banking. 7 P.S. § 6203.A; *Cash America Net of Nevada, LLC,* 607 Pa. at 437-38.

- Licensed lenders could charge annual rates of interest of up to approximately 24 percent on loans of up to $25,000. 7 P.S. §§, 6213.E, 6217.1.A; *Cash America Net of Nevada, LLC,* 607 Pa. at 437-38.
- On May 29, 2008, the Pennsylvania Supreme Court held that the CDCA's interest rate cap applied to interest and any other type of other or additional charges associated with a loan. *Pennsylvania Dep't of Banking v. NCAS of Del., LLC,* 596 Pa. 638, 653 (2008).
- On July 26, 2008, the Pennsylvania Department of Banking issued a public notice announcing that beginning on February 1, 2009, it would seek to enforce the CDCA against out-of-state lenders who engaged in consumer lending to Pennsylvania residents over the Internet or by mail. 38 Pa. Bull. 3986 (July 26, 2008)(Notice).
- On October 29, 2010, the Pennsylvania Supreme Court ruled that Pennsylvania could enforce the CDCA's interest rate caps on an out-of-state company that made payday loans to Pennsylvania residents over the internet, even where the company had no offices or employees in Pennsylvania. *Cash America Net of Nevada, LLC,* 607 Pa. at 451.
- The Pennsylvania Criminal Code defined "Criminal usury" as charging, taking or receiving any money, things in action or other property as interest on the loan or forbearance of any money, things in action or other property, at a rate exceeding thirty-six per cent per annum or the equivalent rate for a longer or

shorter period, when not otherwise authorized by law. 18 P.S. § 4806.1.

- The maximum penalty for criminal usury was ten years' imprisonment, and a fine of $5,000. 18 U.S.C. § 4806.3.

Please advise whether you think we need to tender such a witness as an "expert" on Pennsylvania Banking law in order to testify about such matters.

B. Prohibited and Regulated States

We also would seek to provide the jury with information to support the allegation in Paragraph 12 of Count 1 of the Indictment that at least a dozen other states and the District of Columbia "effectively prohibited most forms of payday lending by prohibiting interest rates charged on such loans in excess of 36 percent (the "Prohibited Payday Loan States"). We believe these states include Connecticut (capping APR at 30.3%), Georgia (16%), Maine (30%), Maryland (33%), Massachusetts (23% plus a fee), Montana (36%), New Hampshire (36%), New Jersey (30%), New York (25%), North Carolina (36%), Ohio (28%), Vermont (18%), West Virginia (31%), and Washington, D.C. (24%). Additionally, Arizona, Arkansas, and Oregon had APR caps in place for at least part of the relevant time period. *See also* Pew Charitable Trusts, "State Payday Loan Regulation and Usage Rates," January 14, 2014, http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/state-payday-loan-regulation-and-usage-rates (identifying 15 "restrictive states" including Colorado), *United Slates v. Tucker,* Crim No. 16-091, (S.D.N.Y Feb. 11, 2016) (identifying 15 states other than Colorado that effectively prohibit payday lending). Since there has been some change in

state laws, we would use the compromise language of "more than a dozen."

Likewise, we would seek to provide the jury with information to support the allegation in Paragraph 13 of Count 1 that "[m]any states permitted some payday lending if the lenders obtained licenses from the states and complied with regulations that often limited the number of payday loans that could be made to particular borrowers and the terms of those payday loans (the "Regulated Payday Loan States"). We believe the precise number of these states is 27, and that the only states that did not regulate payday loans to residents of their states were Delaware, Idaho, Nevada, South Dakota, Utah, and Wisconsin. However, we recognize that some state laws might be open to interpretation, so we would suggest the compromise language of "many states" that fall into the category of "Regulated Payday Loan States."

We do not believe we would need an expert witness to opine as to either of these legal facts: i.e., that from at least 2008 until at least 2013: (a) "more than a dozen" states effectively prohibited payday lending by setting interest rate caps at 36 percent APR or lower; and that (b) "many other states" permitted payday loans as long as the lenders complied with certain regulations and restrictions. Indeed, we ask you to consider stipulating to this compromised language, unless you believe the precise number of prohibited or regulated payday loan states is material to any of the charges. For present purposes, however, please advise us whether you believe we would need to tender any witness as an expert in order to present such information to the jury.

To help your analysis, I am providing you with citations to the relevant state statutes, so you can

conduct your own state-by-state review of the relevant laws.

1. Prohibited States

   - Arizona, *see* Ariz. Rev. Stat. Ann. § 6-1263 (until July 1, 2010);
   - Arkansas, *see* Ark. Const. Art. 19, Section 13 (repealed in 2011);
   - Connecticut, *see* Conn. Gen. Stat. Ann. § 36a-563(a);
   - Georgia, *see* Ga. Code Ann. § 16-17-1 et seq.;
   - Maine, *see* Me. Rev. Stat. Ann. tit. 9-A, §§ 1-201, *et al.;*
   - Maryland, *see* Md. Code Ann., Corn. Law § 12-306;
   - Massachusetts, *see* Mass. Gen. Laws Ann. ch. 140, § 96; 209 Mass. Code Regs. 26.01(1);
   - Montana, *see* Mont. Code Ann. § 31-1-701 et seq.;
   - New Hampshire, *see* N.H. Rev. Stat. Ann. § 399-A:17(I);
   - New Jersey, *see* N.J. Stat. Ann. 2c:21-19; N.J. Admin Code 3:24-1.3;
   - New York, *see* N.Y. Penal Law § 190.40;
   - North Carolina, *see* N.C. Gen. Stat. Ann. § 53-176(a)
   - Ohio, *see* Ohio Rev. Code Ann. § 1321.35 et seq.;
   - Oregon, *see* Or. Rev. Stat. ch. 725A (enacted in 2010;

- Vermont, *see* Vt. Stat. Ann. tit. 9, § 41a(b)(1);
- West Virginia, *see* W. Va. Code Ann. § 46A-4-107(2).
- Washington, D.C., *see* 2007 District of Columbia Laws 17-42 (Act 17-115).

2. Regulated States

- Alabama, *see* Ala. Stat. §§ 5-18A-1 *el seq.* (setting up licensing scheme and limiting total charges to 17.5 percent of amount advanced);
- Alaska, *see* Alaska Stat. 06.50.010, *el seq.* (setting up licensing scheme and limiting fees on deferred deposit advances to approximately 15 percent of amount advanced);
- California, *see* Cal. Civ. Code §§ 1789.30 *el seq.* (limiting fees for deferred deposit transactions to 15 percent of amount advanced);
- Colorado, *see* Colo. Stat. 5-3.101, *el seq.* (limiting size of payday loans and interest charged on them);
- Florida, *see* Fla. Stat. § 560.404(6) (limiting fees charged by deferred presentment providers on currency or payment instrument);
- Hawaii, *see* Haw. Stat. 480E-1, *et seq.* (limiting fees that check cashers can charge on deferred deposit checks);
- Illinois, *see* 815 ILCS §§ 122/1-1 *et seq.* (setting up a regulatory scheme for payday lending and limiting fees that can be charged on such loans);

- Indiana, *see* Ind. Stat. Ann. 24-4.5 — 7.101 (setting up licensing scheme limiting interest rate that can be charged on loans of up to $500);
- Iowa, *see* Iowa Stat. Ann. 533D.1, *et seq.* (setting up licensing scheme and limiting number of loans and fees that can be charged by licensees to approximately $15 per $100 loaned);
- Kansas, *see* Kan. Stat. Ann. § 16a-2-404 (requiring licenses for payday lenders and limiting rates they can charge to approximately $15 per $100 loaned);
- Kentucky, *see* Ky. Stat. Ann. §§ 286.9-010, *et seq.* (setting up licensing scheme and limiting number of loans and fees that can be charged by licensees to approximately $15 per $100 loaned);
- Louisiana, *see* La. Rev. Stat. §§ 9:3578:1, *et seq.* (setting maximum loan amount, requiring licenses, and limiting fees that can be charged on amount advanced);
- Michigan, *see* Mich. Stat. Ann. § 487.2121, *et seq.* (setting up licensing scheme and limiting fees that can be charged by licensees to no more than $15 per $100 loaned);
- Minnesota, *see* Minn. Stat. 47.60 (limiting charges that can be assessed on consumer small loans);
- Mississippi, *see* Miss Code. Ann. §§ 75-67-501 *et seq.* (limiting amount of short-term loans to $500 and limiting fees that can be charged on a delayed deposit check to either

20 percent or 21.95 percent, depending on amount advanced);

- Missouri, *see* Mo. Rev. Stat. § 408.505 (limiting amount and duration of short-term loans and interest rates and fees on such loans);
- Nebraska, *see* Neb. Rev. Stat. §§ 45-901 *et seq*. (limiting amount and duration of short-term loans and limiting total service fees to 15 percent of initial loan amount);
- New Mexico, *see* N.M. Stat. Ann. §§58-15-32-58-15-38 (limiting duration of short-term loans and limiting fees to 15.5 percent of initial loan amount, and linking amount of permissible loan to borrower's income);
- North Dakota, *see* N.D. Cent. Code §§ 13-08-0101 *et seq*. (limiting duration and amount of permissible short-term consumer loans and limiting fees to 20 percent of initial loan amount);
- Oklahoma, *see* Okla. Stat. tit. §§ 3101 *et seq*. (limiting amount and duration of deferred deposit loans);
- Rhode Island, *see* 19 R.I. Gen. Laws §§ 19-14.2-1 *et seq*. (limiting duration of short-term loans and interest to approximately 36 percent per year);
- South Carolina, *see* S.C. Code Ann. § 34-39-250 (limitation duration and amount of short-term loans);
- Tennessee, *see* Tenn. Code Ann. §§ 45-17-101 *et seq*. (limiting duration and amount of short term loans and limiting service fees to

approximately 15 percent of initial loan amount);

- Texas, *see* Tex. Fin. Code Ann. §§ 342.251 *et seq.,* 342.601 *et seq*. (limiting amount and duration of extensions of credit and total charges, providing for maximum interest rates);
- Virginia, *see* Va. Code Ann. §§ §§ 6.2-1800 *et seq*. (limiting interest rate to 36 percent, and total service fee to 20 percent of loan proceeds);
- Washington, *see* Wash. Rev. Code § 31.45.010, *et seq*. (setting up licensing scheme and imposing limits on duration and amount of consumer loans, number of loans that can be made to any borrower, and fees relative to amounts advanced); and
- Wyoming, *see* Wyo. Stat. Ann. § 40-14-363 (limiting finance charges that can be charged on post-dated checks and duration of loans).

C. Rules for S Corporation Tax Filings

I anticipate asking either an accountant, such as Rod Ermel, and/or a representative from the IRS – perhaps Special Agent Susan Roehre or a revenue agent – to explain the general rules for corporate tax filings and the differences between "C Corporations" and "S Corporations." Such a witness (or witnesses) would likely testify to the following:

- The Internal Revenue Code distinguishes between "S Corporations," which are small business corporations, and "C corporations," which are not. 26 U.S.C. § 1361(a).

- The income of a C corporation is taxed to the corporation itself, whereas most income of an S corporation is taxed to the shareholders of the corporation instead. Since individuals are generally taxed at lower rates than corporations, there are potential tax advantages to having the IRS categorize a corporation as an "S" Corporation instead of as a "C" Corporation.
- Not all corporations are eligible to be treated as S Corporations under the Internal Revenue Code. Among the requirements that a corporation must meet to be eligible for S corporation treatment are that: (1) it must be a domestic corporation; (2) all shareholders must be individuals, estates, or exempt organizations, as defined elsewhere in the Code; and (3) it cannot have any nonresident alien shareholders. 26 U.S.C. § 1361(b)(1).
- Any corporation or other entity eligible to be treated as a corporation must complete IRS Form 2553 to make an election under 26 U.S.C. § 1362(a).
- An S Corporation must file IRS Form 1120S to report its annual income to the IRS. The S corporation provides the IRS with Schedule K-1s that report each shareholder's share of income, losses, deductions and credits. The shareholders use the information on the K-1 to report the same thing on their separate tax returns.

Please advise whether you believe we would need to tender such a witness as an "expert" on federal corporate tax laws in order to testify about such matters.

D. General Principles of law Relating to the Indiana Lawsuit

I also anticipate that we would ask one of the attorneys from the Indiana lawsuit (Edwards v. Apex 1, et al.) to explain basic legal principles relating to lawsuits against corporate entities, including but not limited to what a class action lawsuit is; what it means to "certify" a class; how one might try to collect a judgment against a corporate defendant; what it means to "pierce the corporate veil;" and what an Indiana state court's role is in approving a settlement of a class action lawsuit.

Please advise whether you believe we would need to tender such a witness as an "expert" on Indiana civil procedure in order to testify about such matters,

E. General Principles on Tribal Sovereign Immunity

At present, we do not anticipate calling any expert witnesses in our case in chief to explain the concept of tribal sovereign immunity. We may, however, ask witnesses to provide factual testimony about what the defendants said about tribal sovereign immunity. We also may ask the Court in a pretrial motion to instruct the jury on basic legal principles relating to the concept of tribal sovereign immunity. If so, you will obviously have an opportunity to respond.

In sum, it is the government's position that none of the information described in this letter needs to be presented to the jury through expert testimony, but please advise me if you disagree, so we can streamline any disputed issues for the Court. I look forward to hearing from you.

Sincerely yours,
ZANE DAVID MEMEGER
United States Attorney

/s/ Mark B. Dubnoff
Mark B. Dubnoff
Assistant United States Attorney

Cc: Chambers of the Honorable Eduardo C. Robreno