

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DISTRICT

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UNITED STATES OF AMERICA

Plaintiff,

vs.

JIMMY HENRY (1); and
NICOLE GEORGES (2),

Defendants.

2:20-cr-157

Case No. _____

Michael Watson

Judge _____

21 U.S.C. § 841(a)(1), (b)(1)(c)

21 U.S.C. § 846

42 U.S.C. § 1320(a) – 7b(b)(1)(B)

18 U.S.C. § 1349

18 U.S.C. § 1347

18 U.S.C. § 2

FORFEITURE ALLEGATIONS

INDICTMENT

The GRAND JURY charges:

At times material to this Indictment:

GENERAL ALLEGATIONS

The Defendants, Related Individuals, and Entities

1. Defendant JIMMY HENRY was a licensed medical doctor in Ohio, credentialed under Ohio License Number # 35.096049. HENRY was registered with federal and state authorities in Ohio to prescribe Schedule II – V controlled substances. HENRY was also enrolled with the Medicare program as a Medicare provider, and with the Ohio Medicaid program as a Medicaid provider, since at least in or around 2010.

2. Midwest Spine and Pain (“Midwest”) was a purported medical practice which operated out of multiple locations, including at 5051 Forest Drive, New Albany, Ohio 43054, and at 7100 Graphics Way, #3300, Lewis Center, Ohio 43035. JIMMY HENRY owned and operated Midwest and, as part of his practice, personally prescribed controlled substances,

including highly addictive opioids, through these facilities. As the owner and operator of Midwest, HENRY also entered into agreements with Medicare and the Ohio Medicaid Program, among other insurance plans, to provide reimbursement for certain services provided at Midwest.

3. Defendant NICOLE GEORGES was employed as a representative of the pharmaceutical company Insys Therapeutics (“Insys”). GEORGES worked onsite at Midwest from at least in or around 2014 through at least in or around 2016.

4. Insys was incorporated in Delaware and headquartered in Chandler, Arizona.

5. Individual 1 was a licensed physician’s assistant who worked under JIMMY HENRY’s supervision at Midwest from approximately in or around November 2015 to in or around October 2019.

The Controlled Substances Act and Code of Federal Regulations

6. The Controlled Substances Act (“CSA”), Title 21, United States Code, Section 841(a), *et seq.*, and Title 21, Code of Federal Regulations (“CFR”), Section 1306.04, governed the manufacture, distribution, and dispensation of controlled substances in the United States. The CSA and the CFR contained definitions relevant to this Indictment, as set forth below.

7. The term “controlled substance” meant a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV and V, as designated by Title 21, United States Code, Section 802(c)(6), and the CFR. The designation “Schedule II” meant the drug or other substance had a high potential for abuse; the drug had a currently accepted medical use with severe restrictions; and abuse of the drug or other substance may lead to severe psychological or physical dependence.

8. Fentanyl, oxycodone, and tapentadol were opioids and Schedule II controlled

substances. Fentanyl pharmaceutical products were available in multiple forms, including sublingual spray, transdermal patches, and injectable formulations. When fentanyl was prescribed for a legitimate medical purpose, it was typically for the management of breakthrough cancer pain in patients who were already receiving opioid medication for their underlying persistent pain. Transdermal patches were used in the management of chronic pain in patients who require continuous opioid analgesia. Fentanyl was a potent opioid medication and was sometimes abused for its intense euphoric effects.

9. The term “dispense” meant to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance. The term “distribute” meant to deliver (other than by administering or dispensing) a controlled substance.

10. The Drug Enforcement Administration (“DEA”) issued registration numbers to qualifying doctors, who thereby became authorized to dispense Schedule II, III, IV, and V controlled substances. To issue a prescription for a controlled substance, a doctor was required to have a DEA registration number for each location in which the doctor was dispensing medicine, and for each state where the doctor was prescribing controlled substances. The term “prescription” meant an order for medication which was dispensed to or for a user but did not include an order for medication which was dispensed for immediate administration to the user.

11. Title 21, CFR, Section 1306.04, provided that “[a]ll prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.”

12. Under the CSA and CFR, a prescription for a controlled substance was unlawful unless issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.

The Medicare Program

13. The Medicare program (“Medicare”) was a federal health care program, affecting commerce, that provided benefits to persons who were 65 years of age or older or disabled.

14. Medicare was administered by the United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services (“CMS”). Individuals who received benefits under Medicare were referred to as Medicare “beneficiaries.”

15. Individuals who qualified for Medicare benefits were commonly referred to as “beneficiaries.” Each beneficiary was given a unique Medicare identification number.

16. Medicare covered different types of benefits and was separated into different program “parts.”

17. Medicare Part B covered, among other things, physician services, outpatient care, and durable medical equipment.

18. Medicare Part D subsidized the cost of prescription drugs for Medicare beneficiaries. Generally, Medicare Part D covered part or all of the costs of prescription drugs dispensed to a Medicare beneficiary if, among other requirements, the prescription drugs were medically necessary and ordered by a physician.

19. In order to receive Medicare Part D benefits, a beneficiary enrolled in one of several Medicare drug plans. Medicare drug plans were operated by private health care insurance companies approved by Medicare. Those companies were often referred to as drug

plan “sponsors,” each of which dictated the specific prescription drugs covered and how much would be paid for those drugs.

20. Medicare, through CMS, compensated the Medicare drug plan sponsors for providing prescription drug benefits to beneficiaries. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans. Such payments were called capitation fees. The capitation fee was adjusted periodically based on various factors, including the beneficiary’s medical conditions. In addition, in some cases where a sponsor’s expenses for a beneficiary’s prescription drugs exceeded that beneficiary’s capitation fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

21. Medicare and Medicare drug plan sponsors were “health care benefit program[s],” as defined by Title 18, United States Code, Section 24(b), and “federal health care program[s],” as defined by Title 42, United States Code, Section 1320a-7b(f).

22. As part of the Medicare enrollment process, health care providers, including physicians, submitted enrollment applications to Medicare. To participate in Medicare, including Medicare Part B and Part D, providers were required to certify that they would comply with all Medicare-related laws, rules, and regulations, including, among others, the federal Anti-Kickback Statute. If Medicare approved a provider’s application, Medicare assigned the provider a Medicare provider number. A provider with a Medicare provider number could submit claims to Medicare to obtain reimbursement for medically necessary items and services rendered to beneficiaries. Medicare providers were given access to Medicare manuals and service bulletins describing procedures, rules, and regulations.

The Ohio Medicaid Program

23. Medicaid, established by Congress in 1965, was a federal and state funded health care program providing benefits to individuals and families who met specified financial and other eligibility requirements, and certain other individuals who lacked adequate resources to pay for medical care. CMS was responsible for overseeing the Medicaid program in participating states, including Ohio. Individuals who received benefits under Medicaid were referred to as Medicaid “beneficiaries.”

24. Ohio Medicaid was a “health care benefit program” as defined by Title 18, United States Code, Section 24(b), and a “federal health care program[s],” as defined by Title 42, United States Code, Section 1320a-7b(f).

25. The Ohio Department of Medicaid (“ODM”) administered the Medicaid program in the State of Ohio. ODM received, reviewed, and paid Medicaid claims submitted by health care providers, including claims for professional services, such as office visits and medical procedures, as well as for prescription drug benefits.

26. Pursuant to the rules and regulations issued by ODM, Medicaid covered the costs of certain medical services, products, and benefits, including prescription drug benefits, for Medicaid beneficiaries. Generally, Medicaid covered part or all of the costs of prescription drugs dispensed to a Medicaid beneficiary if, among other requirements, the prescription drugs were medically necessary and ordered by a physician. As part of the process to become a Medicaid provider, health care practitioners were required to acknowledge that they understood and would abide by Medicaid’s rules, regulations, and program requirements.

The Conspiracy to Unlawfully Distribute and Dispense Controlled Substances

27. From in or around September 2015 until at least around January 2019, JIMMY HENRY illegally distributed dangerous controlled substances to customers located in the Southern District of Ohio and elsewhere. HENRY unlawfully issued prescriptions for Schedule II controlled substances, including fentanyl, oxycodone, and tapentadol, to patients through Midwest, the practice he owned, at Midwest's multiple offices. HENRY illegally issued these prescriptions himself, and with the assistance of Individual 1 and others known and unknown to the Grand Jury.

The Health Care Fraud Conspiracy

28. From in or around September 2015 until at least around January 2019, JIMMY HENRY, aided and abetted by Individual 1 and others known and unknown to the Grand Jury, and conspiring therewith, caused false and fraudulent claims to be submitted for reimbursement to Medicare and the Ohio Medicaid Program for prescription medications that were not medically necessary, not eligible for reimbursement, induced by illegal kickbacks, and issued outside the usual course of professional practice and without a legitimate medical purpose.

29. It was the purpose of the conspiracy for HENRY and his co-conspirators to unlawfully enrich themselves by (1) submitting and causing the submission of false and fraudulent claims to Medicare and Ohio Medicaid for prescriptions for Subsys and other controlled substances which were induced by kickbacks, medically unnecessary, and not eligible for reimbursement; (2) concealing the submission of these false and fraudulent claims; and (3) diverting the fraud proceeds for their use and benefit and for the use and benefit of others.

Manner and Means of the Health Care Fraud Conspiracy

30. JIMMY HENRY first enrolled as a Medicare provider on or about September 8, 2010, and as such signed a provider agreement with CMS agreeing to abide by the rules and regulations of the Medicare program. HENRY was consistently enrolled as a Medicare provider since that date and signed multiple updated provider agreements with CMS. These certifications included acknowledgements by HENRY that he would abide by all Medicare laws, regulations, and program instructions. These acknowledgements included a specific agreement that HENRY would not violate the Federal Anti-Kickback Statute, that he would not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare, and that he would not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.

31. HENRY was first enrolled as an Ohio Medicaid provider on or about September 8, 2010, and as such, he also signed a provider agreement with ODM agreeing to abide by the rules and regulations of the program. HENRY was consistently enrolled as an Ohio Medicaid provider since that date and signed multiple updated provider agreements with ODM. These certifications included acknowledgements that HENRY would abide by the Medicaid Handbook, which specifically prohibited the submission of any claims for payment by Medicaid that were not medically necessary and the receipt of payment from any other person in connection with the provision of Medicaid services.

32. As part of the conspiracy, JIMMY HENRY, Individual 1, and their co-conspirators issued and caused to be issued prescriptions for controlled substances, including Subsys, a fentanyl-based sublingual spray, that were medically necessary, in that they were

prescribed outside the usual course of professional practice and without a legitimate medical purpose, to patients who did not need these substances.

33. As further part of the conspiracy, JIMMY HENRY and his co-conspirators at Midwest received payments from Subsys' manufacturer, Insys Therapeutics, in return for purported speaking engagements that, in truth and in fact, never occurred. These engagements and payments, totaling approximately \$60,900, coincided with HENRY's increased prescribing of Subsys to patients in a manner that was medically unnecessary and was without a legitimate medical purpose.

34. As further part of the conspiracy, JIMMY HENRY, Individual 1, and their co-conspirators submitted and caused the submission of false and fraudulent claims to Medicare and Medicare drug plan sponsors, through Part D of the Medicare Program, and Ohio Medicaid for reimbursements for prescriptions for Subsys, which were medically unnecessary, induced by kickbacks, and ineligible for reimbursement.

35. Part D of the Medicare Program paid approximately \$1,238,702.94 in reimbursement for Subsys prescriptions issued by HENRY, Individual 1, and their co-conspirators. Ohio Medicaid paid approximately \$454,756.84 in reimbursement for filled Subsys prescriptions issued by HENRY, Individual 1, and their co-conspirators.

The Kickback Scheme

36. On or about January 4, 2012, the Food and Drug Administration ("FDA") approved Insys' application to market Subsys, a fentanyl-based sublingual spray, to patients suffering from breakthrough cancer pain. Breakthrough cancer pain was severe pain that erupted in patients with cancer who were already medicated with a long-acting painkiller. Due to its

potency and the potential for addiction, the FDA approved use of Subsys solely for “the management of breakthrough pain in cancer patients 18 years of age and older who are already receiving and who are already tolerant to opioid therapy for their underlying persistent cancer pain.”

37. The approximate retail cost of Subsys ranged from just under \$2,000 per month for 30 doses of the Fentanyl Spray at 200mcg to over \$8,000 per month for 30 doses of Subsys at the highest dosage of 1,600 mcg. The cost of Subsys could have exceeded \$16,000 per month if multiple doses per day were prescribed.

38. On or about October 10, 2014, defendant JIMMY HENRY entered into a purported “Speaker Agreement” with Insys. Pursuant to the agreement, HENRY would receive approximately \$2,200 from Insys per speaking engagement.

39. Many of the purported speaking programs conducted by defendant JIMMY HENRY, and for which he received payment from Insys, were sham programs. On many occasions HENRY did not attend the purported speaking program. On the occasions he did, HENRY discussed his own pain management practice and did not train any prescribers on Subsys as outlined in his Speakers Program contracts with Insys.

40. During the years that defendant JIMMY HENRY participated in a Speaker Agreement, the number of prescriptions that HENRY wrote for Subsys that were reimbursed through Medicare and Ohio Medicaid rose. As HENRY’s compensation from Insys increased in 2014 and early 2015, so did his prescriptions of Subsys and the Medicare and Ohio Medicaid Program reimbursement therefrom. After HENRY stopped receiving payments from Insys in or around October 2015, his prescribing of Subsys decreased significantly.

41. GEORGES was the Insys representative assigned to HENRY. GEORGES facilitated the relationship between HENRY and Insys. GEORGES commonly worked out of Midwest and coordinated the alleged “speaking engagements” pursuant to HENRY’s “Speaker Agreement” contracts, including scheduling and often catering the events. GEORGES then attended the events and collected sign in sheets from the participants. GEORGES then submitted documentation about the purported “speaking events” to Insys so that HENRY would be paid for these “speaking engagements” pursuant to his “Speaker Agreement” contracts.

42. On multiple occasions including but not limited to on or about September 24, 2015, defendant JIMMY HENRY, aided and abetted by others known to the Grand Jury, including NICOLE GEORGES, violated the Anti-Kickback Statute by agreeing to accept compensation paid by Insys through the purported “Speaker Agreement” in return for increased prescribing of Subsys, a controlled substance which was marketed by Insys and GEORGES.

COUNTS ONE THROUGH NINE

UNLAWFUL DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

[21 U.S.C. § 841(a)(1)]

THE GRAND JURY CHARGES THAT:

43. Paragraphs 1 through 12 of the General Allegations Section of the Indictment are realleged and incorporated by reference as though fully set forth herein.

44. On or about the dates set forth below, in the Southern District of Ohio, and elsewhere, the defendant JIMMY HENRY, aided and abetted by Individual 1 and others known and unknown to the Grand Jury, did knowingly, intentionally, and unlawfully dispense and distribute, and cause to be dispensed and distributed, outside the usual course of professional

practice and not for a legitimate medical purpose, the controlled substances listed below, each of which constitutes a separate count of this Indictment:

Count	Patient	Approximate Date of Written Prescription	Controlled Substance(s)
1	C.B.	10/13/2015	Fentanyl
2	M.M.	10/14/2015	Fentanyl
3	M.M.	2/2/2016	Fentanyl
4	J.F.	2/2/2016	Oxycodone
5	A.L.	7/25/2016	Fentanyl
6	M.G.	10/24/2016	Tapentadol
7	L.B.	2/13/2017	Tapentadol
8	J.F.	2/14/2018	Oxycodone
9	A.L.	1/30/2019	Oxycodone

In violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 18 U.S.C. § 2.

COUNT TEN

CONSPIRACY TO UNLAWFULLY DISTRIBUTE CONTROLLED SUBSTANCES

[21 U.S.C. § 846]

THE GRAND JURY FURTHER CHARGES THAT:

45. Paragraphs 1 through 12 of the General Allegations Section of the Indictment are realleged and incorporated by reference as though fully set forth herein.

46. From on or about September 15, 2015 through on or about January 30, 2019, in the Southern District of Ohio, and elsewhere, the defendant JIMMY HENRY knowingly and intentionally combined, conspired, confederated, and agreed together with other persons known and unknown to the Grand Jury, including Individual 1, to unlawfully distribute and dispense controlled substances, including but not limited to fentanyl, oxycodone, and tapentadol.

In violation of 21 U.S.C. § 846.

COUNT ELEVEN

SOLICITING AND RECEIVING HEALTH CARE KICKBACKS

[42 U.S.C. § 1320a-7b(b)(1)(B)]

THE GRAND JURY FURTHER CHARGES THAT:

47. Paragraphs 1 through 42 of the General Allegations Section of the Indictment are realleged and incorporated by reference as though fully set forth herein.

48. On or about the dates listed below, in the Southern District of Ohio and elsewhere, defendant JIMMY HENRY, aided and abetted by others known to the Grand Jury, including co-defendant NICOLE GEORGES, did knowingly and willfully solicit and receive the remuneration listed below, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item, that is, a significant increase in the number of Subsys prescriptions, for which payment may be made in whole and in part under Federal health care programs, those are, Medicare and Ohio Medicaid:

Approximate Date Payment Received	Payment Amount	Date and Location of Purported Speaking Program
9/15/2015	\$2,200	9/11/2015, Arlington Mill Run – Central Ohio Primary Care, Columbus, Ohio

In violation of 42 U.S.C. § 1320a-7b(b)(1)(B) and 18 U.S.C. § 2.

COUNT TWELVE

CONSPIRACY TO COMMIT HEALTH CARE FRAUD

[18 U.S.C. § 1349]

THE GRAND JURY FURTHER CHARGES THAT:

49. Paragraphs 1 through 42 of the General Allegations Section of the Indictment are realleged and incorporated by reference as though fully set forth herein.

50. From on or about September 15, 2015 until at least on or about January 30, 2019, in the Southern District of Ohio and elsewhere, the defendant JIMMY HENRY did knowingly and willfully combine, conspire, confederate and agree with others known and unknown to the Grand Jury, including Individual 1, to knowingly and willfully execute a scheme and artifice to defraud health care benefit programs affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare and Ohio Medicaid, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

Purpose of the Conspiracy

51. Paragraph 29 of the General Allegations Section of this Indictment is realleged and incorporated by reference as a description of the purpose of the conspiracy to commit health care fraud.

Manner and Means

52. Paragraphs 30 through 35 of the General Allegations Section of this Indictment is realleged and incorporated by reference as a description of the manner and means of the conspiracy to commit health care fraud.

In violation of 18 U.S.C. § 1349.

COUNTS THIRTEEN THROUGH FIFTEEN

HEALTH CARE FRAUD

[18 U.S.C. §§ 1347 and 2]

THE GRAND JURY FURTHER CHARGES THAT:

53. Paragraphs 1 through 42 of the General Allegations Section of the Indictment are realleged and incorporated by reference as though fully set forth herein.

54. From on or about September 15, 2015 until at least on or about January 30, 2019, in the Southern District of Ohio and elsewhere, the defendant, JIMMY HENRY, aided and abetted by others and aiding and abetting others known and unknown to the Grand Jury, including Individual 1, participated in a scheme to defraud health care benefit programs affecting commerce, as defined in 18 U.S.C. § 24(b), namely Medicare and Ohio Medicaid, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services, which scheme is further described below.

Purpose of the Scheme and Artifice

55. It was the purpose of the scheme and artifice for HENRY and his co-conspirators to unlawfully enrich themselves by (1) submitting and causing the submission of false and

fraudulent claims to Medicare and Ohio Medicaid for prescriptions for Subsys and other controlled substances which were induced through kickbacks, medically unnecessary, and not eligible for reimbursement; (2) concealing the submission of these false and fraudulent claims; and (3) diverting the fraud proceeds for their use and benefit and for the use and benefit of others.

The Scheme and Artifice

56. The Grand Jury realleges and incorporates by reference Paragraphs 30 through 35 of this Indictment as a description of the scheme and artifice.

Acts in Execution of the Scheme and Artifice

57. On or about the dates specified below, in the Southern District of Ohio, and elsewhere, JIMMY HENRY, aided and abetted by others, and aiding and abetting others known and unknown to the Grand Jury, including Individual 1, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud health care benefit programs affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare and Ohio Medicaid, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs, as follows:

Count	Beneficiary	Type of Claim	Payer Source	Approximate Date of Submitted Claim	Approximate Amount Paid
13	M.M.	Prescription (Subsys)	Ohio Medicaid	10/19/2015	\$5,941.29
14	C.B.	Prescription (Subsys, Morphine)	Medicare	10/22/2015	\$23,935.10
15	L.B.	Prescription (Subsys)	Ohio Medicaid	8/17/2016	\$14,966.64

All in violation of 18 U.S.C. §§ 1347 and 2.

FORFEITURE ALLEGATIONS

The GRAND JURY further alleges:

58. The allegations contained in Counts 1 through 15 of this Indictment are incorporated here for the purpose of alleging forfeiture pursuant to the provisions of Title 21, United States Code, Section 853 and Title 18, United States Code, Section 982.

59. Upon conviction of a violation of Title 21, United States Code, Sections 841, as alleged in Counts 1 through 9 of this Indictment, defendant JIMMY HENRY shall forfeit to the United States of America any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of such offenses and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the offenses.

60. Upon conviction of the offenses in violation of a federal health care offense, including a violation of Title 42, United States Code, Section 1320a-7b(b)(1)(B) as set forth in Count 11 and/or Title 18, United States Code, Section 1347 as set forth in Counts 13 through 15 of this Indictment, defendant JIMMY HENRY shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses.

61. Pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), upon conviction of a conspiracy to violate Title 18, United States Code, Section 1347 as set forth in Count 12 and/or Title 21, United States Code, Section 841 as set forth in Count 10, in violation of Title 18, United States Code, Section 371, defendant

JIMMY HENRY shall forfeit to the United States of America any property, real or personal, which constitutes or is derived from proceeds traceable to said violation(s).

62. The property to be forfeited includes, but is not limited to, the following:

a. any property, real or personal, that constitutes or is derived, directly or indirectly, as the result of such violation;

b. any DEA license(s) for HENRY; and

c. any of the defendants' property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

63. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

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

ii. has been transferred or sold to, or deposited with, a third party;

iii. has been placed beyond the jurisdiction of the Court;

iv. has been substantially diminished in value; or

v. has been commingled with other property that cannot be subdivided without difficulty;

the defendants shall forfeit to the United States any other property of the defendant, up to the value of the property described above, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

All pursuant to Title 21, United States Code, Section 853(a), Title 18, United States Code, Section 982(a)(7), and Title 28, United States Code, Section 2461(c).

A TRUE BILL:

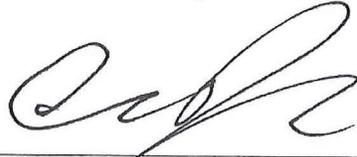


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