FILED
2022 Nov-30 AM 09:52
U.S. DISTRICT COURT
N.D. OF ALABAMA

PFE / JBW / RSR: Dec. 2022
GJ # 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	**Case 5:22-cr-00113-LCB-HNJ**
FRANCENE ARETHA GAYLE and	)	
SCHARA MONIQUE DAVIS	)	

SUPERSEDING INDICTMENT

The Grand Jury charges:

Introduction

At all times relevant to this Superseding Indictment:

The Defendants

1. **FRANCENE ARETHA GAYLE** was licensed by the state of Alabama to practice medicine. She maintained a Drug Enforcement Administration (DEA) registration number that allowed her to write prescriptions for controlled substances. She maintained a Medicare Provider Identification Number (PIN) and National Provider Identifier (NPI) number under which her clinics submitted claims to health care benefit programs for reimbursement for services purportedly provided.

2. **GAYLE** served as the physician at three clinics located in the Northern District of Alabama: Mission Square Medical Clinic in Huntsville; Athens Medical

Clinic in Athens; and Advanced Medical Care in Killen. Complete Medical Health was the legal or tax name for the three clinics. The Killen clinic ceased operations by 2019; the other two clinics ceased operations in 2020.

3. **SCHARA MONIQUE DAVIS** operated the clinics with **GAYLE**. **DAVIS** served as the business manager for the clinics and participated in billing health care benefit programs for services purportedly rendered by **GAYLE**.

4. **GAYLE**, **DAVIS**, and others known and unknown to the grand jury conspired to unlawfully distribute and dispense controlled substances through prescriptions that were issued without a legitimate medical purpose outside the usual course of professional practice.

5. **GAYLE, DAVIS,** and others known and unknown to the grand jury conspired to engage in, and did engage in, a scheme to defraud health care benefit programs for: (1) services that were not provided, including medical office visits billed as if **GAYLE** was the rendering provider when she was not; and (2) medically unnecessary items and services, including prescriptions for controlled substances issued without a legitimate medical purpose and outside the course of usual professional practice that would be billed to health care benefit programs.

6. **GAYLE** and **DAVIS** devised a scheme and artifice to defraud the United States Small Business Administration (SBA) and financial institutions by using fraudulent promises and misrepresentations to obtain funds intended for

COVID-19 pandemic relief, and knowingly using those funds for purposes other than those for which they were intended and provided.

Health Care Benefit Programs

7. The Medicare Program (Medicare) is a federal health care program that provides benefits to persons over the age of sixty-five and to qualifying persons with disabilities. Medicare is administered by the Centers for Medicare and Medicaid Services (CMS), a federal agency under the United States Department of Health and Human Services.

8. The Alabama Medicaid Program (Medicaid) is a joint federal and state health insurance program that provides free and below-cost insurance to low-income individuals and families. It is administered by Alabama in coordination with CMS.

9. Blue Cross Blue Shield of Alabama (Blue Cross) is an entity that provides private health insurance to individuals.

10. Medicare, Medicaid, and Blue Cross are "health care benefit programs" as defined in Title 18, United States Code, Section 24(b). These plans and others provide health benefits including for office visits and prescription drugs. Individuals who receive benefits under these programs are typically referred to as "beneficiaries." Medicare and Medicaid are "federal health care programs" as defined in Title 42, United States Code, Section 1320a-7b(f).

Billing for Medical Services

11. Medicare, Medicaid, and Blue Cross make insurance payments directly to a provider of medical services or goods, rather than to a beneficiary. Such payments occur after the provider submits a claim for payment to the health care benefit program. When a health care provider submits a claim for payment, the provider certifies that services or goods being provided to a patient are provided in accordance with the requirements of the health care benefit program.

12. To be eligible to receive payments for the provision of services to beneficiaries of Medicare, Medicaid, or Blue Cross, a provider must enroll with that program. To enroll with a health care benefit program, a provider must agree to comply with all relevant regulations of the health care benefit program or any third-party intermediaries through which claim payments could be received, adjudicated, and paid. These regulations require that providers submit claims for services only where those services are reasonable and medically necessary.

13. Health care benefit programs provide guidance to participating health care providers regarding proper billing procedures, rules, and regulations for their programs.

14. To obtain payment from a health care benefit program for services provided, the provider or its designee must submit a claim. The claim must include, among other things: (1) the provider's unique provider number; (2) the patient's

name; (3) the patient's diagnosis prescribed by a standardized code; (4) a description of medical services rendered to the patient using standardized codes; (5) the date and location the medical services were provided; and (6) the amount claimed for the payment.

15. Medicare, Medicaid, and Blue Cross will pay a health care provider only for medical services or goods that are medically necessary for the treatment of the patient being provided the services or goods.

16. Health care benefit programs rely on health care providers to submit true and accurate claims for services provided.

Office Visit Billing

17. Medicare, Medicaid, and Blue Cross will pay for certain medically reasonable and necessary services, such as office visits, provided to their beneficiaries.

18. Medicare, Medicaid, and Blue Cross rely on standardized code sets to pay health care claims including for office visits. One such code set, the Current Procedural Terminology (CPT), consists of five-digit codes listing certain procedures and services performed or ordered by health care providers. The procedures and services represented by CPT codes are health care benefits, items, and services within the meaning of Title 18, United States Code, Section 24(b).

19. When claims are submitted to health care benefit programs, health care providers or their designees are expected to identify the proper CPT code or other identifier corresponding to the medical service provided, as well as any appropriate modifiers to designate personnel who performed the visit. Services provided by nurses or other medical staff may be reimbursed by health care benefit programs at a lower rate than services provided by physicians.

20. Medicare, Medicaid, and Blue Cross require health care providers enrolled with their programs to maintain complete and accurate patient medical records reflecting the medical assessment and diagnoses of their patients, as well as records documenting actual treatment of the patients to whom services were provided and for whom claims for payment were submitted by the physician or other health care provider. Health care benefit programs require complete and accurate patient medical records so that it is possible to later verify that the services were provided as described on the claim form. These records are required to be sufficient to permit the programs to review the appropriateness of payments made to the health care provider.

Controlled Substances

21. The Controlled Substances Act (CSA) governs the manufacture, distribution, and dispensing of controlled substances in the United States. With limited exceptions for medical professionals, the CSA makes it unlawful for any

person to knowingly or intentionally manufacture, distribute, or dispense a controlled substance or conspire to do so.

22. The CSA and its implementing regulations set forth which drugs and other substances are defined by law as "controlled substances," and assign those controlled substances to one of five schedules (Schedule I, II, III, IV, or V) depending on their potential for abuse, likelihood of physical or psychological dependency, accepted medical use, and accepted safety for use under medical supervision.

23. The assignment of a controlled substance to Schedule II means that the drug has a high potential for abuse, is highly addictive, and has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions. Abuse of a Schedule II controlled substance could lead to severe psychological or physical dependence. Pursuant to the CSA and its implementing regulations, oxycodone is a Schedule II controlled substance, methadone is a Schedule II controlled substance, and hydrocodone has been a Schedule II controlled substance since October 2014 (before which time it had been a Schedule III controlled substance). Oxycodone, methadone, and hydrocodone are opioid pain medications with a high potential for abuse and associated risk of overdose.

24. Benzodiazepines such as alprazolam and clonazepam are Schedule IV controlled substances and are commonly prescribed to treat anxiety. It is well known that the combination of high-dose opioids and benzodiazepines may present a significant risk of patient intoxication and overdose. To prescribe a combination of high-dose opioids and benzodiazepines for a legitimate medical purpose, a physician must determine, at a minimum, that the benefits of the drugs outweigh the risks to the patient's life.

25. Health care providers are authorized under the CSA to prescribe, or otherwise distribute, controlled substances, if they are registered with the Attorney General of the United States. *See* Title 21, United States Code, Section 822(b); Chapter 21, Code of Federal Regulations, Section 1306.03. Upon application, the DEA assigns a unique registration number to each qualifying health care provider including physicians and nurse practitioners.

26. Chapter 21 of the Code of Federal Regulations, Section 1306.04, governs the issuance of prescriptions and provides, among other things, that a prescription for a controlled substance "must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of [her] professional practice."

27. Chapter 21 of the Code of Federal Regulations, Section 1306.04, also directs that "[a]n order purporting to be a prescription issued not in the usual course

of professional treatment . . . is not a prescription within the meaning and intent of [the CSA] and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances."

28. Health care benefit programs will not pay for controlled substances dispensed or distributed by way of an unlawful prescription.

29. Under federal law, "all 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." Chapter 21, Code of Federal Regulations, Section 1306.05(a).

30. The Alabama Board of Medical Examiners has established similar requirements for controlled substance prescriptions. Those requirements include the provision that "[i]t is improper, under any circumstances, for a physician to pre-sign blank prescription pads or forms and make them available to employees or support personnel." Alabama Administrative Code, Chapter 540-X-4-.06(8).

COVID-19 Disaster Relief Programs

31. The SBA is an executive branch agency of the United States government that provides support to entrepreneurs and small businesses. The SBA

enables and provides for loans through banks, credit unions, and other lenders. These loans have government-backed guarantees.

32. One SBA program, the Economic Injury Disaster Loan (EIDL) program, provides low-interest financing to small businesses, renters, and homeowners affected by declared disasters.

33. In March 2020, the President of the United States declared the COVID-19 pandemic to be a nationwide disaster. On March 27, 2020, the President signed The Coronavirus Aid, Relief, and Economic Security (CARES) Act into law.

34. The CARES Act, along with the Coronavirus Preparedness and Response Supplemental Appropriations Act, authorized the SBA to extend EIDLs of up to $2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. In addition, the CARES Act authorized the SBA to issue advances of up to $10,000 to small businesses within three days of applying for an EIDL. The amount of any advance was determined by the number of employees on the borrower's payroll. The advances did not have to be repaid.

35. The CARES Act also created the Paycheck Protection Program (PPP), which authorized the SBA to guarantee loans of up to $10 million to qualifying employers without collateral or personal guarantees from the borrowers. The PPP was designed to provide a direct incentive for small businesses to keep their workers on payroll. The CARES Act required lenders making loans under the PPP to defer

all repayment obligations for not less than six months on such loans and required borrowers to certify, among other things, that the borrowed "funds [would] be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments."

36. To obtain EIDL or PPP funds, an applicant was required to provide personal identifying information and information about the subject business's operations, such as the number of employees and past revenues. Applicants were also required to make certain good-faith certifications. For example, the PPP application required the applicant to certify that economic uncertainty necessitated the loan request to support ongoing business operations, and that the PPP funds would be used for payroll, rent, utilities, and mortgage payments. The EIDL application required the applicant to certify that it would use the loan proceeds solely as working capital to alleviate economic injury caused by the pandemic.

37. At all times relevant to this Superseding Indictment, applications for EIDLs and EIDL advances were submitted online to the SBA through computer servers outside the state of Alabama, and applications to Intuit Financing Inc. for PPP loans were submitted through servers outside the state of Alabama.

COUNT ONE
Conspiracy to Unlawfully Distribute and Dispense Controlled Substances
[21 U.S.C. § 846]

38. Paragraphs 1 through 37 of this Superseding Indictment are realleged and incorporated as though fully set forth herein.

39. From at least in or about 2015 through in or about March 2020, more exact dates being unknown to the grand jury, in Madison, Limestone, and Lauderdale Counties, within the Northern District of Alabama and elsewhere, the defendants,

FRANCENE ARETHA GAYLE and
SCHARA MONIQUE DAVIS,

knowingly and intentionally conspired, combined, confederated, and agreed with each other, and with others known and unknown to the grand jury, to violate Title 21, United States Code, Section 841(a)(1), that is, to knowingly, intentionally, and unlawfully distribute and dispense, and cause to be distributed and dispensed, mixtures and substances containing a detectable amount of Schedule II controlled substances, through prescriptions that were not issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.

All in violation of Title 21, United States Code, Section 846.

COUNTS TWO THROUGH SIX
Unlawful Dispensing of a Controlled Substance
[21 U.S.C. § 841(a)(1) and (b)(1)(C)]

40. Paragraphs 1 through 39 of this Superseding Indictment are realleged and incorporated as though fully set forth herein.

41. On or about the dates listed below, within Madison, Limestone, and Lauderdale Counties, within the Northern District of Alabama and elsewhere, defendant

FRANCENE ARETHA GAYLE

did knowingly, intentionally, and unlawfully distribute and dispense, and cause to be distributed and dispensed, mixtures and substances containing a detectable amount of Schedule II controlled substances, through prescriptions that were not issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.

Count	Date on Prescription	Patient	Substance
2	July 14, 2017	D.C.	Oxycodone 10 mg
3	April 5, 2018	M.D.	Oxycodone HCL 15 mg
4	April 5, 2018	M.D.	Hydrocodone 10 mg
5	May 11, 2017	T.D.	Methadone HCL 10 mg
6	November 30, 2018	T.J.	Oxycodone HCL 30 mg

All in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(C).

COUNT SEVEN
Conspiracy to Commit Health Care Fraud
[18 U.S.C. § 1349]

42. Paragraphs 1 through 41 of this Superseding Indictment are realleged and incorporated as though fully set forth herein.

43. From at least in or about 2015 through in or about March 2020, more exact dates being unknown to the grand jury, in Madison, Limestone, and Lauderdale Counties, within the Northern District of Alabama and elsewhere, the defendants,

FRANCENE ARETHA GAYLE and
SCHARA MONIQUE DAVIS,

knowingly and intentionally conspired, combined, confederated, and agreed with each other, and with others known and unknown to the grand jury, to 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, Medicaid, Blue Cross, and others, 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

44. It was the purpose of the conspiracy for **GAYLE, DAVIS**, and their co-conspirators to unlawfully enrich themselves by submitting and causing to be submitted and aiding and abetting in the submission of false and fraudulent claims for medical services and prescription drugs that were not medically necessary, not properly provided, or both.

Manner and Means

45. The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

46. **GAYLE** was enrolled as a Preferred Provider of Blue Cross and was enrolled in Medicare and Medicaid, among other health care benefit programs. In doing so, **GAYLE** agreed only to bill for medically reasonable and necessary services that were actually rendered.

47. In documents submitted to health care benefit programs on behalf of the clinics, **DAVIS** made similar certifications.

48. Despite these promises, **GAYLE** and **DAVIS** caused numerous false claims for services to be billed to Medicare, Medicaid, Blue Cross, and other insurers.

49. **GAYLE** and **DAVIS** falsely billed or caused to be billed health care benefit programs for items and services as though **GAYLE** herself had provided them. Between at least 2015 and 2020, **GAYLE** and **DAVIS** submitted or caused to be submitted claims to healthcare benefit programs for millions of dollars in office visits where **GAYLE** purportedly had seen the patients, when in fact she had not.

50. In fact, **GAYLE** frequently did not see patients for whom doctor office visits were billed under her name and provider number, and untrained office staff or other medical personnel saw those patients instead. **GAYLE** was frequently absent from her clinics altogether.

51. **GAYLE** and **DAVIS** continued to bill and cause to be billed health care benefit programs for office visits under **GAYLE's** name and provider number that **GAYLE** did not provide, even after receiving warnings from health care benefit programs and others that such billing practices were not allowed.

52. **GAYLE** also caused her practice to maintain a large number of patients through the prescription of medically unnecessary controlled substances. **GAYLE** routinely issued and caused to be issued to such patients prescriptions for controlled substances without a legitimate medical purpose and outside the usual course of professional practice, knowing that they would be filled by pharmacies and submitted to health care benefit programs for reimbursement.

53. As a result of the conspiracy to defraud health care benefit programs, **GAYLE** and **DAVIS** submitted and caused to be submitted and aided and abetted in the submission of millions of dollars in false and fraudulent claims to Medicare, Medicaid, Blue Cross, and other insurers.

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

COUNTS EIGHT THROUGH FIFTEEN
Health Care Fraud
[18 U.S.C. §§ 1347 & 2]

54. Paragraphs 1 through 53 of this Superseding Indictment are realleged and incorporated as though fully set forth herein.

55. On or about the dates listed below, within Madison, Limestone, and Lauderdale Counties, within the Northern District of Alabama and elsewhere, the defendants,

FRANCENE ARETHA GAYLE and
SCHARA MONIQUE DAVIS,

did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), 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.

Purpose of the Scheme and Artifice

56. Paragraph 44 of this Superseding Indictment is realleged and incorporated as though fully set forth herein as a description of the purpose of the scheme and artifice.

Manner and Means of the Scheme and Artifice

57. Paragraphs 45 through 53 of this Superseding Indictment are realleged and incorporated as though fully set forth herein as a description of the manner and means of the scheme and artifice.

Acts in Execution of the Scheme and Artifice

58. On or about the dates listed below, within Madison, Limestone, and Lauderdale Counties, within the Northern District of Alabama and elsewhere, defendants **GAYLE** and **DAVIS** submitted, caused to be submitted, and aided and abetted in the submission of the following claims to health care benefit programs:

Ct.	Beneficiary	Date of Service	Date Claim Submitted	Service Billed	Health Care Program
8	H.R.	5/18/2017	12/12/2017	Office visit 99214	Medicaid
9	Ta.D.	5/18/2017	12/13/2017	Office visit 99214	Blue Cross
10	Ti.D.	5/14/2018	6/26/2018	Office visit 99214	Blue Cross
11	M.G.	10/24/2018	10/26/2018	Office visit 99214	Blue Cross
12	J.B.	10/24/2018	10/26/2018	Office visit 99214	Medicare
13	J.B.	10/24/2018	11/12/2018	Office visit 99214	Blue Cross FEP
14	C.E.	10/25/2018	7/9/2019	Office visit 99214	Medicaid
15	C.E.	9/11/2019	10/1/2019	Office visit 99214	Medicaid

All in violation of Title 18, United States Code, Sections 1347 and 2.

COUNT SIXTEEN
Conspiracy to Commit Wire Fraud
[18 U.S.C. § 1349]

59. Paragraphs 1 through 58 of this Superseding Indictment are realleged and incorporated as though fully set forth herein.

60. Between in or about June 2020 and in or about 2021, within Madison County, within the Northern District of Alabama and elsewhere, defendants

FRANCENE ARETHA GAYLE and
SCHARA MONIQUE DAVIS

knowingly and intentionally conspired, combined, confederated, and agreed with each other, and with others known and unknown to the grand jury, to execute a scheme and artifice to defraud the SBA and financial institutions and to obtain money and property belonging to the SBA and financial institutions by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1343.

Purpose of the Conspiracy

61. It was the purpose of the scheme and artifice for **GAYLE** and **DAVIS** and their co-conspirators to unlawfully enrich themselves with funds intended to provide COVID-19 pandemic relief to operating businesses.

Manner and Means

62. The manner and means by which **GAYLE** and **DAVIS** sought to accomplish the object and purpose of the conspiracy included, among others, the following:

63. It was a part of the conspiracy that **GAYLE** and **DAVIS** would and did purport to operate a small business, Complete Medical Health, that was purportedly owned by **DAVIS**.

64. It was further a part of the conspiracy that, to induce the SBA and financial institutions to fund PPP loans and EIDLs for the purported business, **GAYLE** and **DAVIS** would and did prepare and submit, and cause to be prepared and submitted, false and fraudulent applications to the SBA and to financial institutions that included several materially false and fraudulent representations and pretenses, such as:

a. stating a business name, owner, address, telephone number, number of employees, gross revenue, and payroll costs suggesting that the company was an ongoing operating business;

b. including fraudulent supporting documentation, such as false payroll information;

c. making false certifications regarding the business's eligibility to apply for a PPP loan or EIDL, the operation of the business, and the use of PPP loan and EIDL funds; and

d. affirming the truth of the statements in the application.

65. It was further a part of the conspiracy that **GAYLE** and **DAVIS** would and did cause Complete Medical Health bank accounts to be used to receive PPP loan and EIDL proceeds via interstate wires;

66. It was further a part of the conspiracy that **GAYLE** and **DAVIS** would and did cause PPP loan and EIDL proceeds to be used for purposes other than those that were authorized under the terms of the programs;

67. It was further a part of the conspiracy that **GAYLE** and **DAVIS** would and did perform acts and make statements to promote and achieve the object of the conspiracy to misrepresent, hide, and conceal, and cause to be misrepresented, hidden, and concealed, the purpose of the conspiracy and the acts committed in furtherance thereof.

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

COUNTS SEVENTEEN THROUGH NINETEEN
Wire Fraud
[18 U.S.C. §§ 1343 & 2]

68. Paragraphs 1 through 67 of this Superseding Indictment are realleged and incorporated as though fully set forth herein.

69. Between in or about June 2020 and in or about 2021, within Madison County, within the Northern District of Alabama and elsewhere, defendants

FRANCENE ARETHA GAYLE and
SCHARA MONIQUE DAVIS

did knowingly devise and intend to devise a scheme and artifice to defraud the SBA and financial institutions and to obtain money and property belonging to the SBA and financial institutions by means of materially false and fraudulent pretenses, representations, and promises.

Purpose of the Scheme and Artifice

70. Paragraph 61 of this Superseding Indictment is realleged and incorporated as though fully set forth herein as a description of the purpose of the scheme and artifice.

Manner and Means of the Scheme and Artifice

71. Paragraphs 62 through 67 of this Superseding Indictment are realleged and incorporated as though fully set forth herein as a description of the manner and means of the scheme and artifice.

Acts in Execution of the Scheme and Artifice

72. On or about the dates listed below, within Madison County, within the Northern District of Alabama and elsewhere, defendants

FRANCENE ARETHA GAYLE and
SCHARA MONIQUE DAVIS,

for the purpose of executing the scheme and artifice described above, knowingly and intentionally transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce the writings, signs, signals, pictures, and sounds described below, each transmission constituting a separate count:

Count	Approximate Date of Wire	Description of Wire
17	June 23, 2020	Deposit of $9,000 in EIDL funds into Complete Medical Health account at Redstone Federal Credit Union ending in x243
18	June 25, 2020	Deposit of $294,730 in PPP funds to Complete Medical Health account at Redstone Federal Credit Union ending in x243
19	June 26, 2020	Deposit of $149,900 in EIDL funds to Complete Medical Health account at Redstone Federal Credit Union ending in x243

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

FIRST NOTICE OF FORFEITURE
[21 U.S.C. § 853]

1. The allegations in Counts 1 through 6 of this Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 21, United States Code, Section 853.

2. Upon conviction of the offenses set forth in Counts 1 through 6 of this Superseding Indictment, **GAYLE** and **DAVIS** shall forfeit to the United States of America, pursuant to Title 21, United States Code, Section 853, any property, real or personal, 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.

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

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,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

All pursuant to 21 U.S.C. § 853.

SECOND NOTICE OF FORFEITURE
[18 U.S.C. § 982(a)(7)]

1. The allegations in Counts 7 through 15 of this Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982(a)(7).

2. Upon conviction of the offenses set forth in Counts 7 through 15 of this Superseding Indictment, **GAYLE** and **DAVIS** 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.

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

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,

the United States of America shall be entitled to forfeiture of substitute property 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 18 U.S.C. § 982(a)(7) and 28 U.S.C. § 2461(c).

THIRD NOTICE OF FORFEITURE
[18 U.S.C. § 981(a)(1)(C)]

4. The allegations in Counts 16 through 19 of this Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C).

5. Upon conviction of the offenses set forth in Counts 16 through 19 of this Superseding Indictment, **GAYLE** and **DAVIS** shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses.

6. The property to be forfeited, includes, but is not limited to, a money judgment of at least $453,630, representing the proceeds obtained from the offenses.

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

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

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

h. has been placed beyond the jurisdiction of the court;

i. has been substantially diminished in value; or

j. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

A TRUE BILL

/s/Electronic Signature

_____

FOREPERSON OF THE GRAND JURY

PRIM F. ESCALONA
United States Attorney

/s/Electronic Signature

_____

JOHN B. WARD
Assistant United States Attorney

/s/Electronic Signature

_____

RYAN S. RUMMAGE
Assistant United States Attorney