

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

*

CRIMINAL NO. 17-241

v.

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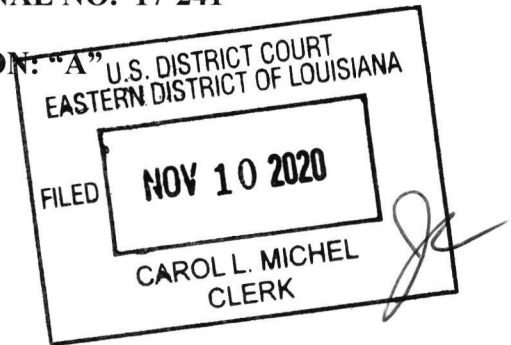
SECTION: "A"

**IRVIN MAYFIELD
RONALD MARKHAM**

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* * *

FACTUAL BASIS



The defendants, **IRVIN MAYFIELD (MAYFIELD)** and **RONALD MARKHAM (MARKHAM)** have indicated that they intend to plead guilty as charged to Count 1 of the Second Superseding Indictment (Indictment) against them, that is, conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 371.

The United States and defendants **MAYFIELD** and **MARKHAM** do hereby stipulate and agree that the following facts are true and correct and that, should this matter have proceeded to trial, the government would have proven them beyond a reasonable doubt, through the introduction of competent testimony and admissible tangible and documentary exhibits. This Factual Basis does not attempt to set forth all of the facts known to the United States at this time. The limited purpose of this Factual Basis is to demonstrate that there exists a sufficient legal basis for the defendants' guilty plea. By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea that the defendants will tender. The parties also agree that this Factual Basis may be used by the United States Probation Office and the Court in determining the applicable advisory

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Claude Kelly 

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guideline range under the United States Sentencing Guidelines or the appropriate sentence under 18 U.S.C. § 3553(a).

The New Orleans Jazz Orchestra

At all times material to the Indictment, **MAYFIELD** founded the New Orleans Jazz Orchestra (NOJO) in 2002. **MAYFIELD** also acted as Artistic Director and featured performer. **MARKHAM** was a long-time friend of **MAYFIELD** and served as NOJO's President and Chief Executive Officer.

NOJO was composed of approximately 18 musicians who routinely performed and toured nationally to promote Jazz music and New Orleans tourism. At least as early as 2007, **MAYFIELD** and **MARKHAM** both received salaries of \$100,000 from NOJO as well as compensation for compositions and performances through Mayfield Publishing Company.

Throughout its existence, NOJO relied on donations to fund its operations and pay its expenses. Between on or about December 16, 2008, until on or about May 31, 2010, NOJO relied on grants from the Edward Wisner Donation, a charitable trust administered by the City of New Orleans. In or about February 2011, support for NOJO through the Edward Wisner Donation was terminated by the City of New Orleans, causing great financial distress to NOJO and its ability to pay expenses.

The New Orleans Public Library Foundation

In or about October 1990, the New Orleans Public Library Foundation (NOPLF) was established to receive donations generated through private fundraising efforts; to oversee the prudent investment of said donations at an acceptable level of risk; and to authorize expenditures

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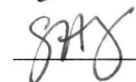
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Ronald Markham



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judiciously for the purpose of purchasing books, other informational materials, and sponsoring New Orleans Public Library (NOPL) related programs. For these purposes, NOPLF maintained an investment account. Until approximately August 2011, the NOPLF used interest earned from its investment account to fund its mission at the direction of its board of directors. All board members were uncompensated volunteers.


In or about August 2006, **MAYFIELD** became a board member of NOPLF. He later became Chairman of the board in or about November 2010. During his time on the NOPLF board, **MAYFIELD** also maintained his position with NOJO. In or about December 2009, **MARKHAM** became a board member of NOPLF. He later became Chairman of the board in or about September 2013 upon **MAYFIELD**'s resignation as Chairman of NOPLF. During his time on the NOPLF board, **MARKHAM** also maintained his position with NOJO. Between August 23, 2011, and November 30, 2013, **MAYFIELD** and **MARKHAM** caused approximately \$1,316,232 to be unlawfully transferred and paid directly from NOPLF to NOJO and elsewhere.

The Youth Rescue Initiative

The Youth Rescue Initiative (YRI) was a New Orleans non-profit dedicated to creating opportunities for disenfranchised youth in the City of New Orleans. Between at least January 2012 and November 2012, **MAYFIELD** was a board member of YRI.

THE CONSPIRACY

Beginning in or about February 2011, and continuing until in or about November 2017, in the Eastern District and elsewhere, the defendants, **IRVIN MAYFIELD** and **RONALD MARKHAM**, did knowingly and willfully combine, conspire, confederate and agree with each

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other to use and cause to be used a private and commercial interstate carrier, and transmit and cause to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures and sounds in furtherance of and for the purpose of executing a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, by transferring money from the NOPLF investment account to NOJO and elsewhere without approval and while misleading the NOPLF and others with regard to the purpose of the transfers.

Among the manner and means by which defendants **MAYFIELD** and **MARKHAM** carried out the conspiracy were the following:

MAYFIELD and **MARKHAM** unlawfully transferred and caused to be transferred approximately \$1,316,232 from the **NOPLF** investment account to NOJO to support NOJO's operating expenses, thereby benefitting **MAYFIELD** and **MARKHAM**.

MAYFIELD and **MARKHAM** sent and caused to be sent materially false and misleading correspondence to NOPLF board members, investment account managers, and auditors regarding the purpose of the money transfers from the NOPLF investment account.


MAYFIELD and **MARKHAM** prepared and caused to be prepared materially false and misleading records to make money transfers from NOPLF to NOJO appear legitimate when they were not.


In furtherance of and to conceal the conspiracy and accomplish its purposes, **MAYFIELD** and **MARKHAM**, committed the following overt acts, among others:

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1. On about August 23, 2011, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$100,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses, \$10,000 to Mayfield Production, two payments of \$8,333.33 to **MAYFIELD** for salary, and two payments of \$6,032.54 to **MARKHAM** for salary.

2. On about October 7, 2011, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$25,000 from NOPLF to NOJO, which was used to pay \$25,000 into a personal checking account of **MAYFIELD**.

3. On about October 21, 2011, **MAYFIELD** and **MARKHAM** emailed and caused to be emailed materially false and misleading financial information to a NOJO board member.

4. On about October 26, 2011, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$150,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses, \$23,000 to a sculptor, two payments of \$8,333.33 to **MAYFIELD** for salary, and two payments of \$6,032.54 to **MARKHAM** for salary.

5. On about December 29, 2011, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$100,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses, \$5,000 to Mayfield Production, \$8,333.33 to **MAYFIELD** for salary, and \$6,032.54 to **MARKHAM** for salary.

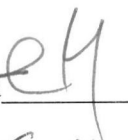
6. On about January 19, 2012, **MAYFIELD** transferred and caused to be transferred \$50,000 from NOPLF to a YRI account for **MAYFIELD**.

7. On about February 27, 2012, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$100,000 from NOPLF to NOJO, which was used to pay NOJO operating

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Irvin Mayfield



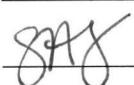
Ronald Markham



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expenses, \$7,000 to Mayfield Production, \$8,333.33 to **MAYFIELD** for salary, and \$6,053.74 to **MARKHAM** for salary.

8. On about April 29, 2012, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$50,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses, \$8,333.33 to **MAYFIELD** for salary, and \$6,053.29 to **MARKHAM** for salary.

9. On about May 31, 2012, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$50,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses, \$8,333.33 to **MAYFIELD** for salary, and \$6,053.28 to **MARKHAM** for salary.

10. On about June 19, 2012, **MAYFIELD** and **MARKHAM** created and caused to be created materially false and misleading NOJO correspondence, dated August 29, 2011.

11. On about June 19, 2012, **MAYFIELD** and **MARKHAM** created and caused to be created materially false and misleading NOJO correspondence, dated October 11, 2011.

12. On about June 19, 2012, **MAYFIELD** and **MARKHAM** created and caused to be created a materially false and misleading NOJO invoice, dated February 27, 2012.

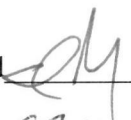
13. On about June 19, 2012, **MAYFIELD** and **MARKHAM** created and caused to be created a materially false and misleading NOJO invoice, dated May 31, 2012.

14. In about July 2012, **MAYFIELD** and **MARKHAM** paid and caused to be paid \$13,438.49 from NOPLF to Ritz Carlton New York to pay for **MAYFIELD's** stay during the course of a NOJO performance.

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15. On about August 27, 2012, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$50,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses.

16. On about September 11, 2012, **MAYFIELD** and **MARKHAM** made and caused to be made materially false and misleading representations to auditors, including that \$375,000 in NOPLF funds was transferred to NOJO in 2011 as fiscal agent to implement the provisions of Memorandums of Understanding with YRI, University of New Orleans, and the Southern Food and Beverage Museum.

17. On about September 18, 2012, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$16,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses, including \$9,728.44 to Park Central Hotel in New York for **MAYFIELD**'s stay during the course of a NOJO performance.

18. On about September 24, 2012, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$50,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses.

19. On about September 27, 2012, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$150,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses, \$5,000 to Mayfield Production, \$13,470.13 to Park Central Hotel in New York, \$38,924 to Carnegie Hall, \$18,860.71 to The Ritz Carlton in New York, \$8,333.33 to **MAYFIELD** for salary, and \$6,053.29 to **MARKHAM** for salary.

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20. On about October 26, 2012, **MAYFIELD** contacted an acquaintance at a third party organization, and asked for the organization to hold approximately \$70,000 of NOPLF money in an organization bank account, telling the acquaintance that he was trying to avoid moving the funds to an organization of which he was a board member.

21. Between about November 1, 2012, and November 5, 2012, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$100,000 from NOPLF to NOJO, and \$45,000 of NOPLF funds being held by YRI for **MAYFIELD** to NOJO, which was used to pay NOJO operating expenses, \$25,000 to **MAYFIELD** for his Carnegie Hall fee, an additional \$20,000 to **MAYFIELD**, \$8,333.33 to **MAYFIELD** for salary, and \$6,053.29 to **MARKHAM** for salary.


22. On about November 21, 2012, **MAYFIELD** transferred and caused to be transferred \$100,000 from NOPLF to a YRI account designated for **MAYFIELD**.


23. On about November 30, 2012, **MAYFIELD** transferred and caused to be transferred approximately \$15,000 from a YRI account, which **MAYFIELD** used to pay for a 24k gold-plated trumpet from a trumpet manufacturer.

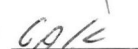
24. On about December 4, 2012, **MAYFIELD** caused to be mailed a 24k gold-plated trumpet to **MAYFIELD**.


25. On about December 5, 2012, **MAYFIELD** transferred and caused to be transferred \$77,000 in NOPLF funds being held by YRI to NOJO, which was used to pay \$66,000 to **MAYFIELD**, of which over \$23,000 was spent at Saks Fifth Avenue and over \$2,000 was spent at Harrah's Casino.

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26. On about January 30, 2013, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$85,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses, \$8,333.33 to **MAYFIELD** for salary, and \$5,904.35 to **MARKHAM** for salary.

27. On about June 26, 2013, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$62,000 from NOPLF to NOJO, which was used to pay NOJO operating expenses, \$5,000 for NOJO's Gala expenses, \$8,333.33 to **MAYFIELD** for salary, and \$5,904.35 to **MARKHAM** for salary.

28. In July 2013, **MAYFIELD** and **MARKHAM** paid and caused to be paid \$12,793.48 from NOPLF to Ritz Carlton New York for **MAYFIELD**'s stay during the course of a NOJO performance.

29. On about October 2, 2013, **MAYFIELD** and **MARKHAM** falsely informed and caused NOPLF auditors to be falsely informed that money transferred to YRI was used for book drives.

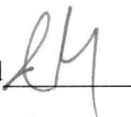
30. On about November 6, 2013 and November 18, 2013, **MAYFIELD** and **MARKHAM** transferred and caused to be transferred \$15,000 and \$50,000, respectively, from NOPLF to NOJO, which was used to pay NOJO operating expenses, \$20,000 to a booking agency for a performance in Chicago, Illinois and \$5,904.36 to **MARKHAM** for salary.

31. On about November 19, 2013, after being notified of the issuance of grand jury subpoenas to NOPLF auditors and an investment account manager, **MARKHAM** and **MAYFIELD** gathered and fraudulently edited NOPLF board minutes by changing line items and dollar amounts.

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32. On about November 25, 2013, **MAYFIELD** and **MARKHAM** emailed and caused to be emailed the fraudulently edited board minutes, now labelled the “official” board minutes, to unwitting legal counsel for NOPLF with the intent to impede, obstruct, and influence the investigation by the Federal Bureau of Investigation.

33. On about November 25, 2013, **MAYFIELD** and **MARKHAM** sent and caused to be sent a materially false and misleading email to NOPLF board members attaching the fraudulently altered NOPLF board minutes and falsely claimed the records justified the transfer of money from NOPLF to NOJO.

34. On about January 14, 2014, **MARKHAM** falsely informed NOPLF board members, employees of NOPLF and NOPLF legal counsel that NOJO did not use NOPLF money to pay the NOJO salaries of **MAYFIELD** and **MARKHAM** and that NOJO was not dependent on NOPLF funding.

Among other documents and tangible exhibits, the following records would be introduced at trial to prove the foregoing:

- Financial records of NOJO, NOPLF, and YRI.
- Records and emails of NOPLF board members and employees.
- Records and emails of NOJO board members and employees.
- Records and emails of defendants **IRVIN MAYFIELD** and **RONALD MARKHAM**. Records and emails of various third parties associated with the facts and circumstances of this matter.
- Records and emails of numerous accounting professionals involved with NOJO and NOPLF.

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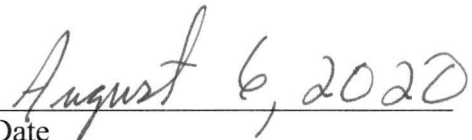
- Records and emails of employees and board members of the New Orleans Public Library System (NOPL).

Furthermore, the government would call employees and board members of NOPLF, NOJO, YRI, and NOPL to testify at trial. The government would also call various accounting professionals and other third parties involved in this matter, Special Agents of the FBI, Investigators from the New Orleans Office of Inspector General, and forensic accounting specialists.


APPROVED AND AGREED TO:




G. DALL KAMMER
Assistant United States Attorney




Date



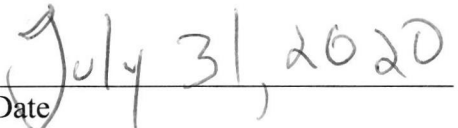
THEODORE CARTER
Assistant United States Attorney



Date



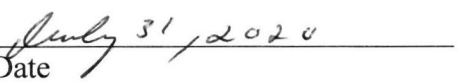
IRVIN MAYFIELD
Defendant




Date




CLAUDE KELLY
Attorney for Defendant Irvin Mayfield




Date



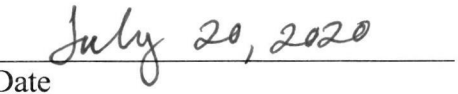
RONALD MARKHAM
Defendant



Date



SARA JOHNSON
Attorney for Defendant Ronald Markham



Date