FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. VASSILY ANTHONY THOMPSON, *Defendant-Appellant.*	No. 18-30206 D.C. No. 2:16-cr-00145-TOR-1
UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. DERRICK JOHN FINCHER, *Defendant-Appellant.*	No. 18-30208 D.C. No. 2:16-cr-00145-TOR-2 OPINION

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Argued and Submitted May 4, 2020
Seattle, Washington

Filed March 3, 2021

Before: Andrew J. Kleinfeld, William A. Fletcher, and Johnnie B. Rawlinson, Circuit Judges.

Opinion by Judge Kleinfeld

SUMMARY*

Criminal Law

The panel affirmed in part, reversed in part, and remanded in a case in which two defendants appealed (1) their convictions for conspiracy to commit wire fraud in violation of 18 U.S.C. §§ 1343 and 1349, and (2) the forfeiture provisions of their sentences.

Appellants argued that because the indictment charged their crimes as it would for an 18 U.S.C. § 371 conspiracy by including "Overt Acts," the indictment should be treated as conspiracy under Section 371, and that allowing the jury to convict Appellants of a Section 1349 conspiracy in effect amended the indictment improperly. Appellants, who were sentenced to 108 and 135 months respectively, asserted that this court should therefore remand for resentencing under Section 371, which would reduce their maximum exposure to five years. Rejecting this argument, the panel wrote that the overt-acts language was surplusage with respect to what Appellants were actually charged with and convicted of, and there is no constructive amendment of the indictment because

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

the indictment alleged all of the elements of Sections 1343 and 1349.

The panel vacated the forfeiture judgment against Appellants and remanded because the judgment amounted to joint and several liability contrary to *Honeycutt v. United States*, 137 S. Ct. 1626 (2017), in which the Supreme Court held that, in a conspiracy, a defendant may not, for purposes of forfeiture, be held jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not acquire. The panel held that *Honeycutt*, which involved 21 U.S.C. § 853, applies to 18 U.S.C. § 981 because the differences between the two statutes are immaterial in light of *Honeycutt*'s reasoning and language. The panel explained that the text of Section 981 and its roots in common law forfeiture, like the statute in *Honeycutt*, necessitate a connection to tainted property. The panel wrote that, on remand, the district court should make findings denoting approximately how much of the proceeds of the crime came to rest with each of the conspirators; and that the forfeiture judgments must be separate, for the approximate separate amounts that came to rest with each of them after the loot was divided among the swindlers.

COUNSEL

Stephen R. Hormel (argued), Hormel Law Office LLC, Spokane Valley, Washington; Nicolas Vernon Vieth (argued), Vieth Law Offices Chtd., Coeur d'Alene, Idaho; for Defendants-Appellants.

Joseph P. Derrig (argued) and Brian M. Donovan (argued), Assistant United States Attorneys; William D. Hyslop, United States Attorney; United States Attorney's Office, Spokane, Washington; for Plaintiff-Appellee.

OPINION

KLEINFELD, Circuit Judge:

We address two issues, whether the indictment was in effect improperly amended, and whether the forfeitures as imposed were contrary to the recent Supreme Court decision in *Honeycutt v. United States*.[1] The first issue is a straightforward application of established authority, but the second requires us to work through a new problem for our court.

Three people, Vassily Anthony Thompson, Derrick John Fincher, and John Patrick Nixon, stole a great deal of money from several people and firms with a classic "advance pay" scheme. In this kind of swindle, the victim is persuaded to pay money to the swindler in order to receive a much larger sum. The Thompson-Fincher-Nixon version persuaded the victims that the swindlers had access to considerable capital that could be loaned to the victims, but the victims would have to advance cash for fees and expenses. There was no capital available for the prospective loans, and the swindlers stole the advances. In this type of "long con," the maxim "you cannot cheat an honest man," does not apply. One can. The "long con" in this case was perfected with extremely

[1] 137 S. Ct. 1626 (2017).

elaborate and complex business documents and escrows, lulling the victims into victimhood, and appearing, until the victims sought the promised loans or to get their money back, to be genuine.

Eventually, the swindlers were caught. Nixon pleaded guilty pursuant to a plea bargain, and Thompson and Fincher were convicted in a jury trial and sentenced. Thompson and Fincher appeal the convictions and the forfeiture provisions of their sentences. We have jurisdiction under 28 U.S.C. § 1291. We lay out more details below, insofar as they bear on the legal issues.

The Indictment

The superseding indictment under which the swindlers were convicted says in the title area that they were charged with conspiracy to commit wire fraud in violation of 18 U.S.C. §§ 1343 and 1349 and aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1). The identity theft charge was dropped and is not an issue in this appeal. The general allegations in the superseding indictment were that the three "worked with one another to offer false and fictitious loans to various parties in Idaho, Montana, and North Carolina." The loans and lines of credit would be offered after Thompson, Fincher, and Nixon "collected fees from these parties under the guise that the fees were being used to acquire the loans. No such loans or lines of credit existed."

The Idaho scheme promised a $6 million line of credit, but required a $160,000 advance fee to be sent to an escrow agent in Georgia, a law firm specializing in escrows. An email promised that the $160,000 would be disbursed to an

imaginary bank if the imaginary loan were approved, or returned if the customer cancelled the escrow. Of course, the imaginary loan was not made available, and the $160,000 was not returned.

The Montana deal required a $300,000 advance fee, supplemented by another $1 million, to get a $60 million or $70 million line of credit. The fees were deposited in a trust account maintained by another attorney, but no line of credit was made available.

The North Carolina scheme asked for an $855,000 advance to secure a fictitious $10 million line of credit, with the advance to be deposited into the trust account of a third attorney's firm.

The swindlers dressed the entire scheme up with genuine-looking escrow agreements, a memorandum of understanding, claims that Bank of America, Barclay's Bank, JP Morgan, the Federal Export Import Bank, RBC Royal Bank, and Landes Capital Management were involved, and lengthy, complex, and apparently genuine documentation.

The indictment recites all these facts in considerably greater detail, and then under a heading, "Overt Acts," incorporates them by reference. It then alleges multiple counts of wire fraud under 18 U.S.C. §§ 1343 and 1349 for the wire communications used to dupe the victims out of their money. The indictment also gives notice of criminal forfeiture allegations under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) for property derived from proceeds traceable to the offenses or substitute property under 21 U.S.C. § 853(p). The jury was instructed on conspiracy to

commit wire fraud and convicted Thompson and Fincher under 18 U.S. C. §§ 1343 and 1349.

Appellants argue that because the indictment charges their crimes as it would for an 18 U.S.C. § 371 conspiracy by including "Overt Acts," it should be treated as so charging. Thus, allowing the jury to convict them of an 18 U.S.C. § 1349 conspiracy in effect amended the indictment improperly. This objection was not raised in district court, but appellants argue that the improper amendment, effectively convicting them of something the grand jury did not charge, was plain error. This statutory distinction matters a great deal because a Section 371 conspiracy has a five year limit on the sentence, but a Section 1349 conspiracy has a twenty year limit. Thompson and Fincher were sentenced to 108 and 135 months (nine and over eleven years), respectively.

The indictment does indeed read, in many respects, as though it was drafted to charge a Section 371 conspiracy. It charges a conspiracy against the United States and alleges overt acts, which are necessary for a Section 371 conspiracy.[2] Relying on the rule that an indictment may not be broadened or altered to charge a different offense except by the grand jury itself,[3] the appellants challenge their conviction for wire fraud under Section 1349. Appellants assert that they were in

[2] *See United States v. Grasso*, 724 F.3d 1077, 1086 (9th Cir. 2013) (requiring an overt act for a Section 371 conspiracy).

[3] *United States v. Miller*, 471 U.S. 130, 144–45 (1985); *Stirone v. United States*, 361 U.S. 212, 215–17 (1960); *Ex parte Bain*, 121 U.S. 1, 10, 13 (1887), *overruled on other grounds*, *United States v. Cotton*, 535 U.S. 625 (2002).

effect charged with the lesser Section 371 crimes, and that we should remand for resentencing under Section 371, which would reduce their maximum exposure to five years of imprisonment.

Appellants are correct on general principles, but mistaken regarding application of the principles to this case. The Fifth Amendment protected them from being convicted of a crime that the grand jury did not charge, and changes could not be made at trial charging them with a crime for which they were not indicted.[4] But that did not happen.

The indictment says in the caption that the appellants were charged with wire fraud and conspiracy to commit wire fraud under 18 U.S.C. §§ 1343 and 1349. After setting out the basis of the charges, and unnecessarily stating overt acts, the indictment says that the alleged acts were "all in violation of 18 U.S.C. §§ 1343 and 1349." It never mentions 18 U.S.C. § 371. Appellants do not dispute that the indictment sets forth all the elements of Sections 1343 and 1349. They say only that it also sets forth all the elements of Section 371. Perhaps they could have been charged with and convicted of conspiracy against the United States under Section 371, but they were not. The language in the indictment that would have been necessary or appropriate for a Section 371 charge was surplusage with respect to what they actually were charged with and convicted of.[5] There is no constructive amendment of the indictment here because the indictment alleged all the elements of Sections 1343 and 1349. Appellants were tried and convicted of the crime charged, and

[4] *See, e.g.*, *Miller*, 471 U.S. at 144–45.

[5] *See United States v. Renzi*, 769 F.3d 731, 756–57 (9th Cir. 2014).

there was no reason to include in the jury instructions the surplusage relating to the Section 371 crime that was not charged.

Thompson and Fincher could not have been misled by the language in the indictment that would have been used in a Section 371 charge. The indictment said consistently in the caption and the operative language that the charges were for wire fraud under Sections 1343 and 1349, never mentioning Section 371.[6] As the Supreme Court held in *Miller*,

> As long as the crime and the elements of the offense that sustain the conviction are fully and clearly set out in the indictment, the right to a grand jury is not normally violated by the fact that the indictment alleges more crimes or other means of committing the same crime. . . . A part of the indictment unnecessary to and independent of the allegations of the offense proved may normally be treated as "a useless averment" that "may be ignored."[7]

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[6] *See Miller*, 471 U.S. at 134–35 (no prejudicial surprise where competent defense counsel should have been on notice of the offense charged); *see also Renzi*, 769 F.3d at 757) ("[A]dditional language in the indictment was surplusage and could be disregarded.") (citing *Bargas v. Burns*, 179 F.3d 1207, 1216 n.6 (9th Cir. 1999); *United States v. Pang*, 362 F.3d 1187, 1194 (9th Cir. 2004) ("The district court did not err by refusing to instruct the jury to find an element that really isn't an element. . . . In any event, [defendant] failed to show that he was ambushed or misled in any way by the extraneous language in the information.").

[7] *Miller*, 471 U.S. at 136 (quoting *Ford v. United States*, 273 U.S. 593, 602 (1927)).

This case falls squarely within *Miller*.

Forfeiture

Thompson and Fincher also challenge the forfeiture aspect of each of their sentences. This issue is considerably more difficult than the indictment issue discussed above because we must apply the teachings of a recent Supreme Court decision to distinct facts.

The district court found that the swindlers ultimately stole $160,000 in the Idaho fraud, $1,000,000 in the Montana fraud, and $855,000 in the North Carolina fraud, for a total of $2,015,000.

The $160,000 from the Idaho fraud went to one lawyer's trust account before being distributed into several accounts. At least one account, AEIO Youth, was owned by Thompson. AEIO Youth then issued Fincher checks totaling some thousands of dollars. The court said Fincher and Thompson jointly obtained all the fraud proceeds because it was a joint decision to have the money initially go into the attorney's trust account.

The $1,000,000 from the Montana fraud went to another attorney's trust account, directed by Thompson. There was no evidence that Fincher directed those proceeds. $196,500 was disbursed, however, to an account owned by Fincher in three separate transactions. Fincher later withdrew some of this money as a cashier's check to pay for a pickup truck. Fincher also wired $9,000 to Thompson.

The $855,000 from the North Carolina fraud went to a third attorney's trust account "controlled and directed" by

Thompson, but from which $275,000 was wired to Fincher's bank account.

The court held that Fincher obtained $631,500 of the total proceeds, even though the court found that less than that came to rest with Fincher. The court ordered Fincher to forfeit the pickup truck he had bought with the money he obtained from the frauds, plus $631,500 "representing the fraud proceeds Defendant obtained, directly and indirectly." The court also ordered Thompson to forfeit the pickup truck plus $2,015,000, "representing the fraud proceeds Defendant obtained, directly and indirectly." There are not two pickup trucks. The court was referring in the Thompson judgment to Fincher's truck. The court did not order any forfeiture from the third conspirator, Nixon, who had pleaded guilty before trial, and made no finding as to how much of the loot Nixon obtained.

In the forfeiture briefing and hearing, the prosecutor said that the FBI had administratively forfeited $77,882.85 from Thompson's bank account and $40,000 from Fincher's bank account—for a total of $117,882.85. The government recommended that this previously forfeited amount be credited evenly between the two swindlers, $58,941.42 for Fincher and $58,941.43 for Thompson. The government said it planned to keep track of what it managed to obtain from its forfeiture collection efforts, and cap recovery at $2,015,000. The district court's order, however, provides no means of enforcing any of these government promises or recommendations or so limiting the forfeitures.

Appellants argue that the forfeitures amounted to a joint and several forfeiture impermissible under the Supreme Court's recent decision in *Honeycutt*, and that the district

court should be required to apportion the total proceeds obtained individually by Fincher, Thompson, and Nixon, and enter money judgments against Thompson and Fincher without joint and several liability. The government argues that the forfeitures were not joint and several, and that the joint and several language in the judgment applied only to restitution. As for *Honeycutt*, the government argues that it was satisfied because neither the oral explanation of the sentences nor the preliminary forfeiture order used the phrase "joint and several." The government further argues that *Honeycutt* interpreted a different statute, not 18 U.S.C. § 981, and in any case was satisfied, because the swindlers jointly obtained and controlled all the money, comparing conspirators to a husband and wife who together use wire fraud to steal title to a house as tenants by the entirety.

We begin, of course, with the statute pursuant to which the forfeitures were ordered, 18 U.S.C. § 981, made applicable to criminal offenses by 28 U.S.C. § 2461:

> (a)(1) The following property is subject to forfeiture . . .
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> . . . .
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> (C) Any property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.
>
> . . . .

> (f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.[8]

It is plain under the language of the statute that the stolen money and the pickup truck bought with stolen money are forfeitable, and that the forfeiture extends to the money traceable to what was sent to the three trust and escrow accounts. Two things are noticeable, for purposes of this case, about the language of this statute. First, it uses the traditional common law concept that title to the tainted property passes to the United States upon commission of the criminal act. Second, only property that is traceable to the proceeds is forfeitable, not other property that the criminal may own (absent the government going through the procedures to forfeit substitute property under 21 U.S.C. § 853(p)).[9]

"Historically, statutes authorizing in rem forfeiture reached only items that were themselves involved in illegal conduct, not items that simply were purchased with the proceeds of such conduct. The use of in rem process against

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[8] 18 U.S.C. §§ 981(a)(1)(C), (f). 18 U.S.C. § 1956(c)(7) defines "specified unlawful activity" to generally include "any act or activity constituting an offense listed in section 1961(1) of this title." 18 U.S.C. § 1961(1) covers acts indictable under "section 1343 (relating to wire fraud)."

[9] 28 U.S.C. § 2461 makes 21 U.S.C. § 853(p) applicable to the current proceedings.

the latter items is a modern development."[10] Forfeiture is not the same as other criminal penalties, though it functions as a deterrent to crime. Very commonly, civil in rem actions are filed in the district courts against sums of money, ships, and automobiles independently of any proceedings against the criminals whose conduct tainted the property.[11] For example, in Alaska, the federal government files many forfeitures against ships for involvement with illegal fishing, without any charges against the companies that own the ships.[12] Until curative legislation was promulgated twenty years ago,[13] innocence was no defense to forfeiture.

Calero-Toledo v. Pearson Yacht Leasing Co.[14] illustrates the injustice to innocent owners prior to the Civil Asset Forfeiture Reform Act. The Supreme Court held that the owner of a yacht, who was neither involved in nor aware that

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[10] Caleb Nelson, *The Constitutionality of Civil Forfeiture*, 125 Yale L.J. 2446, 2455 (2016).

[11] *See, e.g.*, *United States v. Approximately $1.67 Million (US) in Cash, Stock & Other Valuable Assets Held by or at 1) Total Aviation Ldt.*, 513 F.3d 991 (9th Cir. 2008) (affirming district court's summary judgment for United States in its civil forfeiture action); *United States v. Kaiyo Maru No. 53*, 699 F.2d 989 (9th Cir. 1983) (reviewing an action filed by the federal government seeking forfeiture of a Japanese stern trawler); *United States v. One 1976 Porsche 911S, Vin 911-6200323, California License 090 NXC*, 670 F.2d 810 (9th Cir. 1979) (affirming forfeiture of automobile after marijuana discovered in trunk); *see also* Fed. R. Civ. P. Supp. Admiralty and Mar. Claims C (In Rem Actions: Special Provisions).

[12] *See, e.g.*, *Kaiyo Maru No. 53*, 699 F.2d at 991–93.

[13] Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185, § 2, 114 Stat. 202, 206–07 (codified at 18 U.S.C. § 983(d)).

[14] 416 U.S. 663 (1974).

the lessees had marijuana on board, nevertheless had no protected property right to what had been his yacht.[15] The owner of a leased yacht forfeited the yacht because one marijuana cigarette, evidently brought on board by his lessee or the lessee's guest, was found on board.[16] At that time, "[d]espite [the] proliferation of forfeiture enactments, the innocence of the owner of property subject to forfeiture [had] almost uniformly been rejected as a defense."[17]

As the Court explained, forfeiture traces from the English common law concept of deodand (having been given to God).[18] The deodand concept, in turn, traces in part from the biblical injunction that an ox that fatally gored a human was to be stoned to death.[19] At common law, an object that caused a person's death became a deodand and was forfeited to the king in the expectation that the king would provide the money for Masses to be said for the good of the victim's soul or use the money for charity (thereby purifying the property that had been tainted by the wrongdoing).[20] This common law origin and development explains why forfeiture is closely tied to the property involved in the criminal conduct, as opposed to a criminal fine or restitution, which depends on guilt but not on any taint on the criminal's property. Both the

[15] *See id.* at 665–68, 680–90.

[16] *See id. at* 693 (Douglas, J., dissenting).

[17] *Id.* at 683 (majority opinion).

[18] *Calero-Toledo*, 416 U.S. at 680–81, 681 n.16.

[19] *Id.* at 681 & n.17.

[20] *See id.* at 680–81.

possibility that the value of the forfeited property may be greater than the maximum fine that could be levied, and the limitation of forfeiture to tainted property, distinguish this mechanism from other sorts of criminal penalties. Though forfeiture performs many of the same social functions as fines and restitution orders, its mechanics are different because of its unique conceptual basis.

This conceptual difference underlies the recent decision that counsel and the district court wrestled with in this case, *Honeycutt v. United States*. Tony Honeycutt owned a hardware store that sold an iodine-based water-purification product.[21] He employed his brother, Terry, to manage sales and inventory.[22] Terry, the store manager, became suspicious of customers buying iodine crystals in large quantities, so he called the police.[23] The police told him that iodine could be used to manufacture methamphetamine and advised him to cease selling the product if it made him uncomfortable.[24] Despite learning this, the store continued to sell large quantities of iodine to methamphetamine manufacturers.[25]

After both Honeycutt brothers were indicted, Tony pleaded guilty, but Terry went to trial and was convicted of

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[21] *See Honeycutt*, 137 S. Ct. at 1630.

[22] *Id.*

[23] *See id.*

[24] *Id.*

[25] *Id.*

conspiracy to sell and distribute the iodine crystals.[26] The government sought criminal forfeiture money judgments against each brother for the total profits from the sales, $269,751.98.[27] Tony, the store owner who had pleaded guilty, agreed to forfeit $200,000, so the government sought forfeiture of the remaining $69,751.98 from Terry, the store manager.[28] The district court did not enter a forfeiture judgment against Terry because Terry was merely a salaried employee and had not personally received any of the profits from the sales.[29]

The Sixth Circuit reversed, holding that, because the brothers were co-conspirators, they were jointly and severally liable for the proceeds and each bore full responsibility for the entire forfeiture judgment.[30] That is similar to what the district court did in this case. The Supreme Court reversed the Sixth Circuit, holding that, in a conspiracy, a defendant may not, for purposes of forfeiture, be held jointly and severally liable "for property that his co-conspirator derived from the crime but that the defendant himself did not acquire."[31]

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[26] *See id.* (citing 21 U.S.C. §§ 841(c)(2), 843(a)(6), 846).

[27] *See id.* at 1630–31.

[28] *See id.*

[29] *Id.* at 1631.

[30] *Id.*

[31] *Id.* at 1630, 1635.

The Court explained that "[c]riminal forfeiture statutes empower the Government to confiscate property derived from or used to facilitate criminal activity," thereby "separating a criminal from his ill-gotten gains," as well as facilitating restitution and "lessening the economic power of criminal enterprises."[32] Joint and several liability is a creature of tort law, which allows a plaintiff to recover up to the full amount of his judgment from any defendant if multiple defendants are legally responsible for the harm.[33]

The Court gave an example to illustrate joint and several liability in the context of forfeiture: a farmer who runs a marijuana business and recruits a college student to sell the marijuana on the student's campus.[34] The farmer earns $3 million, but he pays the student only $300 a month, or $3,600 per year.[35] Under joint and several liability, the student would be liable for the proceeds of the scheme, $3 million.[36] Under the Court's analysis, he would not forfeit $3 million because he only "personally acquired" $3,600.[37]

The Court held that the 21 U.S.C. § 853 provisions limit forfeiture to "tainted property," and the forfeiture statute

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[32] *Id.* at 1631 (quotation marks and brackets omitted) (citing *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 629–630 (1989)).

[33] *See id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.* at 1631–32.

"does not countenance joint and several liability, which, by its nature, would require forfeiture of untainted property."[38] The key word in the statute was "obtain," and even if the farmer had customers pay the student, who then turned the money over to the farmer, the farmer "ultimately 'obtains' the property—whether 'directly or indirectly.'"[39]

The criminal forfeiture statute "maintain[ed] traditional *in rem* forfeiture's focus on tainted property."[40] This limitation, together with the statute's text, foreclosed joint and several liability.[41] The manager brother was held not to have "obtained" tainted property, even though the property passed from the iodine crystals purchasers into his hands before going to his brother.[42] He could not be subjected to any forfeiture at all.[43]

Our sister circuits are split on whether *Honeycutt* applies to 18 U.S.C. § 981. The Third Circuit, in *United States v. Gjeli*[44] holds that the text and structure of Section 981 is "substantially the same" as the forfeiture statute in *Honeycutt*, so *Honeycutt* applies with equal force to 18 U.S.C.

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[38] *Id.* at 1632.

[39] *Id.* at 1632–33.

[40] *Id.* at 1635.

[41] *Id.* at 1633.

[42] *See id.* at 1630–31, 1635.

[43] *Id.* at 1635.

[44] 867 F.3d 418 (3d Cir. 2017).

§ 981(a)(1)(C).[45] On the other hand, the Sixth Circuit, in *United States v. Sexton*,[46] holds that *Honeycutt* does not apply to 18 U.S.C. § 981(a)(1)(C).[47] It reasoned that, unlike the statute at issue in *Honeycutt*, 18 U.S.C. § 981(a)(1)(C) does not limit the forfeiture to proceeds "the person obtained."[48] So, even though the forfeited property has to be traceable to the crime, it does not need to have been received by the individual forfeiting it.[49] The Eighth Circuit has joined the Sixth Circuit in holding that *Honeycutt* does not apply to forfeitures under 18 U.S.C. § 981(a)(1)(C).[50]

We agree with the Third Circuit. We hold that *Honeycutt* does apply to 18 U.S.C. § 981(a)(1)(C). The textual differences between it and 21 U.S.C. § 853 appear to us to be immaterial, in light of the reasoning and language in *Honeycutt*. *Honeycutt* treats forfeiture, in accord with its development at common law over many centuries, as applicable only to "tainted" property. The property carries the taint, as in *Calero-Toledo*.[51] Although the phrase "the person obtained" does not appear in Section 981, the statute's

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[45] *Id.* at 427–28, 427 n.16.

[46] 894 F.3d 787 (6th Cir. 2018).

[47] *Id.* at 799.

[48] *Id.*

[49] *Id.*

[50] *United States v. Peithman*, 917 F.3d 635, 652 (8th Cir.), *cert. denied*, 140 S. Ct. 340 (2019).

[51] *Calero-Toledo*, 416 U.S. at 684.

language similarly limits forfeiture to tainted property. The forfeited "property," under Section 981(a)(1)(C), has to be "traceable" to the proceeds "derived" from the wire fraud. Also, the absence of the phrase, "the person obtained" in Section 981 strikes us as immaterial in light of the reasoning in *Honeycutt*, that "the most important background principles underlying § 853" are "those of forfeiture."[52] The same principles animate Section 981. The text of this statute and its roots in common law forfeiture, like the statute in *Honeycutt*, necessitate a connection to tainted property.

Granted, Section 981(a)(1)(C) is not strictly limited to the "tainted" property itself, such as the ox in the Bible, because it extends to "proceeds traceable" to the tainted property. This is broader than the traditional notion of deodand,[53] but it does not, and cannot under *Honeycutt*, extend to all the criminal's property, "traceable" or not. Such an application would be inconsistent with the common law conception of forfeiture upon which the statute rests. There is nothing in the text of Section 981 that extends forfeiture to property of a defendant that is not traceable to the proceeds of the crime (outside the procedures set forth in Section 853(p)).

That leaves for our consideration only the question whether the district court's forfeiture judgment did or did not impose joint and several liability. As the Court explained in *Honeycutt*, the concept of joint and several liability comes from tort law, not criminal law.

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[52] *Honeycutt*, 137 S. Ct. at 1634.

[53] *See Nelson*, *supra* note 10, at 2475–76.

In tort law, several liability distinguishes the amount owed by one defendant from the amount owed by another.[54] Joint liability means that each wrongdoer owes the victim the full amount of the damages.[55] Thus, each tortfeasor is "liable for the entire damage done, although one might have battered, while another imprisoned the plaintiff, and a third stole the plaintiff's silver buttons."[56] In modern times, if two drivers negligently cause an accident creating $100,000 in damages to a victim, the victim is entitled under joint and several liability to collect the $100,000 from either one of the tortfeasors, whether he gets a portion from each driver or the entire amount from only one. The tortfeasors are left to whatever remedies in the nature of contribution or indemnity that they may have against each other.[57]

Applying joint and several liability to criminal forfeiture would have meant that, in *Honeycutt*, the government could have forfeited the entire proceeds of the conspiracy from the store manager, and left it to him to pursue his brother, the owner of the store with whom all the profits came to rest. And in the Court's hypothetical case, the government could, if conspirators were jointly liable, obtain by forfeiture the entire $3 million from the college student who dealt the marijuana, or however much it could get from him, instead of limiting his forfeiture to the $3,600 the farmer paid him.

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[54] *See* Restatement (Third) of Torts § 11 (Am. Law Inst. 2000).

[55] *See id.* § 10.

[56] Prosser & Keeton on Torts § 46 (W. Page Keeton et al. eds., 5th ed. 1984) (citing *Smithson v. Garth* (1601) 83 Eng. Rep. 711, 3 Lev. 324).

[57] *See* Restatement, *supra* note 54, §§ 22–23.

In the case before us, we cannot see how the district court's judgment can be viewed as anything but joint and several liability. While the judgment may not use the express words "joint and several" with regards to forfeiture, the district court granted a forfeiture order against Thompson for the whole amount of the proceeds from the conspiracy, despite the fact that some of the proceeds came to rest with Fincher and not Thompson. The district court also held Fincher liable for the entire $160,000 in proceeds from the Idaho fraud, even though apparently much less came to rest with him. No finding was made establishing what came to rest with Nixon, though Nixon's share of the loot must have reduced Thompson and Fincher's share. As in many thefts, after obtaining the loot, the thieves divided it up.

Under Section 981, forfeiture cannot extend beyond the tainted property and proceeds traceable to it, such as the pickup truck Fincher bought with the stolen money. Yet the money judgments against Thompson and Fincher were not based on findings of how much of the proceeds came to rest with them, nor has the government shown that it complied with Section 853(p) to obtain substitute property. To forfeit money from Thompson, the district court was required by Section 981 to find that the amount forfeited came to rest with him as a result of his crimes. The same goes for Fincher. The district court made no findings establishing how the loot was divided among the conspirators.

The government argues that the forfeiture orders were appropriate because the fraud proceeds passed from the victims to the trust and escrow accounts of the three separate lawyers in Georgia, Nevada, and Virginia (for the Idaho, Montana, and North Carolina frauds, respectively). The theory is that because the swindlers directed the money to the

escrow accounts, they each received all the money. That theory cannot withstand the holding in *Honeycutt*, that the college student and the store manager, who each at some point had physical control of all the money, were nevertheless not subject to forfeiture for money that did not come to rest with them.

In this conspiracy, as in many, physical control over the property changed from time to time. That was true of the store manager in *Honeycutt*, the student marijuana dealer in the hypothetical case in *Honeycutt*, and in any conspiracy where the co-conspirators do not all jointly control all the proceeds all the time. The split may occur after the proceeds are received, as when the store manager in *Honeycutt* passed the money in his cash register over to his brother the store owner, and in the hypothetical case where the salaried college student passes the proceeds of his marijuana sales over to the farmer, and in a simple bank robbery, where the split is accomplished after the getaway.

Honeycutt does not allow for an interpretation that any conspirator who at some point had physical control is subject to forfeiture of all the proceeds. This case would be different if, say, Thompson and Fincher had a joint bank account, or were married tenants by the entirety in a house they bought with the stolen money. If the money came to rest in a joint account, or property owned jointly or as tenants by the entirety, the swindlers would each have an unfettered right to enjoy the whole, as in *United States v. Cingari*.[58] But here, the trust accounts and escrows were stops on the way to splitting up the money, not jointly controlled deposits where the money came to rest after the swindlers split it up.

[58] 952 F.3d 1301, 1306 (11th Cir. 2020).

The liability that the judgment imposed on Thompson and Fincher for more, in total, than they each acquired in their swindles amounts to joint and several liability, regardless of whether the district court called it that. And it conflicted with our interpretation of forfeiture in *United States v Nejad*,[59] holding that when Section 853 applies, "the government may not enforce a personal money judgment through the same means it would use to enforce an ordinary *in personam* civil judgment."[60] Rather, the government must establish that the requirements of Section 853 have been met before forfeiting untainted property.[61]

Because the forfeiture judgment against Thompson and Fincher amounted to joint and several liability contrary to *Honeycutt*, we must vacate and remand it. On remand, the district court should make findings denoting approximately how much of the proceeds of the crime came to rest with each of the three conspirators, Thompson, Fincher, and Nixon. Though no forfeiture judgment was issued against Nixon, neither Thompson nor Fincher can be subjected to forfeiture of amounts that came to rest with Nixon, since those amounts were not proceeds that came to rest with them. The forfeiture judgments must be separate, for the approximate separate amounts that came to rest with each of them after the loot was divided among the swindlers.

The district court should determine how our recent decision in *Nejad* will apply. As in *Nejad*, control over the

[59] 933 F.3d 1162 (9th Cir. 2019).

[60] *Id.* at 1166.

[61] *Id.*

forfeiture process lies with the court, not with the prosecution. Only when the procedures under Section 853(p) are followed may the government satisfy a personal money judgment from a defendant's untainted assets.[62] The numbers used throughout this opinion of course may be approximate because swindlers and other criminals may be less than honest and conscientious about their bookkeeping and testimony about what each of them ended up with.

In the end, the prohibition on joint and several liability in forfeiture judgments may not make much of a difference for these particular swindlers. Thompson and Fincher jointly owe restitution under their sentences, in addition to their forfeitures and prison sentences. The forfeitures, though, cannot, under *Honeycutt*, be joint as well as several.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

[62] *Id.*

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. VASSILY ANTHONY THOMPSON, Defendant-Appellant.	No. 18-30206 D.C. No. 2:16-cr-00145-TOR-1 Eastern District of Washington, Spokane ORDER

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DERRICK JOHN FINCHER, Defendant-Appellant.	No. 18-30208 D.C. No. 2:16-cr-00145-TOR-2 Eastern District of Washington, Spokane

Before: KLEINFELD, W. FLETCHER, and RAWLINSON, Circuit Judges.

The petition for panel rehearing is DENIED. Judge W. Fletcher and Judge Rawlinson have voted to deny the petition for rehearing en banc, and Judge Kleinfeld has recommended denial.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing and the petition for rehearing en banc are DENIED.

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UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. VASSILY ANTHONY THOMPSON, DERRICK JOHN FINCHER, and JOHN PATRICK NIXON, Defendants.	2:16-CR-00145-TOR SUPERSEDING INDICTMENT 18 U.S.C. §§ 1343 and 1349 Conspiracy to Commit Wire Fraud (Count 1) 18 U.S.C. § 1343 Wire Fraud (Counts 2-10) 18. U.S.C. § 1028A(a)(1) Aggravated Identity Theft (Counts 11-13) FORFEITURE ALLEGATIONS

The Grand Jury Charges:

GENERAL ALLEGATIONS

At all times relevant and material to this Indictment:

1. Beginning on or about May 1, 2012, and continuing until on or about May 1, 2016, the Defendants, VASSILY ANTHONY THOMPSON ("THOMPSON"),

DERRICK JOHN FINCHER ("FINCHER"), and JOHN PATRICK NIXON ("NIXON"), as well as others known and unknown to the Grand Jury, agreed and worked with one another to offer false and fictitious loans to various parties in Idaho, Montana, and North Carolina. These loans, which were often depicted as lines of credit, would be offered after THOMPSON, FINCHER, and NIXON collected fees from these parties under the guise that the fees were being used to acquire the loans. No such loans or lines of credit existed. THOMPSON, FINCHER, and NIXON used much of the fraudulently-obtained advance fees for their own personal use and gave the rest to others known and unknown to the grand jury.

Coeur D'Alene, Idaho:

2. In early 2012, Patricia Ziebell was working towards establishing a celebrity golf tournament and concert to be held in Coeur d'Alene, Idaho. Ziebell estimated that it would cost approximately $4,000,000 to fund the project, which included paying an attendance fee for basketball legend Magic Johnson to play in the tournament, and for the band Alabama to play a concert after the tournament. As part of the estimated costs, Ziebell considered purchasing a piece of property near the Spokane River in order to have a site for the Alabama concert.

3. DERRICK FINCHER learned of the tournament and its need for funding. He told Cody Schueler, an associate of Ziebell's that he and VASSILY ANTHONY THOMPSON, were partners in a business called Chengdu Industrial Management Ltd ("Chengdu"). FINCHER said that Chendgu obtained large loans from the Federal Export Import Bank and then parceled the funds out to businesses in loans of smaller amounts. FINCHER also told Derek Mulgrew, another of Ziebell's associates involved with the tournament project, that he was worth $700,000,000.

4. Within a few days of this initial meeting, FINCHER informed Schueler and Mulgrew that Chengdu could provide a $6,000,000 line of credit for the golf tournament and concert. The $6,000,000 would – according to FINCHER – come from a larger line of credit that Chengdu would get from the Export Import Bank. FINCHER said that, in order to get the line of credit, the backers of the tournament and concert would first have to provide a $160,000 credit initiation fee and promise Chengdu fifty percent of the profits of the project.

5. On May 24, 2012, THOMPSON sent an email to FINCHER and Schueler. This email was then forwarded from Schueler to Mulgrew. Attached to the email was a "Letter of Intent and Joint Venture Agreement" signed by both THOMPSON and FINCHER. The letter says "the line of credit initiation fee of $160,000 to establish a facility for the Project in an amount of approximately $6,000,000 (Six Million USD)." This was a materially false statement. No such line of credit would be established.

6. On May 29, 2012, THOMPSON sent an email to FINCHER and Schueler containing what purports to be an escrow agreement between Chengdu and Medley and Kosakoski, a law firm located in Atlanta, GA. The agreement states:

> "Customer [Chengdu] agrees to deposit this portion of the bank Service Fee in the amount of $160,000 USD with the Escrow Agent in accordance with the loan Agreement for the amount of $23,520,000 and the Service Fee deposited to the Escrow Agent shall disburse the Service Fee to the bank upon notice from the bank officer of the final approval and extension of line of credit. If Customer cancels Escrow, the deposit of $160,000 will be returned to sending bank coordinates."

7. The only parties to the purported escrow agreement are THOMPSON and Leonard Medley, a partner in Medley and Kosakoski. It was materially false. THOMPSON never intended to return the $160,000.

8. On May 27, 2012, THOMPSON sent an email to FINCHER containing a letter on Chengdu letterhead. The letter, which is signed by THOMPSON, says that

"The wire must take place at the opening of business on Tuesday, May 31, 2012 due to the urgent timeliness for performance on our project…The fees will not be released until JP Morgan advises that all systems are a go. This process will be completed within ten business days." This was a materially false statement. The referenced fees would not be released. On May 29, 2012, FINCHER forwarded the email to Schueler, intending that he would in turn forward it to Mulgrew.

9. THOMPSON, on Chengdu letterhead, executed a document claiming that the $160,000 would be returned if the "pending escrow" was not completed within ten days. The document was materially false. There was never any line of credit established with JP Morgan on behalf of Chengdu or any such "pending escrow," nor did THOMPSON ever intend that the $160,000 would be returned.

10. On May 29, 2012, believing, because of the false statements and representations of FINCHER and THOMPSON, that it was would result in the promised $6,000,000 line of credit, Mulgrew wired $160,000 into an account belonging to Medley and Kosakoski. Two days later, $10,000 of Mulgrew's money was transferred to AEIO Youth, Inc., an entity THOMPSON controls and claims is a "Public Education Non Profit Corporation…formed for purposes which include Public Education Restructure… and Youth intervention projects."

11. After the fictional line of credit failed to materialize, Mulgrew contacted FINCHER on several occasions to demand a return of the $160,000. Between June 15, 2012, and June 18, 2012, FINCHER sent several emails to Mulgrew claiming that the $160,000 would be returned. The emails were materially false. As FINCHER knew, the money would not be returned.

12. On June 18, 2012, Medley and Kosakoski sent an additional $47,000 of Mulgrew's money to AEIO Youth, Inc. and $75,000 of Mulgrew's money to the Martin Firm, a law firm in Atlanta, Georgia, for the benefit of Eximious Holdings, LLC.

13. On June 19, 2012, Medley and Kosakoski sent $25,000 of Mulgrew's money by check to ASM Holdings 64, LLC, an entity controlled by Anthony Lynn Kirkland. Another check was made out to Medley and Kosakoski for the remaining $3,000.

14. THOMPSON spent much of the $57,000 he received from Medley and Kosakoski through AEIO Youth, Inc. on personal expenses. He also sent at least $5,000 of it to FINCHER.

15. On June 20, 2012, FINCHER sent a document he received from THOMPSON to Schueler, intending that he forward it to Mulgrew. The document said that Chengdu had obtained the line of credit. This was a materially false statement. No such line of credit ever existed. Schueler forwarded the document to Mulgrew.

16. On June 23, 2012, FINCHER emailed a document he received from THOMPSON to Schueler, intending that he forward it to Mulgrew. The document claimed that Schueler, Ziebell, and Mulgrew had breached their agreement with Chengdu. This was a materially false statement. No such breach occurred.

17. On July 2, 2012, Mulgrew's attorney, Chris Crago, emailed FINCHER asking for proof that Chengdu had obtained the fictitious line of credit. FINCHER responded by email on the same day stating: "Your client has the proof. Please review it with him and contact us…Thank you. Derrick."

18. On July 5, 2012, FINCHER sent Crago an email with a letter attached in which FINCHER blamed Mulgrew for the failure of the $6,000,000 line of credit to fund in favor of the Project. The letter, in part, states:

> "As you have been advised, we closed escrow and provided your client, Derek Mulgrew, a redacted portion of statement to demonstrate the blocking of assets for the CDA project, pursuant to the litany of meetings, scores of telephone calls and emails with Mulgrew and other parties to the transaction… Mulgrew is in receipt

> of the payment order…If Mulgrew or your offices continue to contact our operatives, bank officers and agents in attempts to extract information with threats of criminal action to leverage funds for a debt that owed by another party, we will seek remedy."

Montana:

19. In 2014, Seth Bloom operated a company called Pimlico Studios. Bloom wanted to establish a movie studio in Montana, and had formed a partnership with his friend Jason Miller. Miller's father, Christian Miller, was rich. Bloom and Jason Miller hoped that Christian Miller would help them fund the studio venture.

20. In the summer of 2014, Hal Wolfe (now deceased) and VASSILY ANTHONY THOMPSON came to Montana to discuss the studio venture with Bloom and Jason Miller. Wolfe said that he worked with THOMPSON, and that if Bloom and Miller could come up with $300,000 for what he claimed were necessary insurance and closing expenses, THOMPSON could fund a $17,000,000 line of credit for the studio venture.

21. On July 10, 2014, Christian Miller wire transferred $300,000 to an account controlled by Peter Block, a now-deceased attorney. Block then sent $47,500 to FINCHER. Block also transferred $209,000 to an account held by an entity called Global Guarantees. NIXON had access to the contents of the Global Guarantees account.

22. THOMPSON and Jason Miller entered into another agreement in which THOMPSON would provide Miller with a line of credit of $60,000,000 or $70,000,000 in exchange for a $1,000,000 fee. Jason Miller and THOMPSON then convinced Christian Miller to supply the $1,000,000.

23. On September 10, 2014, Christian Miller sent $1,000,000 via wire transfer to an account controlled by Block.

24. On September 12, 2014, Block sent Pin Oak, LLC, an entity controlled by FINCHER, $149,000 of the $1,000,000 he received from Christian Miller. The balance in Pin Oak, LLC's account before to the $149,000 deposit was $550. The same day, FINCHER withdrew $67,689.50 from the account and used it to buy a Ford Raptor pickup truck, which he then gave to his son. Block also sent Global Guarantees $503,769.37. THOMPSON received $9,000 of Miller's money from FINCHER.

25. On or about September 16, 2014, THOMPSON emailed Bloom and Jason Miller, claiming that the "funding ha[d] come in." That statement was materially false. No such line of credit ever existed.

26. On or about November 13, 2014, THOMPSON wrote a letter to the Social Security Administration asking for money and claiming that he owed $2,800 for four months of rent and was behind on paying $10,000 in medical bills. THOMPSON's letter continues, "I have no support relative to the purchase of food…I have no support relative to cash advances or loans from the state of California or any other source."

27. THOMPSON continued to reassure Jason Miller that he would provide the line of credit. On June 24, 2015, THOMPSON emailed Miller a letter dated April 15, 2015, which claimed that Caitlin Cragg, a lawyer at the international law firm DLA Piper, had the $1,000,000 provided by Christian Miller which was being used as "equity investment for its portion of fees associated with the issuance of the Bank of America, Barclay's Bank Guarantee, which has a stated value of $20,000,000…" The letter was materially false. Cragg has never had any knowledge of the payment, and did not conduct this business with THOMPSON. No such line of credit or account ever existed.

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North Carolina:

28. Andre Thompson ("Dre") is a contractor in Charlotte, North Carolina and the owner of Hubert Construction Company. As a builder, Dre often uses short-term bridge loans to finish his housing projects. In the past, Dre has used Wendy Sweet, a money broker employed by Carolina Hard Money to obtain those loans.

29. Dre initially spoke with VASSILY ANTHONY THOMPSON in and around July, 2014. In mid-2015, THOMPSON contacted Dre to inquire about Dre's upcoming projects. Dre told THOMPSON about a housing development he was working on called the "Cherokee Project." THOMPSON inquired about funding for the project, and Dre informed him that he was using Sweet for a short-term loan. THOMPSON told Dre that he could get him more money than Sweet could offer.

30. In approximately October 2015, THOMPSON called Dre and told him that he could provide a $10,000,000 line of credit. At the time, Dre had expected to receive $855,000 through Sweet from Gail Poon, a private investor. Dre told THOMPSON that he was going to use the $855,000 to purchase the real estate for the Cherokee Project, and believed he could finish the project for $1,600,000. THOMPSON told Dre that he could use the remainder of the line of credit he could provide for future projects. THOMPSON informed Dre and Sweet that the money was from a JP Morgan line of credit and that because the entire line of credit was not being used, JP Morgan sub-leased the money.

31. On or about November 18, 2015, THOMPSON emailed Dre, and attached a letter purportedly from Medley of Medley and Kosakoski. The letter states:

> "Pursuant to your instruction in our capacity as escrow/trust lawyers, Medley & Associates hereby affirms the MFS Media Exports ("MFS")-Bank of America Proof of Funds in the Amount of $25,000,000 (Twenty Five Million USD), without liens or

> encumbrances, designated for infrastructure development projects at the discretion of MFS with the following coordinates…."

MFS Media Exports is an entity THOMPSON created while defrauding the Millers. "MFS" stands for Montana Film Studios. The letter was materially false. No such account ever existed at Bank of America.

32. On December 2, 2015, THOMPSON sent an email to Dre with an attached memorandum of understanding ("MOU"). The MOU, written on letterhead for "MFS Infrastructure Risk Management," states:

> "HCI [Hubert Construction Incorporated, owned by Dre] will wire the loan amount of $835,000 to the Client Trust Account of Fortress Proprietas, P.C., at the following coordinates: [lists banking coordinates for an account at Monarch Bank in Virginia]." It also states: "MFS will immediately initiate its line of credit for the Cherokee Project and future projects in the amount of $10,000,000 through Wells Fargo Private Bank Beverly Hills, CA."

33. The MOU was materially false. No such line of credit was ever established by Wells Fargo or JP Morgan.

34. On or about December 15, 2015, Poon sent $855,000 to the specified account at Monarch Bank via wire transfer. The account that received the money was the client trust account of Lenard Myers, an attorney practicing at a firm named Fortress Proprietas.

35. Over the next two days, Myers disbursed all of the $855,000. Only $77,500 went to Dre at Hubert Construction. The rest went to NIXON, the Ben Leonard Community Development Corporation, THOMPSON at Montana Film Studios, FINCHER at Pin Oak, LLC, and the Fortress Proprietas operating account.

36. On December 18, 2015, after all of Poon's money had been sent to the fraudsters, THOMPSON sent Dre and FINCHER an email which stated:

> "Good Morning. We have been advised by Fortress Proprietas that the funds for the buy are in the que to go to escrow law firm coordinate. If

> it clears BEFORE 3PM EST, they will settle in the act. IF AFTER 3PM, the funds will settle Monday, Dec. 21 Call if you have any questions. Thx."

37. The email was materially false. As THOMPSON and FINCHER knew, the transaction it describes would never occur.

38. On December 24, 2015, THOMPSON emailed Dre a letter on Fortress Proprietas letterhead purportedly written by Myers. It states:

> "Consistent with our charge of escrow law firm and instructions to t3ndered (sic) for the transactions, has completed has the banking structures for the respective projects consistent with applicable bank policies, procedures and protocols, and we are ready to initiate wire transfers in the amount of $27,000,000 (Twenty-Seven Million USD) without further scrutiny. The aforementioned services of this firm were and continue to be performed in strict adherence to all applicable laws, rules and regulations for the respective projects."

39. The letter was materially false. The referenced $27,000,000 did not exist.

40. On January 8, 2016, THOMPSON emailed three documents written on the letterhead of an attorney named Ian Herzog to Dre. The documents collectively indicate that the $855,000 would be returned. These three documents were materially false. The $855,000 would not be returned. The documents were not produced by Herzog.

41. On April 30, 2016, THOMPSON sent an email to Dre. Attached to the email is a letter from Landes Capital THOMPSON received from FINCHER and which bears the signature of Justin Smith. In the letter, Smith purports to guarantee to John NIXON that Landes Capital has $6,500,000 awaiting use, with an account balance of $6,975,332 at the RBC Royal Bank. The letter was materially false. It was not written by Justin Smith and there were no such funds.

42. THOMPSON used $30,000 of his proceeds to purchase a Ford Shelby Mustang and an additional $43,000 buy cosmetic dental implants. FINCHER used

approximately $84,500 of his proceeds to buy two new Jeep Wranglers from a car dealer in Spokane Valley, Washington.

COUNT 1

Conspiracy to Commit Wire Fraud

(18 U.S.C. §§ 1343 and 1349)

43. The Grand Jury repeats and realleges Paragraphs 1 through 42 of this Indictment as if fully set forth herein.

44. Beginning on or about May 1, 2012, and continuing until on or about May 1, 2016, within the Eastern District of Washington, and elsewhere, the Defendants, VASSILY ANTHONY THOMPSON, DERRICK JOHN FINCHER, and JOHN PATRICK NIXON, as well as others known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate, and agree to commit an offense against the United States, to wit: wire fraud, in violation of 18 U.S.C. § 1343, by having devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted, by wire and radio communications, in interstate and foreign commerce, writings, signs, signals, pictures, and sounds.

Objects of the Conspiracy

45. The Grand Jury repeats and realleges Paragraphs 1 through 42 of this Indictment as if fully set forth herein.

Manner and Means of the Conspiracy

46. The Grand Jury repeats and realleges Paragraphs 1 through 42 of this Indictment as if fully set forth herein.

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Overt Acts

47. The Grand Jury repeats and realleges Paragraphs 1 through 42 of this Indictment as if fully set forth herein.

48. All in violation of 18 U.S.C. §§ 1343 and 1349.

COUNTS 2-10
Wire Fraud
(18 U.S.C. § 1343)

Background

49. The Grand Jury repeats and realleges Paragraphs 1 through 42 of this Indictment as if fully set forth herein.

Scheme and Artifice

50. The Grand Jury repeats and realleges Paragraphs 1 through 42 of this Indictment as if fully set forth herein, as setting forth the scheme and artifice to obtain money from the individuals in Idaho, Montana, and North Carolina corresponding to Counts 2 through 10, inclusive, of this Indictment in the chart below.

The Manner and Means of the Scheme and Artifice

51. The Grand Jury repeats and realleges Paragraphs 1 through 42 of this Indictment as if fully set forth herein, as setting forth the manner and means of the scheme and artifice to obtain money and from the individuals in Idaho, Montana, and North Carolina corresponding to Count 2 through Count 10, inclusive, of this Indictment in the chart below.

52. On or about each of the dates set forth below, in the Eastern District of Washington and elsewhere, Defendants VASSILY ANTHONY THOMPSON, DERRICK JOHN FINCHER, and JOHN PATRICK NIXON, as well as others known and unknown to the Grand Jury did knowingly and with the intent to defraud, devise and willfully participate in, with knowledge of its fraudulent

nature, the scheme and artifice to defraud described in Paragraphs 1 through 42 of this Indictment to obtain money by materially false and fraudulent pretenses, representations, and promises and cause to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for Count 2 through Count 10, inclusive, of this Indictment, each transmission constituting a separate count:

Count	Date of Email	Sender	Recipient	Fraudulent Content
2	May 24, 2012	VASSILY ANTHONY THOMPSON	Cody Schueler	"Venture Agreement" signed by both THOMPSON and FINCHER. This three page document indicates that "the line of credit initiation fee of $160,000 to establish a facility for the Project in an amount of approximately $6,000,000 (Six Million USD)." This was a materially false statement. No such line of credit would be established.
3	May 29, 2012	VASSILY ANTHONY THOMPSON	Cody Schueler	Attached to the email is an "Escrow Agreement." The Escrow Agreement is between only Chengdu Industrial Management and Medley and Kosakoski, a law firm located in Atlanta, GA. The agreement specifically states: "Customer agrees to deposit this portion of the bank Service Fee in the amount of $160,000 USD with the Escrow Agent in accordance with the loan

				Agreement for the amount of $23,520,000 and the Service Fee deposited to the Escrow Agent shall disburse the Service Fee to the bank upon notice from the bank officer of the final approval and extension of lone of credit. If Customer cancels Escrow, the deposit of $160,000 will be returned to sending bank coordinates." This was a materially false statement. THOMPSON never intended to return the $160,000.
4	May 29, 2012	VASSILY ANTHONY THOMPSON and DERRICK FINCHER	Cody Schueler	Attached to the email is a letter on Chengdu Industrial Management letterhead. The letter, which is signed by Anthony THOMPSON, states that "The wire must take place at the opening of business on Tuesday, May 31, 2012 due to the urgent timeliness for performance on our project." The letter continues, "The fees will not be released until JP Morgan advises that all systems are a go....This process will be completed within ten business days." This was a materially false statement. The referenced fees would not be released.
5	June 20, 2012	VASSILY ANTHONY	Cody Schueler	Attached to the email is a document claiming that

		THOMPSON and DERRICK FINCHER		Chengdu Industrial had a line of credit for $23,500,000 funded via JP Morgan. This was a materially false statement. No such line of credit ever existed
6	June 24, 2015	VASSILY ANTHONY THOMPSON and DERRICK FINCHER	Jason Miller	Attached to the email is a letter dated April 15, 2015, indicating that Caitlin Cragg of the law firm of DLA Piper had possession of $1,000,000 provided by Miller which was being used as "equity investment for its portion of fees associated with the issuance of the Bank of America, Barclay's Bank Guarantee, which has a stated of $20,000,000…" The letter is addressed to John NIXON of Global Guarantees and is signed by THOMPSON. This is a materially false statement. Cragg had no involvement in the matter. No such line of credit or account was ever created at Bank of America.
7	November 18, 2015	VASSILY ANTHONY THOMPSON	Dre	Attached to the email is a letter from attorney Leonard Medley of Atlanta. Medley notes: "Pursuant to your instruction in our capacity as escrow/trust lawyers,

				Medley & Associates hereby affirms the MFS Media Exports ("MFS")-Bank of America Proof of Funds in the Amount of $25,000,000 (Twenty Five Million USD), without liens or encumbrances, designated for infrastructure development projects at the discretion of MFS with the following coordinates…." This was a materially false statement. No such account ever existed at Bank of America.
8	December 24, 2015	VASSILY ANTHONY THOMPSON	Dre	Attached to the email is a letter written by attorney Lenard Myers which states: "Consistent with our charge of escrow law firm and instructions to tendered (sic) for the transactions, has completed has the banking structures for the respective projects consistent with applicable bank policies, procedures and protocols, and we are ready to initiate wire transfers in the amount of $27,000,000 (Twenty-Seven Million USD) without further scrutiny. The aforementioned services of this firm were and continue to be performed in strict adherence to all applicable

				laws, rules and regulations for the respective projects." This is a materially false statement. No line of credit in the amount of $27,000,000 ever existed.
9	January 28, 2016 – February 2, 2016	VASSILY ANTHONY THOMPSON, DERRICK JOHN FINCHER, and JOHN PATRICK NIXON	Dre	Attached to an email THOMPSON sent Dre is a document on Landes Capital letterhead, purportedly signed by Justin Smith, that states, "We have placed trace confirmation on LMA incoming wire F945926000618820067BH. We are awaiting sequence update from international clearing. We are understand the urgency of your request and the deficiency caused by this delay. We have placed the same urgent status on our internal verification process and attend to rectify this matter as fast as regulatory time permits." THOMPSON received the document from FINCHER, who got it from NIXON. The document is materially false. Smith did not write it and Landes placed no such "trace confirmation."
10	April 30, 2016	VASSILY ANTHONY THOMPSON, and	Dre	Attached to the email is a letter from Landes Capital which bears the signature of Justin Smith. In the

		DERRICK FINCHER		letter, Smith purports to guarantee to John NIXON that Landes Capital is "ready, willing, and able to fund any amount up to six million five hundred thousand USD ($6,500,000)." The letter was materially false. It was not written by Justin Smith and there were no such funds.

All in violation of 18 U.S.C. §§ 1343 and 2.

COUNTS 11 through 13
Aggravated Identity Theft
(18 U.S.C. § 1028A(a)(1))

53. The Grand Jury repeats and realleges Paragraphs 1 through 42 of this Indictment as if fully set forth herein.

54. Between on or about May 1, 2012 and May 1, 2016, in the Eastern District of Washington and elsewhere, Defendants VASSILY ANTHONY THOMPSON, DERRICK JOHN FINCHER, and JOHN PATRICK NIXON, as well as others known and unknown to the Grand Jury did knowingly transfer, possess, and use, without lawful authority, a means of identification of another person, as specified below, with the intent to commit and in connection with wire fraud, in violation of 18 U.S.C. §§ 1343 and 1349, as alleged in Counts 1 through 10 of this Indictment:

Count	Date	Defendant(S)	Execution
11	January 28, 2016	VASSILY ANTHONY THOMPSON, DERRICK JOHN FINCHER, and	Unauthorized use of the letterhead of Landes Capital Management, LLC and the signature of Justin Smith

		JOHN PATRICK NIXON	
12	April 27, 2016	DERRICK JOHN FINCHER	Unauthorized use of the letterhead of Landes Capital Management, LLC and the signature of Justin Smith
13	April 30, 2016	VASSILY ANTHONY THOMPSON	Unauthorized use of the letterhead of Landes Capital Management, LLC and the signature of Justin Smith

All in violation of 18 U.S.C. § 1028A(a)(7) and 18 U.S.C. § 2.

NOTICE OF CRIMINAL FORFEITURE ALLEGATIONS

55. The general allegations contained in Paragraphs 1 through 54 and the allegations contained in Counts 1 through 13 of this Superseding Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), upon conviction of the following counts, the Defendants shall forfeit any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses. The property to be forfeited includes but is not limited to the following:

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Defendant(s)	Count(s)	Asset(s) to be forfeited
VASSILY ANTHONY THOMPSON, DERRICK JOHN FINCHER and JOHN PATRICK NIXON	1	A sum of money equal to $2,015,000.00 in United States currency, representing the total amount of proceeds obtained as a result of the conspiracy to commit wire fraud offense(s). $77,882.85 in U.S. funds seized from Wells Fargo Bank Account Number XXXXXX1362 held in the name of Montana Film Studios, LLC. $40,000.00 in U.S. funds seized from Capital One, N.A., Account Number XXXXXX1742 owned by David Sanders. 2014 Ford F150 Truck, Washington State License C43982A, VIN: 1FTFW1R62EFC96262.
VASSILY ANTHONY THOMPSON	2-5	A sum of money equal to $160,000.00 in United States currency, representing the total amount of proceeds obtained as a result of the wire fraud offense(s).
VASSILY ANTHONY THOMPSON	6	A sum of money equal to $1,000,000.00 in United States currency, representing the total amount of proceeds obtained as a result of the wire fraud offense(s).
VASSILY ANTHONY THOMPSON	7-10, 11, 13	A sum of money equal to $855,000.00 in United States currency, representing the total amount of proceeds obtained as a result of the wire fraud offense(s). $77,882.85 in U.S. funds seized from Wells Fargo Bank Account Number XXXXXX1362 held in the name of Montana Film Studios, LLC.
DERRICK JOHN FINCHER	4-5	A sum of money equal to $160,000.00 in United States currency, representing the total amount of proceeds obtained as a result of the wire fraud offense(s).

Defendant(s)	Count(s)	Asset(s) to be forfeited
DERRICK JOHN FINCHER	6	A sum of money equal to $1,000,000.00 in United States currency, representing the total amount of proceeds obtained as a result of the wire fraud offense(s). 2014 Ford F150 Truck, Washington State License C43982A, VIN: 1FTFW1R62EFC96262.
DERRICK JOHN FINCHER	9-10, 11-12	A sum of money equal to $855,000.00 in United States currency, representing the total amount of proceeds obtained as a result of the wire fraud offense(s), for which the Defendants are jointly and severally liable. $40,000.00 in U.S. funds seized from Capital One, N.A., Account Number XXXXXX1742 owned by David Sanders.
JOHN PATRICK NIXON	9, 11	A sum of money equal to $855,000.00 in United States currency, representing the total amount of proceeds obtained as a result of the wire fraud offense(s).

SUBSTITUTE ASSETS PROVISION

If any of the above-described forfeitable property, as a result of any act or omission of the Defendants:

(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,

the United States of America shall be entitled to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c).

All pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

DATED this 25th day of July, 2017.

A TRUE BILL

Foreperson

JOSEPH H. HARRINGTON
Acting United States Attorney

Russell E. Smoot
Assistant United States Attorney
Chief, Criminal Division

Scott T. Jones
Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. VASSILY ANTHONY THOMPSON, and DERRICK JOHN FINCHER, Defendants.	CASE NO: 2:16-CR-0145-TOR-1, 2

COUNT 1

We, the Jury, find Defendant VASSILY ANTHONY THOMPSON,

GUILTY (NOT GUILTY/GUILTY) of conspiracy to commit wire fraud in violation of 18 U.S.C. §§ 1343 and 1349.

DATED February 9, 2018.

PRESIDING JUROR

AO 245B (Rev. 11/16) Judgment in a Criminal Case
Sheet 1 Revised by WAED - 02/17

UNITED STATES DISTRICT COURT
Eastern District of Washington

UNITED STATES OF AMERICA
V.
Vassily Anthony Thompson

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:16CR00145-TOR-1

USM Number: 20133-085

David D. Partovi
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

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

☑ was found guilty on count(s) after a plea of not guilty. 1 of the Superseding Indictment

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § § 1343 and 1349	Conspiracy to Commit Wire Fraud	05/01/16	1s

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.

9/7/2018
Date of Imposition of Judgment

Signature of Judge

The Honorable Thomas O. Rice Chief Judge, U.S. District Court
Name and Title of Judge

9/7/2018
Date

DEFENDANT: Vassily Anthony Thompson
CASE NUMBER: 2:16CR00145-TOR-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 108 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Defendant be housed at a BOP medical facility and receive credit for the time served in federal custody prior to sentencing in this matter. Defendant participate in the BOP Residential Drug Abuse Program (RDAP) and the Inmate Financial Responsibility Program.

☑ 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.

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

☐ before 2 p.m. on _____.

☐ 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

DEFENDANT: Vassily Anthony Thompson
CASE NUMBER: 2:16CR00145-TOR-1

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, including marijuana, which remains illegal under federal law.
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 cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ 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 which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ 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.

DEFENDANT: Vassily Anthony Thompson
CASE NUMBER: 2:16CR00145-TOR-1

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 be truthful when responding to 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 this judgment imposes restitution, a fine, or special assessment, it is a condition of supervised release that you pay in accordance with the Schedule of Payments sheet of this judgment. You shall notify the probation officer of any material change in your economic circumstances that might affect your ability to pay any unpaid amount of restitution, fine, or special assessments.
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 _____

DEFENDANT: Vassily Anthony Thompson
CASE NUMBER: 2:16CR00145-TOR-1

SPECIAL CONDITIONS OF SUPERVISION

1) If you pose a risk to another person or an organization, the probation officer may seek permission from the court to require you to notify that person or organization about the risk. If the court approves, you must provide the notification. The probation officer may contact the person or organization to confirm that you have provided the proper notification.

2) You must not open, possess, use, or otherwise have access to any checking account, ATM card, or credit card, without the advance approval of the supervising officer.

3) You must provide the supervising officer with access to all requested financial information and authorize the release of all financial information. The probation office may share financial information with the U.S. Attorney's Office. You must disclose all assets and liabilities to the supervising officer. You must not transfer, sell, give away, or otherwise convey any asset, without the advance approval of the supervising officer.

4) You must surrender or make available for review, any documents and/or business records, requested by the supervising officer.

5) You must furnish financial information to the Internal Revenue Service (IRS), in order to determine taxes owing. You must file all delinquent and current tax returns as required by law and must pay any outstanding tax liability once assessed, including interest and penalties, either through lump sum or installment payments as approved by the IRS. You must provide a copy of any payment agreement to the supervising officer and must allow reciprocal release of information between the supervising officer and the IRS.

6) You must not incur any new debt, open additional lines of credit, or enter into any financial contract, without the advance approval of the supervising officer.

7) You must submit your person, residence, office, vehicle and belongings to a search, conducted by a probation officer, at a sensible time and manner, based upon reasonable suspicion of contraband or evidence of violation of a condition of supervision. Failure to submit to search may be grounds for revocation. You must warn persons with whom you share a residence that the premises may be subject to search.

DEFENDANT: Vassily Anthony Thompson
CASE NUMBER: 2:16CR00145-TOR-1

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ $100.00	$ $0.00	$ $0.00	$ $2,015,000.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered 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
Derek Mulgrew	$160,000.00	$160,000.00	pro rata
Gail Poon	$855,000.00	$855,000.00	pro rata
Christian Miller	$1,000,000.00	$1,000,000.00	pro rata

TOTALS	$ 2,015,000.00	$ 2,015,000.00

☐ 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 the ☐ fine ☑ restitution.

☐ the interest requirement for the ☐ 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.

DEFENDANT: Vassily Anthony Thompson
CASE NUMBER: 2:16CR00145-TOR-1

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ 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 ☑ Special instructions regarding the payment of criminal monetary penalties:

Defendant shall participate in the BOP Inmate Financial Responsibility Program. During the time of incarceration, monetary penalties are payable on a quarterly basis of not less than $50.00 per quarter.

While on supervised release, monetary penalties are payable on a monthly basis of not less than $500.00 per month or 10% of the defendant's net household income, whichever is larger, commencing 30 days after the defendant is released from imprisonment.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the peroid of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the following address until monetary penalties are paid in full: Clerk, U.S. District Court, Attention: Finance, P.O. Box 1493, Spokane, WA 99210-1493.

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.

Derrick J Fincher 2:16CR145TOR-2	$160,000.00	$160,000.00	Derek Mulgrew
Derrick J Fincher 2:16CR145TOR-2	$855,000.00	$855,000.00	Gail Poon
John P Nixon 2:16CR145TOR-3	$855,000.00	$855,000.00	Gail Poon

☐ The defendant shall pay the cost of prosecution.

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

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:

2014 Ford F150 Truck, Washington State license C43982A, VIN: 1FTFW1R62EFC96262 and a money judgment is hereby imposed in the amount of $2,015,000 representing the fraud proceeds Defendant obtained, directly and indirectly.

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.

DEFENDANT: Vassily Anthony Thompson
CASE NUMBER: 2:16CR00145-TOR-1

ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, If appropriate
Derrick J Fincher 2:16CR145TOR-2	$1,000,000.00	$1,000,000.00	Christian Miller
John P Nixon 2:16CR145TOR-3	$1,000,000.00	$1,000,000.00	Christian Miller