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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CR 02 - 0062

UNITED STATES OF AMERICA, Plaintiff, v. DANIEL DAVID and SCOTT D. NISBET, Defendants.	VIOLATIONS: 18 U.S.C. § 371 – Conspiracy; 18 U.S.C. § 1341 – Mail Fraud; 18 U.S.C. §§ 1956(a)(1)(B)(i) & (a)(1)(A)(i) – Laundering of Monetary Instruments; 18 U.S.C. § 2 – Aiding & Abetting; 26 U.S.C. § 7206(1) – Making and Subscribing a False Return; 18 U.S.C. § 982(a)(1) – Forfeiture SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

INTRODUCTION

1. At all times relevant to this Indictment, Pacific Bell Telephone Company (hereafter "Pacific Bell") engaged in the business of leasing payphone lines, primarily to businesses and commercial establishments (hereafter "Payphone Leasors"). Pacific Bell charged a fee for each local telephone call made from a leased payphone. Similarly, long-distance telephone carriers charged a fee for each long-distance telephone call made from a leased

payphone. The fee was collected when the caller deposited money into the Pacific Bell payphone, used a calling card, or called collect. Fees for toll-free or 800-number telephone calls from leased Pacific Bell payphones were paid to long-distance telephone carriers by the business or entity which had established the toll-free number.

2. At all times relevant to this Indictment, long-distance telephone carriers agreed to split the profits from payphone calls with the Payphone Leasors. In the case of toll-free calls, Payphone Leasors were paid approximately 24 cents per call.

COUNT ONE: (18 U.S.C. § 371 – Conspiracy)

3. The allegations contained in paragraphs One and Two are realleged and incorporated by reference as if set forth herein.

4. In or about and between April 1998 and April 2000, both dates being approximate and inclusive, in the Northern District of California and elsewhere, the defendants

DANIEL DAVID and
SCOTT D. NISBET

did knowingly and intentionally combine, conspire and agree to commit mail fraud, in violation of Title 18, United States Code, Section 1341 as follows:

MEANS AND METHODS OF CONSPIRACY AND FRAUDULENT SCHEME

5. DAVID and NISBET leased 24 payphone lines from Pacific Bell (hereafter "Leased Payphone Lines") using the fictitious names Bill Jansen and Dave Jacobs.

6. DAVID and NISBET arranged for Pacific Bell to install the Leased Payphone Lines at 139 Mitchell Ave., No. 107, South San Francisco, California.

7. DAVID and NISBET programmed an automatic telephone dialing system to make calls to toll-free numbers from the Leased Payphone Lines in order to collect fees.

8. DAVID and NISBET rented a mailbox at Mail & More in Scottsdale, Arizona in the names of Bill Jansen and Dave Jacobs using a fictitious notary stamp.

9. DAVID and NISBET directed long-distance telephone carriers through Pacific Bell to mail dividend checks made payable to "Bill Jansen and Dave Jacobs" for toll calls made from the Leased Payphone Lines to Mail & More in Arizona.

10. DAVID and NISBET directed Mail & More to send the Leased Payphone Lines dividend checks to San Francisco.

11. A friend of DAVID's who is an attorney (hereafter "Attorney Doe") deposited Leased Payphone Lines dividend checks made payable to Bill Jansen and Dave Jacobs from the Leased Payphone Lines into Attorney Doe's trust account and Doe wrote checks made payable to DAVID in identical amounts.

12. DAVID and NISBET created four shell corporations in Nevada, including Breeze Communications.

13. DAVID and NISBET informed Pacific Bell that the identity of the Payphone Leasors for the Leased Payphone Lines had been changed from Bill Jansen and Dave Jacobs to Breeze Communications and Mark Ryan, a fictitious person, and asked that future dividend checks for toll calls from the Leased Payphone Lines be made payable to "Breeze Communications and Mark Ryan".

OVERT ACTS

14. In furtherance of the conspiracy and to effect the objects thereof, in the Northern District of California, and elsewhere, DAVID and NISBET committed the following overt acts, among others:

a. On or about April 22, 1998, NISBET rented office space at 139 Mitchell Ave., No. 107, South San Francisco, California.

b. On or about May 1998, NISBET purchased a 24-line Audisys automatic telephone dialing system from Buffalo, International, Inc. in Valhalla, New York.

c. On or about October 5, 1999, an unidentified person using the name "David Scott" picked up a package mailed from Mail & More containing Leased Payphone Lines dividend checks made payable to Bill Jansen and Dave Jacobs at the United Airlines cargo desk at San Francisco International Airport in San Bruno, California.

d. On or about May 3, 1999, NISBET requested that his tax accountant (hereafter "Tax Accountant") create four shell corporations in Nevada named Breeze Communications, Boxcar Communications, Bamboo Communications and Pelican

Communications.

All in violation of 18 U.S.C. § 371.

COUNTS TWO THROUGH EIGHT: (18 U.S.C. §§ 1341 & 2 – Mail Fraud and Aiding and Abetting)

15. The allegations contained in paragraphs One through Thirteen are realleged and incorporated by reference as if set forth herein.

16. In or about the dates indicated below, which are approximate and inclusive, in the Northern District of California and elsewhere, the defendants

DANIEL DAVID and
SCOTT D. NISBET

having devised and intending to devise a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations and promises, did for the purpose of executing that scheme, knowingly cause to be placed in a post office and authorized depository for mail matter, the following:

COUNT	APPROXIMATE DATE OF MAILING	ITEM MAILED
2	January 4, 1999	NPC check in the amount of $126,453.89 made payable to "Bill Jansen and Dave Jacobs"
3	March 23, 1999	Sprint check in the amount of $22,157.68 made payable to "Bill Jansen and Dave Jacobs c/o Jansen, Bill, Ryan, Mark"
4	April 1, 1999	NPC check in the amount of $88,779.96 made payable to "Bill Jansen and Dave Jacobs"
5	June 24, 1999	Sprint check in the amount of $15,473.17 made payable to "Bill Jansen and Dave Jacobs c/o Jansen, Bill, Ryan, Mark"
6	July 1, 1999	NPC check in the amount of $147,759.74 made payable to "Bill Jansen and Dave Jacobs"
7	September 22, 1999	Sprint check in the amount of $22,790.89 made payable to "Bill Jansen and Dave Jacobs c/o Jansen, Bill, Ryan, Mark"
8	October 1, 1999	NPC check in the amount of $20,783.58 made payable to "Bill Jansen and Dave Jacobs"

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

COUNT NINE THROUGH THIRTEEN: (18 U.S.C. § 18 U.S.C. 1956(a)(1)(B)(i) – Laundering of Monetary Instruments.)

17. The allegations contained in paragraphs One through Thirteen and Counts One through Eight are realleged and incorporated by reference as if set forth.

18. In or about the dates indicated below, which are approximate and inclusive, in the Northern District of California and elsewhere, the defendant

DANIEL DAVID

did knowingly conduct financial transactions with the proceeds of a specified unlawful activity, to wit, mail fraud, a violation of Title 18 United States Code, Section 1341, knowing that the financial transactions were designed, in whole or in part, to conceal and disguise the nature, location, source, ownership and control of the proceeds of the specified unlawful activity, as follows:

Count	Date	Financial Transaction	Amount
9	February 5, 1999	Deposit of check from Attorney Doe into DAVID's Bank of America Account #05319-11191	$100,000
10	February 5, 1999	Deposit of check from Attorney Doe into DAVID's Bank of America Account #05314-09803	$26,453.89
11	April 26, 1999	Deposit of check from Attorney Doe into DAVID's Bank of America Account #05319-11191	$110,937.64
12	July 20, 1999	Deposit of check from Attorney Doe into DAVID's Bank of America Account #05319-11191	$163,232.91
13	October 28, 1999	Deposit of check from Attorney Doe into DAVID's Bank of America Account #05314-09803	$43,574.47

All in violation of 18 U.S.C. § 1956(a)(1)(B)(i).

COUNTS FOURTEEN AND FIFTEEN: (18 U.S.C. § 18 U.S.C. 1956(a)(1)(A)(i) – Laundering of Monetary Instruments.)

19. The allegations contained in paragraphs One through Thirteen and Counts One Through Eight are realleged and incorporated by reference as if set forth fully herein.

20. In or about the dates indicated below, which are approximate and inclusive, in the Northern District of California and elsewhere, the defendant

SCOTT D. NISBET

did knowingly conduct financial transactions with the proceeds of a specified unlawful activity, to wit, mail fraud, a violation of Title 18 United States Code, Section 1341, with the intent to promote the carrying on of a specified unlawful activity, as follows:

Count	Date	Financial Transaction	Amount
14	April 27, 1999	Check # 921 from Bank of America Account # 10872-15165 to Tax Accountant	$3,000
15	April 29, 1999	Check #922 from Bank of America Account # 10872-15165 to Tax Accountant	$2,500

All in violation of 18 U.S.C. § 1956(a)(1)(A)(i).

COUNT SIXTEEN: (26 U.S.C. § 7206(1) – Making and Subscribing a False Return)

21. On or about October 16, 2000, in the Northern District of California and elsewhere, the defendant

DANIEL DAVID,

then a resident of Berkeley, California, did willfully make and subscribe a False United States Individual Income Tax Return, Form 1040, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service, which he did not believe to be true and correct as to every material matter in that the said United States Individual Income Tax Return, Form 1040, included a fraudulent bad debt expense deduction of $349,750, in violation of Title 26, United States Code, Section 7206(1).

COUNT SEVENTEEN: (18 U.S.C. § 982(a)(1) – Forfeiture)

22. The allegations contained in paragraphs One through Twenty-One and Counts One through Fifteen are realleged and incorporated by reference as if set forth herein.

23. As a result of the offenses alleged in Counts One through Thirteen above, defendant

DANIEL DAVID

shall forfeit to the United States the sum of $444,198.91, as property involved in or traceable to said money laundering violations.

24. If, as a result of any act or omission of the defendant, any of said property

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

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

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 without difficulty cannot be subdivided;

then the defendant shall forfeit to the United States any and all interest defendant has in any other property (not to exceed the value of the above forfeitable property), including but not limited to the following:

Real property and improvements located at 406 Berkeley Park Boulevard, Kensington, California 94707, identified by Assessor's Parcel Number 571-332-008, an more particularly described in attachment A.

All in violation of Title 18, United States Code, Section 982(a)(1).

DATED: A TRUE BILL.

FOREPERSON

DAVID W. SHAPIRO
United States Attorney

J. DOUGLAS WILSON
Chief, Criminal Division

(Approved as to form: AUSA JACOBS)