

Presented to the Court by the foreman of the
Grand Jury in open Court, in the presence of
the Grand Jury and FILED in the U.S.
DISTRICT COURT at Seattle, Washington.

February 8, 2023
By Ravi Subramanian, Clerk
[Signature] Deputy

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff

v.

STEPHEN ALEXANDER BAIRD,
Defendant.

NO. **CR23-017** RAJ
INDICTMENT

The Grand Jury charges that:

COUNTS 1-10
Wire Fraud

A. Summary

1. Beginning no later than 2012, and continuing until March 2021, STEPHEN BAIRD defrauded investors out of more than \$10.75 million by persuading them to purchase stock in S-Ray, Incorporated. BAIRD told prospective investors that S-Ray had developed innovative ultrasound devices that allowed dentists to quickly and safely capture high-quality oral images of their patients' mouths. To entice the investors to buy S-Ray stock, BAIRD represented that S-Ray's devices produced "astonishing results;" that S-Ray was perpetually on the cusp of offering the devices for sale; that S-Ray had obtained FDA "market clearance" authorizing the company to sell the device; and that

1 the S-Ray technology was protected by the company's broad and valuable array of
2 intellectual property rights.

3 2. None of these things were true. In fact, as BAIRD well knew, S-Ray never
4 developed any ultrasound product capable of producing usable dental images; was never
5 close to offering any product for sale; never received FDA authorization to market any
6 products; never earned any revenue; and possessed only limited intellectual property.
7 Further, after telling investors he would use their investment funds to develop and market
8 S-Ray's product, BAIRD instead used millions of dollars of investment proceeds to
9 purchase his own private residence, luxury cars, and for other personal uses. As a result
10 of BAIRD's fraud, all of S-Ray's investors lost their entire investments.

11 **B. Background**

12 3. BAIRD was a resident of Bainbridge Island, Washington and Bend,
13 Oregon. In 2010, BAIRD founded S-Ray Incorporated, a Nevada corporation. In 2015,
14 BAIRD re-formed S-Ray as a Delaware corporation. At times S-Ray had offices in
15 Seattle and Redmond, Washington, Portland, Oregon, and Huntington Beach, California.

16 4. BAIRD has been the sole board member of S-Ray since 2010. He served
17 continuously as either its Chief Executive Officer or "Chairman of the Board"—though
18 the company had no board members other than BAIRD.

19 5. Under a series of employment agreements, BAIRD was entitled to total
20 annual compensation of \$400,000. In December 2018, BAIRD agreed to waive his salary
21 and bonus until the company was sold.

22 6. BAIRD also controlled two business entities known as Island Family
23 Limited Partnership and Lido Asset Management, LLC. As discussed below, BAIRD
24 used these entities as vehicles to funnel S-Ray corporate funds to himself.

25 7. BAIRD solicited and received money from investors continuously from at
26 least 2012 until March 2021. BAIRD frequently provided information to investors and
27

1 prospective investors via group email updates, which BAIRD either drafted or approved.
2 BAIRD caused these emails to be transmitted by interstate wire transmissions. Many of
3 the communications with investors were sent at BAIRD's direction from Vancouver,
4 Washington by a person referenced below as "Person 1." In March 2017 and January
5 2019, BAIRD produced Confidential Offering Documents, which BAIRD and others
6 distributed to investors via interstate wire transmission. Investors generally funded their
7 S-Ray stock purchases via check or wire transfer, both of which caused interstate wire
8 transmissions.

9 8. BAIRD represented to shareholders that S-Ray had developed two devices
10 that used ultrasound technology for dental imaging. BAIRD stated that one device, which
11 BAIRD called "Clearview LAB," created digital images of dental molds. BAIRD stated
12 that a second device, called Clearview SCAN (and sometimes described as an "intraoral
13 wand,") would be inserted into patients' mouths to create images of patients' teeth.
14 BAIRD told investors that S-Ray's products were capable of replacing traditional x-ray
15 technology in the dental space. BAIRD represented that S-Ray's ultrasound technology
16 would generate higher quality images than x-rays, without exposing patients to the
17 radiation associated with x-rays.

18 9. S-Ray never developed a product or prototype that was effective for any
19 dental application. While S-Ray engaged in some product development, the efforts were
20 unsuccessful, in part because BAIRD diverted corporate funds to his own personal use
21 instead of using them for product development or other corporate purposes.

22 10. In December 2017, BAIRD terminated and ceased paying most of S-Ray's
23 employees. In November 2018, BAIRD stopped paying S-Ray's Chief Technology
24 Officer, who was the company's last remaining employee engaged in product
25 development. The Chief Technology Officer left the company in April 2019. S-Ray's
26 corporate registration lapsed in about January 2019.

11. All S-Ray product development ceased following the Chief Technology Officer's April 2019 departure. Nonetheless, despite having no product; no ongoing product development efforts; no registered corporate entity, and no regulatory authority to market any product, BAIRD continued to solicit and accept S-Ray investments until at least March 2021.

C. The Scheme to Defraud

12. Beginning no later than 2012, and continuing until at least March 21, 2021, in King County, within the Western District of Washington, and elsewhere, STEPHEN BAIRD devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, promises, and omitted facts.

13. The essence of the scheme and artifice to defraud was for STEPHEN BAIRD to enrich himself by persuading investors to purchase S-Ray stock using misrepresentations, false promises, and omissions about S-Ray's product development and regulatory status, the use of investor funds, and other circumstances material to investors' decisions to invest in S-Ray. BAIRD then converted most of the investment funds to his own personal use.

D. Manner and Means

The following conduct was part of BAIRD's scheme and artifice to defraud:

1. Misrepresentations Regarding Product Development

14. BAIRD repeatedly represented to investors and prospective investors that S-Ray had successfully developed one or more ultrasound products to the point where the product would be ready to sell in a matter of months. BAIRD represented that S-Ray was perpetually on the verge of earning millions of dollars of revenue, when in fact it had no realistic prospect of doing so because it did not have a product to sell. For example:

- a. In an April 24, 2012 email to investors, BAIRD stated that the company's product was "defined," and that S-Ray planned a "limited release" of the

1 product in July 2013. BAIRD stated that the company would sell
2 approximately 30 systems per month for \$7,500 each.

- 3 b. In December 2014, at BAIRD's direction, an S-Ray employee announced
4 to shareholders that S-Ray would be releasing Clearview LAB into the
5 market in "the first quarter of 2015," which "will bring revenue to the
6 company."
- 7 c. In February 2015, S-Ray announced that the company was "on the cusp of
8 releasing our first product."
- 9 d. In February 2016, BAIRD represented to shareholders that the product was
10 "approaching the end of development" and was about to "shift into
11 production and delivery." BAIRD stated that the company's product
12 delivered "astonishing results" and that S-Ray would either "take the
13 product into the market during the second quarter of the year" or "license
14 the product rights to a major entity in dental."
- 15 e. In March 2017, BAIRD prepared and distributed a Confidential Offering
16 Document that contained images of devices it portrayed as S-Ray products.
17 In fact, many of the pictured items were only plastic mock ups with no
18 functioning electronics. The Offering Document stated that S-Ray intended
19 to offer Clearview LAB for sale later that year. The Offering Document
20 predicted that ClearView SCAN would receive regulatory approval in
21 2017.
- 22 f. In the Offering Document, and elsewhere, BAIRD told investors that S-
23 Ray's product would use an innovative type of ultrasound technology
24 known as "pitch-catch" technology, which BAIRD claimed was "unique to
25 S-Ray." In fact, to the extent S-Ray engaged in product development
26 efforts at all, those efforts used a less innovative and more common
27 technology known as "pulse-echo" ultrasound.
- g. In a January 2018 shareholder letter, BAIRD represented that "we are now
ready to move into initial sales of our product in the United States." In a
September 2018 "Chairman's Update," BAIRD stated that "we will start
selling and delivering systems in the next 90 days. In a March 2018 "letter
from the Chairman," BAIRD told investors that "we are booking about
\$200,000 in orders every day."
- h. In a March 2019 Shareholder Update, BAIRD stated that S-Ray had
developed a "functional prototype" of an intraoral ultrasound wand in 2017,
and that the company was presently "offer[ing] the product for sale."
- i. In a February 2020 update, BAIRD projected that S-Ray would earn annual
revenues of \$130 million. In a November 2020 shareholder letter, BAIRD

1 stated that “we are providing Scanning as a Service using our ultrasound
2 technology with teledentistry software.”

3 Contrary to these representations, and as BAIRD well knew, S-Ray had not, at any time
4 during this period, developed any functional prototype or product useful for any dental
5 application, and was nowhere near releasing any product into the market or generating
6 revenue.

7 **2. Misrepresentations Regarding FDA Market Clearance**

8 15. Because the ClearView SCAN was intended to be inserted into patients’
9 mouths, S-Ray could offer the device for sale only if it obtained FDA authorization to do
10 so. In May 2017, BAIRD announced to shareholders that the ClearView SCAN could
11 qualify for a type of FDA clearance known as a 510(k) exemption. To obtain a 510(k)
12 exemption, a device manufacturer must submit application materials to the FDA
13 establishing that the device is substantially equivalent to a legally-marketed device, and
14 must receive a letter from the FDA known as a “510(k) clearance letter” finding the
15 exemption applicable.

16 16. As BAIRD well knew, it was impossible for S-Ray to obtain market
17 clearance for ClearView SCAN because S-Ray had not developed any actual product that
18 could be the subject of a 510(k) submission. S-Ray never prepared or submitted an
19 application for 510(k) clearance, Premarket Approval or any other authorization to
20 market any device. S-Ray never received an FDA clearance letter or received any
21 communication authorizing S-Ray to market any device.

22 17. In October 2017, S-Ray posted a notice on its website stating that “WE
23 DID IT!,” referring to “FDA Clearance.” In a January 11, 2018, letter to shareholders,
24 BAIRD wrote that “we have received Food and Drug Administration Clearance for
25 Clearview SCAN.” BAIRD used the supposed market clearance as a rationale to double
26 the offering price of S-Ray shares.
27

1 18. Following these announcements, BAIRD routinely touted S-Ray's
2 supposed market clearance as a selling point when soliciting investments. For example,
3 an August 16, 2018 S-Ray Business Plan Summary distributed to shareholders stated that
4 "S-Ray has been granted Market Clearance for ClearView SCAN." In a March 18, 2019
5 Shareholder Update, BAIRD wrote that S-Ray has "gain[ed] FDA market clearance to
6 offer the product for sale." Less than two months after sending this communication,
7 BAIRD admitted to an FDA inspector that S-Ray had never filed an 510(k) application
8 and did not even have a medical device. BAIRD never disclosed to investors the fact that
9 S-Ray had not obtained market clearance as he had previously announced.

10 **3. Misrepresentations Regarding Intellectual Property**

11 19. BAIRD misrepresented the scope and value of S-Ray's intellectual property
12 rights. For example, the 2017 Offering Document stated that BAIRD has "invented or co-
13 invented over 30 patents for S-Ray." The document further stated that S-Ray had
14 "secured" 32 "issued or provisional" patents protecting its "proprietary technology." The
15 Offering Document stated that S-Ray was offering 12 of its patents for use by other
16 companies under license agreements, pursuant to which S-Ray would be "contractually
17 entitled to receive payments from the licensee, typically in the form of royalties."

18 20. In fact, S-Ray owned only a single patent. S-Ray had not developed any
19 marketable device protected by that patent. BAIRD was not the inventor or co-inventor of
20 any S-Ray patent, as he claimed. While S-Ray had submitted provisional patent
21 applications in 2013, all of them had expired by the end of 2014—years before BAIRD
22 prepared and distributed the Offering Document claiming that the company had secured
23 32 issued or provisional patents. BAIRD told an employee not to disclose the expiration
24 of the provisional patents, advising him that "it is our little secret."

1 **4. The Fraudulent Equipment Financing Application**

2 21. In June 2017, BAIRD and a California-based orthodontist agreed that the
3 orthodontist would invest \$20,000 in S-Ray. BAIRD and the investor/orthodontist agreed
4 the investor/orthodontist would finance the \$20,000 investment by taking out a loan from
5 an equipment financing company, and would falsely represent to the financing company
6 that the purpose of the loan was to purchase dental equipment from S-Ray, when in fact
7 the purpose was to finance the stock sale.

8 22. BAIRD then created, and caused to be submitted to the financing company,
9 a fraudulent invoice representing that the investor/orthodontist was purchasing \$20,000
10 worth of S-Ray equipment. BAIRD did so despite knowing that S-Ray had no product
11 available to sell the investor/orthodontist, and knowing that the real purpose of the loan
12 was to fund the stock sale. The financing company then paid \$20,000 to S-Ray believing
13 that the money was being used to fund an equipment purchase. BAIRD directed S-Ray's
14 bookkeeper to account for the transaction as a stock sale.

15 **5. Misrepresentations Regarding Use of Investment Proceeds**

16 23. BAIRD told investors that investment proceeds would be used only for
17 corporate purposes. For example, in a May 2015 email to shareholders, S-Ray
18 represented that investment proceeds would be used to obtain market clearance for its
19 product, to finance production and sales, and to complete preparations for a public
20 offering. S-Ray's 2017 Confidential Offering Document represented that investment
21 proceeds would be used for business purposes, such as expanding in-house
22 manufacturing and building sales and fulfillment capacity. In a second Confidential
23 Offering Document dated January 20, 2019, BAIRD represented that investment
24 proceeds would be used to accelerate product development, expand in-house
25 manufacturing, and for general corporate purposes.

1 24. In fact, BAIRD used a large share of the investment proceeds for his own
2 purposes. For example, in December 2014, BAIRD wrote a check for \$100,000 to Lido
3 Asset Management, LLC, a business entity under his control. BAIRD wrote on the memo
4 line of the check that the funds were for “lab equipment.” However, eight days later,
5 BAIRD used a portion of those funds to purchase a luxury car. None of the funds were
6 used to purchase lab equipment or for other corporate expenses.

7 25. Similarly, between April and July 2015, BAIRD transferred a total of \$1.7
8 million in S-Ray funds to Island Family Limited Partnership, another business entity
9 under his control. BAIRD then used approximately \$1.65 million of this money to buy a
10 personal residence on Bainbridge Island.

11 26. In August 2017, BAIRD announced to shareholders that he was selling
12 15% of his personal S-Ray stock. BAIRD said that he was selling the stock so that he
13 would be in a position to personally guarantee a \$25 million line of credit for S-Ray,
14 which S-Ray would then use to bring its product to market. Investors paid over \$2 million
15 to Island Family Limited Partnership to purchase S-Ray stock pursuant to this offering.
16 However, BAIRD never obtained the promised \$25 million line of credit for S-Ray, and
17 never disclosed that he had failed to do so.

18 27. In February 2020, long after S-Ray had suspended all operations, BAIRD
19 offered investors up to \$1.7 million in additional stock. Despite the fact that it had no
20 product, no revenues, and very limited cash or other assets, BAIRD represented to
21 investors that the company had “earned a valuation of about \$400 million,” or “\$780
22 million” depending on the valuation method. Investors purchased an additional \$975,000
23 worth of stock. Even though BAIRD had previously promised shareholders he would
24 forego salary and bonus until the company was sold, BAIRD distributed more than
25 \$710,000 of the \$975,000 to himself and his family members.
26
27

28. In all, investors paid at least \$10.75 million to purchase S-Ray stock between May 2012 and March 2021. BAIRD used only approximately \$4 million of these proceeds for S-Ray business purposes. Baird used for his own purposes, or transferred to affiliate companies or family members, the remaining \$6.7 million, or 62% of the investment proceeds. By December 31, 2021, approximately \$13,000 remained in S-Ray's corporate account, with S-Ray having never developed a usable device.

E. Execution of the Scheme to Defraud

29. On or about the dates set forth below, at King County, and elsewhere, for the purpose of executing and attempting to execute the scheme and artifice to defraud, STEPHEN BAIRD knowingly transmitted, and caused to be transmitted, by wire communication in interstate and foreign commerce, the following signs, signals, pictures and sounds, each transmission of which constitutes a separate count of this Indictment:

Count	Date	Wire Transmission
1	6/8/2017	Email from S-Ray representative in Washington to investor in Colorado containing Confidential Offering Documents
2	7/29/2017	Email from BAIRD in Washington to Highland Capital in New Jersey re: Regulatory Filings
3	12/11/2017	Email from Person 1 in Washington to investor L.C. in Oregon attaching stock purchase and sale agreement
4	1/11/2018	Email from BAIRD in China to Person 1 in Washington containing text of shareholder letter announcing FDA market clearance
5	8/24/18	Email from Person 1 in Washington to investor A.L in California containing mailing label for investment check
6	8/7/2019	Deposit of \$21,000 Chase Bank check from Kentucky investor J.K. into S-Ray's Kitsap Bank account in Washington
7	5/15/2020	Deposit of \$20,000 M&T Bank check from New York investor P.C. into S-Ray's Kitsap Bank account in Washington

Count	Date	Wire Transmission
8	7/2/2020	Deposit of \$10,000 Chase Bank check from New York investor R.S. into S-Ray's Kitsap Bank account in Washington
9	10/2/2020	Deposit of \$5,000 JP Morgan check from New Jersey investor E.B. into S-Ray's Kitsap Bank account in Washington
10	10/14/2020	Wire of \$20,000 investment from Bank of New York Mellon for investment by Arizona investor C.C. into S-Ray's Kitsap Bank account in Washington

All in violation of Title 18, United States Code, Section 1343 and Section 2.

FORFEITURE ALLEGATION

30. The allegations contained in Paragraphs 1–29 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture. Upon conviction of any of the offenses alleged in Counts 1–10, STEPHEN BAIRD shall forfeit to the United States any property constituting, or derived from, proceeds Defendant obtained directly or indirectly as a result of the wire-fraud scheme described above. All such property is forfeitable pursuant to Title 18, United States Code, Section 981(a)(1)(C), by way of Title 28, United States Code, Section 2461(c), and includes, but is not limited to, a sum of money in the amount of at least \$10,754,970.37, reflecting the proceeds the Defendant obtained as result of the wire-fraud scheme.

31. **Substitute Assets.** If any of the above-described forfeitable property, 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 divided without difficulty,

1 it is the intent of the United States to seek the forfeiture of any other property of the
2 defendant, up to the value of the above-described forfeitable property, pursuant to
3 Title 21, United States Code, Section 853(p).

4
5 A TRUE BILL:

6
7 DATED: *Feb 8, 2023*

8 *Signature of Foreperson redacted pursuant*
9 *to the policy of the Judicial Conference of*
10 *the United States.*

11
12 FOREPERSON

11 *G. W. Wood*
12
13 NICHOLAS W. BROWN
14 United States Attorney

15 *C. Friedman*
16 ANDREW FRIEDMAN
17 Assistant United States Attorney

18 *S. Wilkinson*
19 SETH WILKINSON
20 Assistant United States Attorney