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15
 16 UNITED STATES DISTRICT COURT
 17 FOR THE DISTRICT OF NEVADA

18 UNITED STATES OF AMERICA,
 19
 Plaintiff,
 20
 v.
 21 GLEN BURKE and
 22 MICHAEL ROSSI aka MIKE ROSS
 23 Defendant.

Case No. 2:16-cr- 262

Sealed Indictment

Conspiracy (18 U.S.C. § 1349) (Burke and Rossi)

Wire Fraud (18 U.S.C. § 1343) (Burke and Rossi)

Mail Fraud (18 U.S.C. § 1341) (Burke and Rossi)

Contempt (18 U.S.C. § 401(3)) (Burke)

1 The Grand Jury charges that at all relevant times:

2 **COUNT ONE**

3 **(Conspiracy to Commit Wire and Mail Fraud)**

4 1. From at least as early as October 2011 to in or about January 2013, in the District
5 of Nevada and elsewhere, Defendants

6 **GLEN BURKE and MICHAEL ROSSI aka MIKE ROSS**

7 did conspire with each other and with others known and unknown to the grand jury to commit
8 the crimes of mail fraud and wire fraud as those crimes are defined in 18 U.S.C. §§ 1341 and
9 1343, and did so by operating a false and fraudulent telemarketing scheme.

10 **PURPOSE OF THE CONSPIRACY**

11 2. The purpose of the conspiracy was for **BURKE** and **ROSSI** to enrich themselves
12 by deceiving consumers into paying hundreds, and in some cases thousands, of dollars for
13 inexpensive vitamins. **BURKE** and **ROSSI** hired telemarketers to make interstate phone calls in
14 which they falsely told consumers that they had been selected to receive a valuable prize, and
15 that they would receive the prize if they bought vitamins. In reality, these consumers only
16 received inexpensive vitamins and a cheap prize worth only a small fraction of what they paid.

17 **THE MANNER AND MEANS OF THE CONSPIRACY**

18 3. The manner and means by which the defendants carried and attempted to carry
19 out the scheme consist of the following acts, among other acts.

20 4. **BURKE** and **ROSSI** operated the telemarketing scheme through a Nevada
21 company called American Health Associates, LLC (“AHA”). **BURKE** controlled AHA, a fact
22 that he concealed by using the names of certain other individuals on AHA’s official corporate
23 records and bank accounts. **BURKE** supplied AHA with start-up money, office space, and its
24 fraudulent business model, which used the same modus operandi as **BURKE’S** past
25 telemarketing scheme. **BURKE** controlled AHA’s illegal profits.

26 5. **ROSSI** became involved in the scheme in late 2011. By mid-2012, **ROSSI**
27 managed the day-to-day operation of AHA’s fraudulent telemarketing business, while reporting
28 to and receiving instructions from **BURKE**. **BURKE** and **ROSSI** hired AHA’s employees,

1 including telemarketers who, at the direction of **BURKE** and **ROSSI**, made fraudulent telephone
2 calls in interstate commerce.

3 **The Fraudulent "Promotion"**

4 6. Using lists of United States residents provided by **BURKE** and **ROSSI**, AHA
5 telemarketers called consumers and pretended to deliver exciting news. Reading from scripts
6 approved by **BURKE** and **ROSSI**, AHA telemarketers told consumers that they had been
7 specially selected to receive one of five valuable prizes as part of a "promotion." For example,
8 many consumers were told that they had won a new Chevy Camaro, a new Boston Whaler boat,
9 a diamond-and-sapphire bracelet, \$3,000 cash, or a cruise that could be exchanged for \$2,300 if
10 the consumer did not wish to travel. Reading from the scripts, telemarketers told consumers that
11 they were "guaranteed one of these five awards," which would be randomly selected for them by
12 a computer. To claim the prize, the consumer only had to pay \$299 to \$399 for vitamins. Once
13 consumers paid, however, AHA sent them nothing but inexpensive vitamins and the "diamond-
14 and-sapphire bracelet" – a cheap piece of jewelry worth only a small fraction of what the
15 consumers had paid.

16 7. The scripts misled consumers, many of whom were elderly and vulnerable, into
17 believing that each of the five prizes had a value far exceeding the \$299-\$399 purchase price for
18 the vitamins. In order to fool consumers into believing this, telemarketers following the scripts
19 provided by **BURKE** and **ROSSI** fraudulently told consumers that they had been chosen to
20 participate in a "promotion." The telemarketers falsely told consumers that AHA was giving
21 away the prizes in order to receive pictures of consumers posing with their prizes, so the
22 company could use the photos to promote the vitamins. In fact, the "promotion" was a lie, and
23 AHA did not actually need the customer photos or use them for any legitimate purpose.

24 **The "VIP Round"**

25 8. Once consumers fell for the scheme and purchased vitamins, **BURKE** and
26 **ROSSI** used a process called "loading" or "reloading" to target the same consumers with another
27 round of false statements in order to take even more of their money. **BURKE** and **ROSSI**
28 directed more experienced AHA telemarketers known as "reloaders" to call these purchasers

1 back with the supposedly good news that they would be receiving the jewelry prize described in
2 the first call. The reloader would then claim that there was even bigger news: the consumer had
3 been specially selected to participate in a “VIP” round of the promotion and was guaranteed to
4 receive an even better prize. A typical list of big-ticket items for the “VIP” round included a
5 new Ford Mustang, a home theater, his and hers diamond watches, \$7,000 in cash, and a
6 Caribbean cruise that could be exchanged for \$5,000 cash.

7 9. Once again, the consumer had to buy vitamins to claim the prize – but this time,
8 the price was even higher, often more than \$1,000. Consumers who gave their money a second
9 time received nothing but inexpensive vitamins and jewelry, typically a watch or set of watches –
10 which were of poor quality and worth only a small fraction of what they had paid.

11 **The Third and Fourth Rounds**

12 10. **BURKE** and **ROSSI** targeted consumers who were defrauded twice for a third
13 “promotion.” Reloaders working for **BURKE** and **ROSSI** called these consumers with more
14 supposedly good news. They had typically won the watches in the “VIP” round, and AHA had
15 selected them for yet another, even better “promotion” with even bigger prizes. A typical prize
16 list for the third round consisted of a new Cadillac CTS, a new Kia Soul, four one-ounce gold
17 bars, a lithograph, or an Alaskan cruise that could be exchanged for \$5,000. Consumers in the
18 third round typically paid well over a thousand dollars for vitamins and received the lithograph,
19 which was worth only a small fraction of what they paid. Some of these consumers were
20 targeted for a fourth “promotion” that followed the same fraudulent pattern as the previous
21 rounds.

22 11. Consumers who participated in **BURKE**’s and **ROSSI**’s fraudulent promotions
23 suffered financial losses. After paying hundreds or thousands of dollars to claim prizes that were
24 supposedly much more valuable, these consumers received only vitamins and cheap prizes.
25 **BURKE** and **ROSSI** did not deliver to consumers any cars, boats, cruises, home theater systems,
26 gold bars, or large cash payments.

Omission/Concealment of Material Facts

1
2 i. That in 1996 the Federal Trade Commission obtained a court order prohibiting
3 **BURKE** from engaging in deceptive practices, based on his involvement in a business
4 opportunity scheme;

5 j. That in 1997 the Securities and Exchange Commission obtained a court order
6 against **BURKE** prohibiting him from misleading investors, based on his failure to disclose to
7 investors that at least five states had filed law enforcement proceedings against his publicly-
8 traded telemarketing operation;

9 k. That in 1998 **BURKE** agreed to a court order barring him from engaging in
10 telemarketing or assisting others in telemarketing as a result of his involvement in another
11 telemarketing scheme;

12 l. That in 2003 **ROSSI** was convicted of the crime of conspiracy to commit theft by
13 obtaining money under false pretenses.

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

15 **COUNTS 2-17**

16 **(Wire Fraud)**

17 13. The Grand Jury re-alleges and incorporates by reference the allegations in Count
18 1 of this Indictment.

19 14. From at least as early as October 2011 to in or about January 2013, in the District
20 of Nevada and elsewhere, Defendants **GLEN BURKE** and **MICHAEL ROSSI** aka **MIKE**
21 **ROSS** did devise and intend to devise and participate in a scheme and artifice to defraud and for
22 obtaining money and property by means of materially false and fraudulent pretenses,
23 representations, and promises.

24 15. To execute the above-described fraudulent scheme, on or about the below-
25 specified dates, within the District of Nevada, and elsewhere, **BURKE** and **ROSSI**, together
26 with others known and unknown to the Grand Jury, transmitted and caused the transmission of
27 the following items by means of wire communication in interstate commerce:
28

<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>DESCRIPTION OF WIRE</u>
2	November 9, 2011	Phone call between victim A.U. in Ohio and AHA employee J.B. in Nevada
3	December 21, 2011	Phone call between victim A.U. in Ohio and AHA employee M.T. in Nevada
4	November 15, 2011	Phone call between victim D.L. in Arkansas and AHA employee J.B. in Nevada
5	December 28, 2011	Phone call between victim D.L. in Arkansas and AHA employee M.T. in Nevada
6	November 17, 2011	Phone call between victim S.S. in Montana and AHA employee "Dennis" in Nevada
7	January 23, 2012	Phone call between victim J.K. in Kansas and AHA employee C.M. in Nevada
8	February 21, 2012	Phone call between victim J.K. in Kansas and AHA employee P.D. in Nevada
9	March 2012	Phone call between victim B.P. in Missouri and AHA employee in Nevada
10	March 28, 2012	Phone call between victim M.C. in Florida and AHA employee S.S. in Nevada
11	May 15, 2012	Phone call between victim M.C. in Florida and AHA employee P.D. in Nevada
12	April 2, 2012	Phone call between victim S.C. in California and AHA employee "Andre" in Nevada
13	May 7, 2012	Phone call between victim S.C. in California and AHA employee D.B. in Nevada.
14	July 16, 2012	Phone call between victim R.K. in Alaska and AHA employee "Nancy" in Nevada
15	August 14, 2012	Phone call between victim R.K. in Alaska and AHA employee D.B. in Nevada
16	August 8, 2012	Phone call between victim C.G. in Missouri and AHA employee "Karen" in Nevada
17	September 5, 2012	Phone call between victim C.G. in Missouri and AHA employee D.B. in Nevada

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

COUNTS 18-22

(Mail Fraud)

16. The Grand Jury re-alleges and incorporates by reference the allegations in Count 1 of this Indictment.

1 17. From at least as early as October 2011 to in or about January 2013, in the District
 2 of Nevada and elsewhere, Defendants **GLEN BURKE** and **MICHAEL ROSSI aka MIKE**
 3 **ROSS** did devise and intend to devise and participate in a scheme and artifice to defraud and for
 4 obtaining money and property by means of materially false and fraudulent pretenses,
 5 representations, and promises.

6 18. To execute the above-described fraudulent scheme, on or about the below-
 7 specified dates, within the District of Nevada and elsewhere, **BURKE** and **ROSSI**, together with
 8 others known and unknown to the Grand Jury, caused to be delivered, by the United States Postal
 9 Service and by private and commercial interstate carrier, the following items:

<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>DESCRIPTION OF MAILING</u>
18	January 2012	Envelope from AHA in Nevada to victim D.L. in Arkansas containing "Affidavit of Eligibility and Liability & Publicity Release Form"
19	January 2012	Package from AHA in Nevada to victim D.L. in Arkansas containing bracelet
20	March 5, 2012	Envelope from AHA in Nevada to victim J.K. in Kansas containing "Affidavit of Eligibility and Liability & Publicity Release Form"
21	April 2012	Letter from AHA employee "Brian" in Nevada to victim M.C. in Florida
22	April 2012	Check from victim B.P. in Missouri to AHA in Nevada

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

21 **COUNT 23**

22 **(Contempt)**

23 19. The Grand Jury re-alleges and incorporates by reference the allegations in Counts
 24 1-22 of this Indictment.

25 20. At all times relevant to this indictment, Defendant **GLEN BURKE** was subject to
 26 an order entered by Judge Philip M. Pro of the United States District Court for the District of
 27 Nevada on or about October 1, 1998 (the "1998 Court Order") in the case entitled Federal Trade
 28 Commission v. Dayton Family Productions, Inc. **BURKE** had agreed to entry of the 1998 Court

1 Order to resolve a lawsuit brought by the Federal Trade Commission alleging that Burke
2 participated in a telemarketing scheme that used misrepresentations to sell investments in a film
3 company.

4 21. The 1998 Court Order banned **BURKE** from telemarketing. Section III of the
5 1998 Court Order, entitled “BAN ON TELEMARKETING,” permanently bans **BURKE** from
6 “engaging in telemarketing” and “assisting others in telemarketing.” The 1998 Court Order
7 defines “telemarketing,” in relevant part, as “a plan, program, or campaign which is conducted to
8 induce the purchase of goods or services by use of one or more telephones and which involves
9 more than one interstate phone call.”

10 22. From at least as early as October 2011 to in or about January 2013, in the District
11 of Nevada and elsewhere, **BURKE** did knowingly and willfully disobey and resist a lawful
12 order, decree, and command of this Court, namely, Section III of the 1998 Court Order, by
13 engaging in telemarketing and assisting others in telemarketing.

14 All in violation of Title 18, United States Code, Section 401(3).

15 **COUNT 24**

16 **(Contempt)**

17 23. The Grand Jury re-alleges and incorporates by reference the allegations in Counts
18 1-23 of this Indictment.

19 24. Section II.B. of the 1998 Court Order contained a provision banning **BURKE**
20 from “[m]isrepresenting, in any manner, directly or by implication, or failing to disclose any fact
21 material to a consumer’s decision to purchase any item, product, good, service, or investment.”
22 **BURKE** violated this provision by committing the acts described below.

23 25. In addition to his fraudulent telemarketing business, **BURKE** operated another
24 scheme from his offices in Nevada. **BURKE** caused deceptive mailers to be sent to consumers.
25 The mailers were designed to fool them into believing they had won thousands or millions of
26 dollars. The mailers used fictitious names and many looked like they came from law firms or
27 financial institutions. The mailers advised consumers to pay a small fee – usually \$20 to \$30 –
28 in order to claim their winnings. Once consumers paid, however, **BURKE** either failed to

1 deliver any money or sent consumers a check or money order for less than \$2 – far less than
2 what the consumer paid as a processing fee to claim the “prize.”

3 26. As a result of this scheme, from at least as early as September 2011 to in or about
4 January 2013, in the District of Nevada and elsewhere, **BURKE** did knowingly and willfully
5 disobey and resist a lawful order, decree, and command of this Court, namely, Section II.B. of
6 the 1998 Court Order, by causing mailers that misrepresented and failed to disclose material
7 facts to be sent to consumers.

8 All in violation of Title 18, United States Code, Section 401(3).

9 **FORFEITURE ALLEGATION**

10 The Grand Jury re-alleges and incorporates by reference the allegations in Counts 1-24 of
11 this Indictment for the purpose of alleging forfeiture pursuant to Title 18, United States Code,
12 Section 982(a)(8).

13 Pursuant to Title 18, United States Code, Section 982(a)(8), upon conviction of a
14 violation of Title 18, United States Code, Sections 1341 or 1343, or a conspiracy to commit such
15 an offense, if such offense involves telemarketing as defined in Title 18, United States Code,
16 Section 1325, Defendants **GLEN BURKE** and **MICHAEL ROSSI aka MIKE ROSS**, shall
17 forfeit to the United States of America any real or personal property (A) used or intended to be
18 used to commit, to facilitate, or to promote the commission of such offense; and (B) constituting,
19 derived from, or traceable to the gross proceeds that the defendants obtained directly or
20 indirectly as a result of the offense(s). The property to be forfeited includes, but is not limited to,
21 an in personam criminal forfeiture money judgment.

22 If any of the property described above, as a result of any act or omission of the
23 defendants:

- 24 a. cannot be located upon the exercise of due diligence;
25 b. has been transferred or sold to, or deposited with, a third party;
26 c. has been placed beyond the jurisdiction of the court;
27 d. has been substantially diminished in value; or
28 e. has been commingled with other property which cannot be divided without difficulty,

