

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
Clerk of the Superior Court

OCT 29 2021

By: G. Abad

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

TRACY EMERY SMITH,
dob 09/21/1981; xref

Defendant.

Case No. **SCD291895**

INDICTMENT

A Special Statewide Grand Jury of the County of San Diego, State of California, hereby accuses TRACY EMERY SMITH by this Indictment, of the following crimes committed in the Counties of San Diego, Riverside, Santa Clara and San Francisco.

COUNT ONE
(Fraudulent Security Scheme)

On or around and between August 2, 2017 and September 7, 2018, at and in the Counties of San Diego, Riverside, Santa Clara and San Francisco, State of California, defendant TRACY EMERY SMITH did willfully and unlawfully, in violation of section 25541 of the Corporations

1 Code of the State of California, employ, directly or indirectly, any device, scheme, or artifice to
2 defraud in connection with the offer, purchase, or sale of any security or willfully engage, directly
3 or indirectly, in any act, practice, or course of business which operates or would operate as a
4 fraud or deceit upon any person in connection with the offer, purchase, or sale of any security to
5 wit: Jonathan Kaufman, Benjamin Serebin, Richard Bradd, Paul Kalra, Brandy Ching-Arciga and
6 Howard Mintz, who combined, invested \$1,362,809 with defendant TRACY EMERY SMITH.

7 **COUNT TWO**
8 **(Fraud in the Sale of a Security)**

9 For a further and separate cause of action, being a different offense from but connected in
10 its commission as the charges set forth above: On or about February 1, 2018 at and in the County
11 of San Francisco, State of California, defendant TRACY EMERY SMITH, did willfully and
12 unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of
13 California, offer or sell a security to a person or persons by means of a written or oral
14 communication that included an untrue statement of a material fact or omitted to state a material
15 fact necessary to make the statement made, in light of the circumstances under which the
16 statement was made, not misleading.

17 **COUNT THREE**
18 **(Grand Theft)**

19 For a further and separate cause of action, being a different offense from but connected in
20 its commission as the charges set forth above: On or about February 1, 2018 at and in the County
21 of San Francisco, State of California, defendant TRACY EMERY SMITH, in violation of Penal
22 Code section 487(a), a felony, willfully and unlawfully took personal property of a value
23 exceeding nine hundred and fifty dollars (\$950), to wit: \$35,333 belonging to Jonathan Kaufman.

24 ///

25 ///

1
2
3
4
5
6
7
8
9
10
11
12

COUNT FOUR
(Fraud in the Sale of a Security)

13 For a further and separate cause of action, being a different offense from but connected in
14 its commission as the charges set forth above: On or about June 25, 2018 at and in the County of
15 San Francisco, State of California, defendant TRACY EMERY SMITH, did willfully and
16 unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of
17 California, offer or sell a security to a person or persons by means of a written or oral
18 communication that included an untrue statement of a material fact or omitted to state a material
19 fact necessary to make the statement made, in light of the circumstances under which the
20 statement was made, not misleading.

21
22
23
24
25
26
27
28

COUNT FIVE
(Grand Theft)

For a further and separate cause of action, being a different offense from but connected in
its commission as the charges set forth above: On or about June 25, 2018 at and in the County of
San Francisco, State of California, defendant TRACY EMERY SMITH, in violation of Penal
Code section 487(a), a felony, willfully and unlawfully took personal property of a value
exceeding nine hundred and fifty dollars (\$950), to wit: \$140,000.00 belonging to Jonathan
Kaufman.

COUNT SIX
(Fraud in the Sale of a Security)

For a further and separate cause of action, being a different offense from but connected in
its commission as the charges set forth above: On or about March 12, 2018 at and in the County
of Riverside, State of California, defendant TRACY EMERY SMITH, did willfully and
unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of
California, offer or sell a security to a person or persons by means of a written or oral
communication that included an untrue statement of a material fact or omitted to state a material
fact necessary to make the statement made, in light of the circumstances under which the
statement was made, not misleading.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**COUNT SEVEN
(Grand Theft)**

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about and between March 12, 2018 and October 18, 2018, at and in the County of Riverside, State of California, defendant TRACY EMERY SMITH, in violation of Penal Code section 487(a), a felony, willfully and unlawfully took personal property of a value exceeding nine hundred and fifty dollars (\$950), to wit: \$166,502 belonging to Jonathan Kaufman.

**COUNT EIGHT
(Fraud in the Sale of a Security)**

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about March 23, 2018 at and in the County of San Diego, State of California, defendant TRACY EMERY SMITH, did willfully and unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of California, offer or sell a security to a person or persons by means of a written or oral communication that included an untrue statement of a material fact or omitted to state a material fact necessary to make the statement made, in light of the circumstances under which the statement was made, not misleading.

**COUNT NINE
(Grand Theft)**

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about and between March 27, 2018 and May 18, 2018, at and in the County of San Diego, State of California, defendant TRACY EMERY SMITH, in violation of Penal Code section 487(a), a felony, willfully and unlawfully took personal property of a value exceeding nine hundred and fifty dollars (\$950), to wit: 475,000 belonging to Jonathan Kaufman.

///
///

1
2
3
4
5
6
7
8
9
10
11
12

COUNT TEN
(Fraud in the Sale of a Security)

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about November 14, 2017 at and in the County of San Diego, State of California, defendant TRACY EMERY SMITH, did willfully and unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of California, offer or sell a security to a person or persons by means of a written or oral communication that included an untrue statement of a material fact or omitted to state a material fact necessary to make the statement made, in light of the circumstances under which the statement was made, not misleading.

COUNT ELEVEN
(Grand Theft)

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about November 14, 2017, at and in the County of San Diego, State of California, defendant TRACY EMERY SMITH, in violation of Penal Code section 487(a), a felony, willfully and unlawfully took personal property of a value exceeding nine hundred and fifty dollars (\$950), to wit: \$100,000.00 belonging to Jonathan Kaufman.

COUNT TWELVE
(Fraud in the Sale of a Security)

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about August 13, 2018 at and in the County of San Francisco, State of California, defendant TRACY EMERY SMITH, did willfully and unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of California, offer or sell a security to a person or persons by means of a written or oral communication that included an untrue statement of a material fact or omitted to state a material fact necessary to make the statement made, in light of the circumstances under which the statement was made, not misleading.

1 **COUNT THIRTEEN**
2 **(Grand Theft)**

3 For a further and separate cause of action, being a different offense from but connected in
4 its commission as the charges set forth above: On or about August 13, 2018, at and in the County
5 of San Francisco, State of California, defendant TRACY EMERY SMITH, in violation of Penal
6 Code section 487(a), a felony, willfully and unlawfully took personal property of a value
7 exceeding nine hundred and fifty dollars (\$950), to wit: \$10,000.00 belonging to Jonathan
8 Kaufman.

9 **COUNT FOURTEEN**
10 **(Fraud in the Sale of a Security)**

11 For a further and separate cause of action, being a different offense from but connected in
12 its commission as the charges set forth above: On or about August 17, 2018 at and in the County
13 of San Francisco, State of California, defendant TRACY EMERY SMITH, did willfully and
14 unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of
15 California, offer or sell a security to a person or persons by means of a written or oral
16 communication that included an untrue statement of a material fact or omitted to state a material
17 fact necessary to make the statement made, in light of the circumstances under which the
18 statement was made, not misleading.

19 **COUNT FIFTEEN**
20 **(Grand Theft)**

21 For a further and separate cause of action, being a different offense from but connected in
22 its commission as the charges set forth above: On or about August 17, 2018, at and in the County
23 of San Francisco, State of California, defendant TRACY EMERY SMITH, in violation of Penal
24 Code section 487(a), a felony, willfully and unlawfully took personal property of a value
25 exceeding nine hundred and fifty dollars (\$950), to wit: \$30,000.00 belonging to Benjamin
26 Serebin.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**COUNT NINETEEN
(Grand Theft)**

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about September 7, 2018, at and in the County of San Francisco, State of California, defendant TRACY EMERY SMITH, in violation of Penal Code section 487(a), a felony, willfully and unlawfully took personal property of a value exceeding nine hundred and fifty dollars (\$950), to wit: \$30,000.00 belonging to Benjamin Serebin.

**COUNT TWENTY
(Fraud in the Sale of a Security)**

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about November 14, 2017 at and in the County of San Diego, State of California, defendant TRACY EMERY SMITH, did willfully and unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of California, offer or sell a security to a person or persons by means of a written or oral communication that included an untrue statement of a material fact or omitted to state a material fact necessary to make the statement made, in light of the circumstances under which the statement was made, not misleading.

**COUNT TWENTY-ONE
(Grand Theft)**

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about and between December 13, 2017 and February 1, 2018, at and in the County of San Diego, State of California, defendant TRACY EMERY SMITH, in violation of Penal Code section 487(a), a felony, willfully and unlawfully took personal property of a value exceeding nine hundred and fifty dollars (\$950), to wit: \$60,000.00 belonging to Benjamin Serebin.

1 **COUNT TWENTY-TWO**
2 **(Fraud in the Sale of a Security)**

3 For a further and separate cause of action, being a different offense from but connected in
4 its commission as the charges set forth above: On or about May 3, 2018 at and in the County of
5 San Francisco, State of California, defendant TRACY EMERY SMITH, did willfully and
6 unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of
7 California, offer or sell a security to a person or persons by means of a written or oral
8 communication that included an untrue statement of a material fact or omitted to state a material
9 fact necessary to make the statement made, in light of the circumstances under which the
10 statement was made, not misleading.

11 **COUNT TWENTY-THREE**
12 **(Grand Theft)**

13 For a further and separate cause of action, being a different offense from but connected in
14 its commission as the charges set forth above: On or about and between May 3, 2018 and July 27,
15 2018, at and in the County of San Francisco, State of California, defendant TRACY EMERY
16 SMITH, in violation of Penal Code section 487(a), a felony, willfully and unlawfully took
17 personal property of a value exceeding nine hundred and fifty dollars (\$950), to wit: \$156,000
18 belonging to Benjamin Serebin.

19 **COUNT TWENTY-FOUR**
20 **(Fraud in the Sale of a Security)**

21 For a further and separate cause of action, being a different offense from but connected in
22 its commission as the charges set forth above: On or about September 7, 2018 at and in the
23 County of San Francisco, State of California, defendant TRACY EMERY SMITH, did willfully
24 and unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State
25 of California, offer or sell a security to a person or persons by means of a written or oral
26 communication that included an untrue statement of a material fact or omitted to state a material
27 fact necessary to make the statement made, in light of the circumstances under which the
28 statement was made, not misleading.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT TWENTY-FIVE
(Grand Theft)

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about September 7, 2018, at and in the County of San Francisco, State of California, defendant TRACY EMERY SMITH, in violation of Penal Code section 487(a), a felony, willfully and unlawfully took personal property of a value exceeding nine hundred and fifty dollars (\$950), to wit: \$5,000 belonging to Benjamin Serebin.

COUNT TWENTY-SIX
(Fraud in the Sale of a Security)

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about May 18, 2018 at and in the County of San Francisco, State of California, defendant TRACY EMERY SMITH, did willfully and unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of California, offer or sell a security to a person or persons by means of a written or oral communication that included an untrue statement of a material fact or omitted to state a material fact necessary to make the statement made, in light of the circumstances under which the statement was made, not misleading.

COUNT TWENTY-SEVEN
(Grand Theft)

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about May 18, 2018, at and in the County of San Francisco, State of California, defendant TRACY EMERY SMITH, in violation of Penal Code section 487(a), a felony, willfully and unlawfully took personal property of a value exceeding nine hundred and fifty dollars (\$950), to wit: \$31,000.00 belonging to Richard Bradd.

COUNT TWENTY-EIGHT
(Fraud in the Sale of a Security)

For a further and separate cause of action, being a different offense from but connected in its commission as the charges set forth above: On or about November 14, 2017 at and in the

1 County of San Diego, State of California, defendant TRACY EMERY SMITH, did willfully and
2 unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of
3 California, offer or sell a security to a person or persons by means of a written or oral
4 communication that included an untrue statement of a material fact or omitted to state a material
5 fact necessary to make the statement made, in light of the circumstances under which the
6 statement was made, not misleading.

7 **COUNT TWENTY-NINE**
8 **(Grand Theft)**

9 For a further and separate cause of action, being a different offense from but connected in
10 its commission as the charges set forth above: On or about January 16, 2018, at and in the County
11 of San Diego, State of California, defendant TRACY EMERY SMITH, in violation of Penal
12 Code section 487(a), a felony, willfully and unlawfully took personal property of a value
13 exceeding nine hundred and fifty dollars (\$950), to wit: \$26,000.00 belonging to Richard Bradd.

14 **COUNT THIRTY**
15 **(Fraud in the Sale of a Security)**

16 For a further and separate cause of action, being a different offense from but connected in
17 its commission as the charges set forth above: On or about September 18, 2017 at and in the
18 County of San Francisco, State of California, defendant TRACY EMERY SMITH, did willfully
19 and unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State
20 of California, offer or sell a security to a person or persons by means of a written or oral
21 communication that included an untrue statement of a material fact or omitted to state a material
22 fact necessary to make the statement made, in light of the circumstances under which the
23 statement was made, not misleading.

24 **COUNT THIRTY-ONE**
25 **(Elder Abuse)**

26 For a further and separate cause of action, being a different offense from but connected in
27 its commission as the charges set forth above: On or about September 25, 2017 and at in the
28 county of Santa Clara, State of California, defendant, TRACY EMERY SMITH, in violation of

1 California Penal Code section 368 (d), a felony, did willfully and unlawfully commit theft,
2 embezzlement, or fraud, with respect to the property of an elder adult, said property, moneys
3 taken and obtained having a value exceeding \$950, when he knew or reasonably should have
4 known that said person was an elder adult, to wit: \$150,000.00 from Paul Kalra, DOB 8/21/1943.

5 **COUNT THIRTY-TWO**
6 **(Fraud in the Sale of a Security)**

7 For a further and separate cause of action, being a different offense from but connected in
8 its commission as the charges set forth above: On or about July 31, 2017 at and in the County of
9 San Diego, State of California, defendant TRACY EMERY SMITH, did willfully and unlawfully,
10 in violation of sections 25401 and 25540(b) of the Corporations Code of the State of California,
11 offer or sell a security to a person or persons by means of a written or oral communication that
12 included an untrue statement of a material fact or omitted to state a material fact necessary to
13 make the statement made, in light of the circumstances under which the statement was made, not
14 misleading.

15 **COUNT THIRTY-THREE**
16 **(Grand Theft)**

17 For a further and separate cause of action, being a different offense from but connected in
18 its commission as the charges set forth above: On or about August 2, 2017, at and in the County
19 of San Diego, State of California, defendant TRACY EMERY SMITH, in violation of Penal
20 Code section 487(a), a felony, willfully and unlawfully took personal property of a value
21 exceeding nine hundred and fifty dollars (\$950), to wit: \$75,000.00 belonging to Brandy Ching-
22 Arciga.

23 **COUNT THIRTY-FOUR**
24 **(Fraud in the Sale of a Security)**

25 For a further and separate cause of action, being a different offense from but connected in
26 its commission as the charges set forth above: On or about July 31, 2017 at and in the County of
27 San Diego, State of California, defendant TRACY EMERY SMITH, did willfully and unlawfully,
28 in violation of sections 25401 and 25540(b) of the Corporations Code of the State of California,

1 offer or sell a security to a person or persons by means of a written or oral communication that
2 included an untrue statement of a material fact or omitted to state a material fact necessary to
3 make the statement made, in light of the circumstances under which the statement was made, not
4 misleading.

5 **COUNT THIRTY-FIVE**
6 **(Fraud in the Sale of a Security)**

7 For a further and separate cause of action, being a different offense from but connected in
8 its commission as the charges set forth above: On or about July 31, 2017 at and in the County of
9 San Diego, State of California, defendant TRACY EMERY SMITH, did willfully and unlawfully,
10 in violation of sections 25401 and 25540(b) of the Corporations Code of the State of California,
11 offer or sell a security to a person or persons by means of a written or oral communication that
12 included an untrue statement of a material fact or omitted to state a material fact necessary to
13 make the statement made, in light of the circumstances under which the statement was made, not
14 misleading.

15 **COUNT THIRTY-SIX**
16 **(Grand Theft)**

17 For a further and separate cause of action, being a different offense from but connected in
18 its commission as the charges set forth above: On or about August 28, 2017, at and in the County
19 of San Diego, State of California, defendant TRACY EMERY SMITH, in violation of Penal
20 Code section 487(a), a felony, willfully and unlawfully took personal property of a value
21 exceeding nine hundred and fifty dollars (\$950), to wit: \$6,000.00 belonging to Brandy Ching-
22 Arciga.

23 **COUNT THIRTY-SEVEN**
24 **(Fraud in the Sale of a Security)**

25 For a further and separate cause of action, being a different offense from but connected in
26 its commission as the charges set forth above: On or about November 14, 2017 at and in the
27 County of San Diego, State of California, defendant TRACY EMERY SMITH, did willfully and
28 unlawfully, in violation of sections 25401 and 25540(b) of the Corporations Code of the State of

1 California, offer or sell a security to a person or persons by means of a written or oral
2 communication that included an untrue statement of a material fact or omitted to state a material
3 fact necessary to make the statement made, in light of the circumstances under which the
4 statement was made, not misleading.

5 **COUNT THIRTY-EIGHT**
6 **(Grand Theft)**

7 For a further and separate cause of action, being a different offense from but connected in
8 its commission as the charges set forth above: On or about and between November 20, 2017 and
9 January 26, 2018, at and in the County of San Diego, State of California, defendant TRACY
10 EMERY SMITH, in violation of Penal Code section 487(a), a felony, willfully and unlawfully
11 took personal property of a value exceeding nine hundred and fifty dollars (\$950), to wit:
12 \$70,0000 belonging to Howard Mintz.

13 **FIRST SPECIAL ALLEGATION**

14 **[THEFT OF AMOUNT OVER \$100,000 (PENAL CODE SECTION 1203.045)]**

15 It is further alleged that TRACY EMERY SMITH, in the commission of the offenses
16 alleged in Counts 1 through 38 in this Indictment, with the intent to do so, took funds of a value
17 exceeding one hundred thousand dollars (\$100,000) within the meaning of Penal Code section
18 1203.045.

19 **SECOND SPECIAL ALLEGATION**

20 **[EXCESSIVE LOSS OVER \$500,000 (PENAL CODE SECTION 186.11(A)(2))]**

21 It is further alleged pursuant to Penal Code section 186.11(a)(2), TRACY EMERY
22 SMITH committed two or more related felonies to wit: Counts 1 through 38, a material element
23 of which is fraud, involving a pattern of related felony conduct and the taking of, or resulted in
24 the loss by another person or entity of, more than five hundred thousand dollars (\$500,000).

25 ///

26 ///

27 ///

28

1 **TOLLING OF THE STATUTE OF LIMITATIONS**

2 **Statute of Limitations – Discovery Within Four Years (Penal Code, §§ 801.5, 803(c))**

3 IT IS FURTHER ALLEGED, as described in Penal Code section 803 (c), that each of the
4 above violations were not discovered until March 1, 2018, at the earliest, when victim Paul Kalra
5 contacted the Stanislaus County District Attorney about potential theft in connection with the
6 misuse and refusal to return his \$150,000 investment. No victims of said violations and no law
7 enforcement agency chargeable with the investigation and prosecution of said violations had
8 actual and constructive knowledge of said violations prior to March 1, 2018, at the earliest.
9 Because defendant continued to assure the victims that the investments they had made were
10 progressing and in some instances made contracted payments to the victims, the victims could not
11 have known that the defendant had stolen the funds.

12 As reflected in this Indictment, counts are charged through August of 2018. For the
13 Grand Theft, Elder Abuse, and Securities Fraud charges, the counts in this Indictment that
14 occurred less than four years ago fall within the statute of limitations based on the date of their
15 commission without reference to tolling due to the date of discovery.

16 For those counts alleged to have occurred before March 1, 2018, it is alleged that no victim
17 of said violation and no law enforcement agency chargeable with the investigation and
18 prosecution of said violation had actual and constructive knowledge of said violation prior to the
19 date alleged above within the meaning of Penal Code section 803(c).

20 * * * * *

21 **THE FOLLOWING WITNESSES APPEARED BEFORE THE GRAND JURY IN THE**
22 **ABOVE-CAPTIONED MATTER:**

- 23
- 24 1. Brandy Ching-Arciga
 - 25 2. Richard Bradd
 - 26 3. Benjamin Serebin
 - 27 4. Howard Mintz
 - 28 5. Jonathan Kaufman
 6. Mark Hendrickson
 7. Paul Kalra
 8. Sarah Hacker

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 9. Justin Diesslin
- 10. Darrell Early
- 11. Laurie Brugger

TRUE BILL

This indictment, having been approved and concurred in by at least twelve (12) members of the Grand Jury in and for the County of San Diego, is a true bill with a finding that the requirements of Penal Code section 923(c) have been satisfied.

Dated: 10/29/21 *Brun Palmer*

FOREPERSON
SAN DIEGO COUNTY GRAND JURY

Presented by the Foreperson to the Court in the presence of the Grand Jury and filed this 29 day of October, 2021.

SA2021301701