

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 21-cr-00192-RM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. **ROBERT REGER** and
2. **DAVID LYTLE**,

Defendants.

SUPERSEDING INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

1. **ROBERT REGER** and **DAVID LYTLE** ("the Defendants") worked in the data practice of Epsilon Data Management, LLC ("Epsilon"), a large marketing company that sold consumer information to clients for marketing purposes. Epsilon's data practice was based in the District of Colorado.
2. Epsilon's data practice collected and sold consumer information. Epsilon employed sophisticated data modeling based on the data it had collected to assist its clients with identifying new potential customers and obtaining new information about the clients' existing customers. In particular, Epsilon's data practice analyzed various types of data to create targeted lists of consumers likely to respond to each client's marketing campaigns. To acquire these targeted lists from Epsilon's data practice, clients generally

had to submit payment to Epsilon and also share information about their existing customers.

3. In creating or “modeling” lists of consumers for a client, Epsilon’s data practice primarily used consumer data acquired from other clients in the same industry. In light of this fact, the data practice established sales units or divisions that focused on attracting multiple clients from the same industry.

4. One such sales unit was the Direct to Consumer Unit (“the DTC Unit”), established in or around 2005. The DTC Unit specialized in serving clients that advertised and sold products by mailing solicitations (or “mail pieces”) to consumers. The DTC Unit sold targeted lists of consumer names and addresses to clients to help them find consumers who were more likely to respond to their mail pieces.

5. During his employment with Epsilon, **REGER** worked and resided in the State and District of Colorado. **REGER** helped to establish the DTC Unit, and he managed the unit as Vice President from in or around July 2007 through in or around 2011. In or around 2011, **REGER** was promoted to Senior Vice President, a supervisory position overseeing sales at the DTC Unit as well as other units. As both Vice President and later as Senior Vice President, **REGER** managed the sale of consumer data to DTC Unit clients. **REGER** left Epsilon in or around March 2017.

6. **LYTLE** served as Business Development Manager for the DTC Unit from in or around April 2012 until January 2018. **LYTLE** was responsible for recruiting potential

new clients for the DTC Unit, persuading clients to share their data with Epsilon, and encouraging those clients to purchase consumer lists.

7. **LYTLE** worked and resided outside the State and District of Colorado but reported to supervisors in the State and District of Colorado, including **REGER** and a co-conspirator, S.K., known to the grand jury. S.K. was a Vice President at Epsilon, with supervisory responsibility over the DTC Unit, from approximately 2011 to January 2018.

8. **REGER**, **LYTLE**, and S.K. received salaries and incentive compensation based in part on the DTC Unit's sales of consumer data to clients.

COUNT ONE

9. Paragraphs 1-8 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

10. Between at least as early as in or around 2008 and continuing until in or around January 2018, in the State and District of Colorado and elsewhere,

ROBERT REGER and DAVID LYTLE

did knowingly combine, conspire, confederate and agree together and with other persons, and acted interdependently to commit the following offenses:

- a. wire fraud, in violation of Title 18, United States Code, Section 1343; and
- b. mail fraud, in violation of Title 18, United States Code, Section 1341.

MANNER AND MEANS

11. Through their work with the DTC Unit, **REGER** and **LYTLE** and one or more co-conspirators routinely caused Epsilon to sell targeted lists of consumers and their addresses to clients the Defendants and co-conspirators knew were engaged in sending

false and deceptive mail pieces to consumers. These mail pieces included the following types, among others:

- a. Sweepstakes: These mail pieces falsely appeared to be personalized, formal communications from a government agency, law firm, or other official entity. The form, content, and structure of the mail pieces deceived some consumers into believing they had won a substantial sum of money, usually in a sweepstakes or other contest or game, but that, in order to claim the winnings, recipients first had to pay a fee, tax, or other sum.
- b. Astrology: These mail pieces falsely led consumer recipients to believe they had been specially selected to receive the mail pieces because an astrologer or psychic had experienced a vision about them and would provide personalized information about them or purportedly unique items for a fee.

12. New clients generally provided Epsilon with sample copies of the mail pieces they intended to send to consumers. **LYTLE**, in his role as Business Development Manager, routinely requested these samples in the course of his job duties, and at times he made comments revealing his awareness of the false and deceptive nature of certain DTC Unit clients' mail pieces. For example, on one occasion in 2017, **LYTLE** characterized a client he had recently recruited as a "crappy mailer . . . whose quid pro quo is \$20 from a buyer fulfilled with 50cents [sic] worth of paper and postage." **LYTLE** often circulated sample mail pieces from newly signed clients to co-conspirator S.K. and others, and, while doing so, discussed the fraudulent and deceptive character of certain

clients' mail pieces. For example, in one instance in 2016, **LYTLE** sent S.K. a copy of a deceptive astrology client's mail piece. S.K. responded to **LYTLE** "Congrats on this really shady signing! I can't believe the creative[.]" to which **LYTLE** replied "You never know...it may blow up big (for a while)." The term "creative" was often used by Epsilon employees to describe the mail pieces to be sent to consumers.

13. **REGER, LYTLE**, and one or more co-conspirators also knew that they were causing Epsilon to sell consumer names and information to clients who were the subject of law enforcement actions targeting entities that mailed fraudulent and deceptive mail pieces to consumers. For example, in October 2015, **LYTLE** sent S.K. a press release regarding a DTC Unit client with the headline "FTC Action Halts Global Sweepstakes Scam; Consumers Lost Millions of Dollars Despite 'Guarantee' of Prize Money[.]" Nearly a year later, in or around September 2016, **REGER** and **LYTLE**, along with co-conspirators, learned of significant law enforcement actions against numerous DTC Unit clients and similar entities. E-mails discussing actions against clients that the Defendants and co-conspirators circulated amongst themselves and others included a link to a press release from the U.S. Department of Justice with a headline that referenced "Civil and Criminal Actions to Dismantle Global Network of Mass Mailing Fraud Schemes Targeting Elderly and Vulnerable Victims." With respect to one individual named in a press release with whom Epsilon had facilitated sales of consumer data, **REGER** stated to co-conspirators, "We all knew he was crooked."

14. The Defendants and co-conspirators pursued business relationships with individuals and entities they knew were subject to anti-fraud enforcement actions by civil and criminal authorities. For example, in August 2012, **LYTLE** made an entry into a sales

log he maintained as part of his employment at Epsilon. That entry reflected that a particular client had “what we call in the trade, the ‘designated convict’; his name was on the mailing permits, etc[.], so if anything went down...eg [sic] compliance problems[,]” the client itself would not be “on the hook” with law enforcement. **LYTLE** further noted that the designated convict “got busted by USPS Postal Inspectors or an [Attorney General][,]” but that the actual client “obviously had other DC’s [designated convicts]...see if I can rustle up his contact info?”

15. As another example, in October 2015, **LYTLE** reported to co-conspirator S.K. that a particular business partner had “[n]o new North American business...all their international mailers have been scared off the US as [attorneys general] and [the Federal Trade Commission] has cracked down,” and recommended that he “[c]heck back in 2016.” **REGER** and co-conspirator S.K. similarly discussed responses to enforcement actions against Epsilon clients. Just four days after communicating about the September 2016 Department of Justice press release, co-conspirator S.K. informed **REGER** of the “impact” on the DTC Unit of “this legal action against mailers[.]” **REGER** responded “Yep, I know all about it.”

16. While acknowledging the false and deceptive nature of certain DTC Unit clients’ mail pieces and operations, the Defendants and co-conspirators continued to cause Epsilon to sell consumer information to those clients, including the following examples.

- a. **Client D.R.C.**: Client D.R.C. sent consumers deceptive astrology-themed mail pieces. In or about 2010, co-conspirator S.K. expressed concern to his supervisor **REGER** about selling consumer data to Client

D.R.C. in light of the falsity of Client D.R.C.'s mail pieces. In response, **REGER** dismissed co-conspirator S.K.'s concern, and replied that if S.K. discontinued working with Client D.R.C., someone else from the DTC Unit would take over the account. After this conversation, co-conspirator S.K. continued facilitating the sale of consumer data to Client D.R.C. Approximately four years later, in November 2014, federal law enforcement alleged that Client D.R.C. was operating multi-million dollar mail fraud schemes that defrauded elderly consumers; within days, a federal court ordered Client D.R.C. to cease committing mail fraud or distributing false or misleading solicitations. Several months after the court order, in an e-mail exchange with the subject line "RE: Clients making extreme claims[,]'" co-conspirator S.K. remarked to **REGER** and **LYTLE** that Client D.R.C. "brought us rev[enue] for 5 years but the law caught up with them and shut them down recently[.]" Less than a year after the court order against the client and after the e-mail exchange with co-conspirator S.K. about the "law [catching] up with them[.]" **LYTLE** offered to sell data modeled from Client D.R.C.'s victim lists to another potential client, commenting that Client D.R.C. "got popped in Q2 of this year." In total, Epsilon sold Client D.R.C. data for more than 2 million consumers.

- b. **Client J.K.S.:** Client J.K.S.'s deceptive mail pieces resembled formal or "official" notices that the consumer receiving the mail piece had won a large cash prize, and needed to pay a nominal fee to collect the

winnings. The mail pieces were fraudulent, given that they were sent to thousands of consumers who could not all have won the promised cash prize. On or about October 14, 2016, less than a month after the law enforcement actions against “Mass Mailing Fraud Schemes Targeting Elderly and Vulnerable Victims” as described in the September 2016 Department of Justice press release, **LYTLE** assisted Client J.K.S. in becoming an Epsilon client. Client J.K.S.’s representative was the same individual about whom, in 2012, **LYTLE** had noted the use of a “designated convict” as alleged above. In the course of signing up Client J.K.S. as an Epsilon client, **LYTLE** sent S.K. and other Epsilon employees a copy of Client J.K.S.’s fraudulent mail pieces. On or about October 24, 2016, **LYTLE** e-mailed the entire DTC Unit, including **REGER** and co-conspirator S.K., with information about Client J.K.S., noting that Client J.K.S. was expected to mail 750,000 copies of its mail piece annually. In total, Epsilon sold Client J.K.S. data for more than 25,000 consumers.

- c. **Client N.C.D.:** Client N.C.D.’s deceptive mail pieces purported to be official notifications from a “prize director” with “exciting news” about the sum of \$2,451,768.00, for which the recipient would supposedly be “fully eligible” upon payment of a \$20 fee. In actuality, recipients of Client N.C.D.’s mail piece did not receive a prize. After Epsilon signed Client N.C.D. in or around April 2017, **LYTLE** noted to other DTC Unit employees certain suspicious aspects of Client N.C.D.’s business

operations, including that the client's contact e-mail accounts were "all @gmail handles" (indicating that the client had no corporate e-mail address), the client's listed physical address was a private mail box, and Client N.C.D.'s corporate name had only been registered within the prior sixty days, and yet Client N.C.D. already claimed to Epsilon to have more than 178,000 customers. **LYTLE** wrote to co-conspirator S.K. that "[w]e have to be careful, but I think they will mail aggressively[.]" **LYTLE** also instructed the account executive who was assigned to Client N.C.D. to "keep them on a short (receivables) leash[.]" Receivables refer to the amount owed or paid to Epsilon for its services. Approximately three months later, after having received consumer data from Epsilon, a representative of Client N.C.D. informed **LYTLE** that Client N.C.D. had stopped mailing. **LYTLE** shared this information with co-conspirator S.K. S.K. responded: "Crazy they wanted to join so recently!" **LYTLE** replied that "[t]hat first mailing must have really 'not met their [return-on-investment] expectations'. Or they went to jail. It's all the same." In total, Epsilon sold Client N.C.D. data for more than 25,000 consumers.

17. During the conspiracy, the Defendants and co-conspirators caused the sale of data associated with millions of American consumers to entities and individuals that the Defendants and co-conspirators knew were engaged in fraud. Many of those consumers were elderly or otherwise vulnerable.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH NINETEEN

18. Paragraphs 1 through 8 and 11 through 17 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

19. Between at least as early as in or around 2008 and continuing until in or around January 2018, in the State and District of Colorado and elsewhere,

**ROBERT REGER and
DAVID LYTLE**

knowingly devised and intended to devise a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and, for the purpose of executing such scheme, did cause to be transmitted in interstate commerce by means of wire communications certain writings, signs, signals, pictures, and sounds, as alleged below in Counts 2 through 19:

COUNT	APPROXIMATE DATE	DEFENDANT(S)	WIRE TRANSMISSION
2.	6/13/16	REGER LYTLE	E-mail from D.M., an Epsilon employee located in the State and District of Colorado, to misops@d[xxxxxx].com, J.C., K.B., and R.L. bearing subject line: "Epsilon Shipment: CDS 6.30.16 Mailing - PO 86509-Pre Merge" and containing a link to consumer data, including identifying information about victims N.F., R.H., and L.M.
3.	8/4/16	REGER LYTLE	E-mail from K.B., an Epsilon employee located in the State and District of Colorado, to data@p[xxxxxxxx].com and M.D. bearing subject line: "Epsilon Shipment: Nature Plus Lady of Hearts 8/22/16 Campaign-Pre Merge" and containing a link to consumer data

4.	8/12/16	REGER LYTLE	E-mail from D.M., an Epsilon employee located in the State and District of Colorado, to K.B., J.C. misops@d[xxxxxx].com, and R.L. bearing subject line: "Epsilon Shipment – Registered Disbursement – SDA 8.30.16 Mailing" and containing a link to consumer data
5.	8/15/16	REGER LYTLE	E-mail from M.N., an Epsilon employee located in the State and District of Colorado, to misops@d[xxxxxx].com, J.C., and K.B. bearing subject line: "Epsilon Shipment: ESC 8.30.16 Mailing-Pre Merge" and containing a link to consumer data
6.	8/30/16	REGER LYTLE	E-mail from D.M., an Epsilon employee located in the State and District of Colorado, to data@p[xxxxxxx].com and M.D. bearing subject line: "Epsilon Shipment: JLDS Sophia 9/26/16 Campaign-Pre merge" and containing a link to consumer data
7.	9/8/16	REGER LYTLE	E-mail from K.B., an Epsilon employee located in the State and District of Colorado, to J.C., data@p[xxxxxxx].com, and L.L. bearing subject line: "Epsilon Shipment: Gold Rush September 2016-Pre Merge" and containing a link to consumer data
8.	9/30/16	REGER LYTLE	E-mail from LYTLE to S.K., an Epsilon employee located in the State and District of Colorado, bearing subject line: "call me? intell on the pacnet strike pushing business our way"
9.	10/14/16	REGER LYTLE	E-mail from LYTLE to Sh.K., an Epsilon employee located in the State and District of Colorado, and T.E bearing subject line: "need

			MRC and PROD CAT: JKS VENTURES"
10.	11/14/16	REGER LYTLE	E-mail from M.N., an Epsilon employee located in the State and District of Colorado, to data@p[xxxxxxxx].com and data.p[xxxxxxxx]@gmail.com bearing subject line: "Epsilon Shipment: Diamond Dollars November 2016-Pre Merge" and containing a link to consumer data
11.	4/4/17	LYTLE	E-mail from J.K., an Epsilon employee located in the State and District of Colorado, to N.D. bearing subject line: "FW: PALM BEACH - AM_Abacus Agreement_2017.02.23" and containing an attachment with consumer data, including identifying information about victim H.K.
12.	4/15/17	LYTLE	E-mail from LYTLE to S.K., an Epsilon employee located in the State and District of Colorado, bearing subject line: "RE: Please welcome new DTC Abacus Account: National Consumer Division"
13.	4/26/17	LYTLE	E-mail from M.N., an Epsilon employee located in the State and District of Colorado, to data2@e[xxxxxxxxxxxx].org and J.C. bearing subject line: "Epsilon Shipment: Palm Beach May 2017 Campaign-Pre Merge" and containing a link to consumer data
14.	5/12/17	LYTLE	E-mail from A.V., an Epsilon employee located in the State and District of Colorado, to it@l[xxxxxx].solutions bearing subject line: "Epsilon Shipment: JKS Ventures April 2017 Campaign-Pre Merge" and containing a link to consumer data

15.	6/13/17	LYTLE	E-mail from C.M., an Epsilon employee located in the State and District of Colorado, to data2@e[xxxxxxxxxxxx].org and J.C. bearing subject line: "Epsilon Shipment: Palm Beach June 2017-Pre Merge ***Replacement Shipment***" and containing a link to consumer data, including identifying information about victims including F.G.
16.	7/3/17	LYTLE	E-mail from LYTLE to D.A. and S.K., an Epsilon employee located in the State and District of Colorado, bearing subject line: "RE: Live tree"
17.	7/4/17	LYTLE	E-mail from LYTLE to B.C. and S.K., an Epsilon employee located in the State and District of Colorado, bearing subject line: "RE: Live tree"
18.	7/19/17	LYTLE	E-mail from LYTLE to S.K., an Epsilon employee located in the State and District of Colorado, bearing subject line: "RE: fully executed mailer agreements: NATIONAL CONSUMER DIVISION"
19.	7/28/17	LYTLE	E-mail from R.L., an Epsilon employee located in the State and District of Colorado, to data@b[xxxxxxxxxxxx].com and cwalker.txmktg@gmail.com bearing subject line: "Epsilon Shipment: National Consumer Division 08/2017 Mailing-Pre Merge" and containing a link to consumer data

All in violation of Title 18, United States Code, Section 1343.

COUNTS TWENTY THROUGH TWENTY-SEVEN

20. Paragraphs 1 through 8, 11 through 17 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

21. Between at least as early as in or around 2008 and continuing until in or around January 2018, in the State and District of Colorado and elsewhere, as alleged below in Counts 20 through 27:

**ROBERT REGER and
DAVID LYTLE**

knowingly devised and intended to devise a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and, for the purpose of executing such scheme, did cause to be deposited matter and things for transmission and delivery by private or commercial interstate carriers and did cause things to be placed in a post office and authorized depository for mail matter to be sent and delivered by the United States Postal Service:

COUNT	APPROXIMATE DATE	DEFENDANT(S)	DESCRIPTION OF MATTER DEPOSITED FOR TRANSMISSION OR DELIVERY
20.	6/22/16	REGER LYTLE	Check No. 3885 in the amount of \$20.00 mailed by victim W.S.
21.	8/3/16	REGER LYTLE	Check No. 2233 in the amount of \$20.00 mailed by victim C.H.
22.	8/3/16	REGER LYTLE	Check No. 1030 in the amount of \$20.00 mailed by victim R.H.
23.	8/23/16	REGER LYTLE	Check No. 1097 in the amount of \$20.00 mailed by victim N.F.
24.	8/25/16	REGER LYTLE	Check No. 1050 in the amount of \$30.00 mailed by victim R.H.
25.	9/3/16	REGER LYTLE	Check No. 1065 in the amount of \$20.00 mailed by victim R.H.

26.	9/3/16	REGER LYTLE	Check No. 279 in the amount of \$25.00 mailed by victim L.M.
27.	9/7/16	REGER LYTLE	Check No. 1068 in the amount of \$20.00 mailed by victim R.H.

All in violation of Title 18 United States Code Section 1341.

FORFEITURE ALLEGATION

22. The allegations contained in Counts 1 through 27 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

23. Upon conviction of the violations alleged in Counts 1 through 27 of this Indictment involving the commission of violations of 18 U.S.C. §§ 1341, 1343, and 1349, defendants **REGER** and **LYTLE** shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all of the defendants' right, title and interest in all property constituting and derived from any proceeds the defendant obtained directly and indirectly as a result of such offense, including, but not limited to: a money judgment in the amount of proceeds obtained by the scheme and by the defendants.

24. If any of the property described above, as a result of any act or omission of the defendant:

- a) cannot be located upon the exercise of due diligence;
- b) has been transferred or sold to, or deposited with, a third party;
- c) has been placed beyond the jurisdiction of the Court;
- d) has been substantially diminished in value; or
- e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property.

A TRUE BILL:

Ink signature on file in Clerk's Office
FOREPERSON

AMANDA LISKAMM
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Dated: November 2, 2022