

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,	)	No. CR 09-60165-HO
	)	
Plaintiff,	)	<u>INDICTMENT</u>
	)	
v.	)	[18 U.S.C. §§ 371, 1014, 1344,
	)	1957, and 2]
TYLER FITZSIMONS,	)	
SHANNON EGELAND,	)	Conspiracy to Commit Bank Fraud
JEREMY KENDALL, and	)	
JOHN PARTIN,	)	False Statement on Loan
	)	Application
Defendants.	)	Bank Fraud
	)	Money Laundering
	)	Forfeiture Allegation

**THE GRAND JURY CHARGES:**

**INTRODUCTORY ALLEGATIONS**

At all times relevant to this Indictment:

1. TYLER FITZSIMONS, hereinafter referred to as FITZSIMONS, was president of Desert Sun Development, Inc., (“DSD”), a commercial and residential development and construction company located in Bend, Oregon.

2. SHANNON EGELAND, hereinafter referred to as EGELAND, was vice president and secretary of DSD.

3. JEREMY KENDALL, hereinafter referred to as KENDALL, was the office manager at DSD and took instruction from FITZSIMONS, including submitting documents to lending institutions to obtain construction loans.

4. JOHN PARTIN, hereinafter referred to as PARTIN, owned and operated Advanced Steel Systems, Inc. (“Advanced Steel”), an Oregon corporation located in Bend, Oregon. Advanced Steel sold steel building kits that DSD would often use for its commercial construction projects.

5. To secure financing for commercial projects, FITZSIMONS, EGELAND, and KENDALL worked directly with lending institutions to provide information needed to obtain loan approval, submitting, among other things, financial statements, tax returns, and leases, as required by the lending institutions.

6. After DSD began construction on commercial projects, KENDALL, acting at FITZSIMONS’s direction, would submit requests, also referred to as “draws,” to the lending institutions funding the projects. KENDALL submitted draws throughout construction to reimburse DSD for costs and expenses it had allegedly incurred through developing and constructing commercial construction projects. To justify the costs and expenses claimed in the draws, KENDALL would often submit contracts, invoices, and copies of checks. Based on the

draws and associated contracts, invoices, and copies of checks, lending institutions would advance loan funds on the construction loans to reimburse DSD for the costs and expenses associated with construction it had allegedly completed.

7. Umpqua Bank, Liberty Bank, First Horizon Home Loan Corporation, U.S. Bank, and Community First Bank were financial institutions for purposes of 18 U.S.C. § 1344. Umpqua Bank, Liberty Bank, U.S. Bank, and Community First Bank were financial institutions for purposes of 18 U.S.C. § 1014.

8. Mid Oregon Federal Credit Union was a financial institution for purposes of 18 U.S.C. § 1344.

### **COUNT ONE**

#### **(Conspiracy to Commit Bank Fraud)**

#### **OBJECTS OF THE CONSPIRACY**

9. Paragraphs 1-7 of the Introductory Allegations are incorporated herein.

10. Beginning in or about June 2004 and continuing up to and including July 2008, in the District of Oregon and elsewhere, defendants FITZSIMONS, EGELAND, KENDALL, and PARTIN, and others known and unknown to the grand jury, knowingly and willfully conspired, combined, confederated, and agreed together and with each other to commit bank fraud, in violation of 18 U.S.C. § 1344, and loan application fraud, in violation of 18 U.S.C. § 1014.

#### **MANNER AND MEANS AND SCHEME TO DEFRAUD**

11. It was part of the manner and means and scheme to defraud that FITZSIMONS, EGELAND, KENDALL, and PARTIN, and others known and unknown to the grand jury:

- A. Submitted and caused the submission of false financial statements, tax returns, leases, and other documents to secure financing with lending institutions;
- B. Created and caused the creation of false contracts, invoices, and checks to justify costs claimed in fraudulent draws; and
- C. Submitted and caused the submission of false draws, contracts, invoices, and copies of fraudulent checks to induce, and did induce, lending institutions to advance loans.

12. Defendants used the fraudulently obtained funds to pay for construction costs incurred on other DSD projects and to pay their personal expenses. Included in the scheme to defraud are the following banks and properties on which defendants failed to construct any building despite lending institutions approving commercial construction loans and advancing loan funds to DSD for their construction:

<b>LENDER</b>	<b>PROPERTY</b>	<b>APPROXIMATE LOAN AMOUNT</b>	<b>FUNDED DRAWS</b>
Umpqua Bank	2895 SW 13 <sup>th</sup> Street, Redmond, Oregon, (Tax Lot 2600)	\$921,000	\$390,000
Umpqua Bank	20798 High Desert Lane, Bend, Oregon	\$1,700,000	\$350,000
First Horizon	62935 and 62945 18 <sup>th</sup> Street, Bend, Oregon	\$2,000,000	\$385,000
U.S. Bank	20860 Redside Court, Bend, Oregon	\$2,500,000	\$2,500,000
U.S. Bank	199 NE King Way, Redmond, Oregon	\$1,400,000	\$580,000

13. Based on the false applications and fraudulent draws, these lending institutions and others provided funding for DSD's commercial projects in excess of \$25 million and

suffered a loss of more than \$9 million.

**OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY**

14. In furtherance of the conspiracy and to effect the object of the conspiracy, the following overt acts, among others, were committed in the District of Oregon and elsewhere:

15. On or about December 2, 2004, KENDALL submitted a fraudulent draw to Community First Bank.

16. On or about November 17, 2006, KENDALL submitted a fraudulent draw to Umpqua Bank.

17. On or about February 28, 2007, KENDALL submitted a fraudulent draw to Umpqua Bank.

18. On or about May 1, 2007, PARTIN created two false Advanced Steel invoices.

19. On or about May 2, 2007, KENDALL submitted a fraudulent draw to Umpqua Bank.

20. On or about November 29, 2006, KENDALL submitted a fraudulent Advanced Steel contract and invoice, and a copy of a fraudulent DSD check to Umpqua Bank.

21. On or about November 30, 2006, KENDALL submitted a fraudulent a draw to Umpqua Bank.

22. On or about May 2, 2007, KENDALL submitted a fraudulent draw to Umpqua Bank.

23. On or about October 17, 2006, FITZSIMONS and EGELAND signed a construction loan agreement with First Horizon.

24. On or about October 17, 2006, KENDALL submitted fraudulent DSD and Advanced Steel invoices to First Horizon.
25. On or about April 17, 2007, KENDALL submitted a fraudulent draw to First Horizon.
26. On or about April 23, 2007, KENDALL submitted fraudulent Advanced steel invoices to First Horizon.
27. On or about May 25, 2007, KENDALL submitted a fraudulent Advanced Steel invoice with a fraudulent draw to Liberty Bank.
28. On or about June 8, 2007, KENDALL submitted a fraudulent draw to Liberty Bank.
29. On or about February 28, 2006, KENDALL submitted a fraudulent draw to U.S. Bank.
30. On or about July 21, 2006, KENDALL submitted a fraudulent draw to U.S. Bank.
31. On or about August 22, 2006, KENDALL submitted a fraudulent draw to U.S. Bank.
32. On or about November 21, 2006, KENDALL submitted a fraudulent draw to U.S. Bank.
33. On or about April 26, 2006, FITZSIMONS caused the submission of a fraudulent draw to U.S. Bank.
34. On or about November 21, 2006, KENDALL submitted a fraudulent draw to U.S. Bank.

35. On or about January 24, 2007, KENDALL submitted a fraudulent draw to U.S. Bank.

All in violation of 18 U.S.C. § 371.

### COUNTS TWO THROUGH TWELVE

#### (Bank Fraud)

36. Paragraphs 1-7 of the Introductory Allegations and paragraphs 11-13 of the Manner and Means and Scheme to Defraud of Count One are incorporated herein.

37. On or about the dates set forth in each count below, in the District of Oregon and elsewhere, defendants TYLER FITZSIMONS, SHANNON EGELAND, JEREMY KENDALL, and JOHN PARTIN knowingly executed and attempted to execute a scheme and artifice to defraud as to material matters, as described in paragraphs 11-13 of the Manner and Means and Scheme to Defraud of Count One, and to obtain monies and funds owned and under the custody and control of Umpqua Bank, First Horizon, Liberty Bank, U.S. Bank, and Community First Bank by means of material false and fraudulent pretenses, representations, promises, and omissions, as described below:

COUNT	DEFENDANTS	DESCRIPTION OF EXECUTION
2	FITZSIMONS and KENDALL	On or about February 28, 2007, a fraudulent draw was submitted to Umpqua Bank.
3	FITZSIMONS, KENDALL, and PARTIN	On or about May 2, 2007, a fraudulent draw, including a fraudulent Advanced Steel invoice, was submitted to Umpqua Bank.
4	FITZSIMONS, EGELAND, KENDALL, and PARTIN	On or about November 29, 2006, a fraudulent Advanced Steel contract, fraudulent Advanced Steel invoice, and a copy of a fraudulent DSD check were submitted to Umpqua Bank.

5	FITZSIMONS, KENDALL, and PARTIN	On or about May 2, 2007, a fraudulent draw, including a fraudulent Advanced Steel invoice, was submitted to Umpqua Bank.
6	FITZSIMONS, KENDALL, and PARTIN	On or about April 17, 2007, a fraudulent Advanced Steel invoice in support of a fraudulent draw was submitted to First Horizon.
7	FITZSIMONS and KENDALL	On or about June 8, 2007, a fraudulent draw was submitted to Liberty Bank.
8	FITZSIMONS, KENDALL, and PARTIN	On or about February 28, 2006, a fraudulent draw, including a fraudulent Advanced Steel invoice, was submitted to U.S. Bank.
9	FITZSIMONS and KENDALL	On or about July 21, 2006, a fraudulent draw was submitted to U.S. Bank.
10	FITZSIMONS and KENDALL	On or about April 26, 2006, a fraudulent draw was submitted to U.S. Bank.
11	FITZSIMONS and KENDALL	On or about November 21, 2006, KENDALL submitted a fraudulent draw to U.S. Bank.
12	FITZSIMONS, EGELAND, and KENDALL	On or about December 2, 2004, KENDALL submitted a fraudulent draw to Community First Bank.

All in violation of 18 U.S.C. §§ 1344 and 2.

### **COUNTS THIRTEEN THROUGH EIGHTEEN**

#### **(False Statement on Loan Application)**

38. Paragraphs 1-7 of the Introductory Allegations and paragraphs 11-13 of the Manner and Means and Scheme to Defraud of Count One are incorporated herein.

39. On or about the dates set forth below, in the District of Oregon, defendants as set forth below knowingly made false statements and reports for the purpose of influencing the action of the FDIC insured financial institutions, as set forth in each count below, in connection

with an application, advance, commitment, and loan, and any change and extension of any of the same, in that defendants, as set forth below, submitted and caused the submission of draws on loans for costs and expenses, when in truth and in fact, as defendants well knew, the costs and expenses claimed in the draws had not been incurred.

<b>COUNTS</b>	<b>DEFENDANTS</b>	<b>SUBMISSION</b>
13	FITZSIMONS, KENDALL, and PARTIN	On or about May 2, 2007, a fraudulent draw, including a fraudulent Advanced Steel invoice, was submitted to Umpqua Bank.
14	FITZSIMONS, EGELAND, KENDALL, and PARTIN	On or about November 29, 2006, a fraudulent Advanced Steel contract, a fraudulent Advanced Steel invoice, and a copy of a fraudulent DSD check was submitted to Umpqua Bank.
15	FITZSIMONS and KENDALL	On or about June 8, 2007, a fraudulent draw was submitted to Liberty Bank.
16	FITZSIMONS, KENDALL, and PARTIN	On or about February 28, 2006, a fraudulent draw, including a fraudulent Advanced Steel invoice, was submitted to U.S. Bank.
17	FITZSIMONS and KENDALL	On or about January 24, 2007, a fraudulent draw was submitted to U.S. Bank.
18	FITZSIMONS and KENDALL	On or about November 21, 2006, a fraudulent draw was submitted to U.S. Bank.

All in violation of 18 U.S.C. §§ 1014 and 2.

**COUNT NINETEEN**

**(Bank Fraud)**

**SCHEME AND ARTIFICE TO DEFRAUD**

- 40. Paragraphs 1 and 8 of the Introductory Allegations are incorporated herein.
- 41. In on or about February 2006, in the District of Oregon, defendant FITZSIMONS

knowingly devised and intended to devise a scheme and artifice to defraud as to material matters and to obtain monies and funds owned and under the custody and control of Mid Oregon Federal Credit Union by means of material false and fraudulent pretenses, representations, promises, and omissions.

42. It was part of the scheme that FITZSIMONS did prepare and submit a fraudulent loan application and a false financial statement to Mid Oregon Federal Credit Union as part of his loan application to purchase a 2006 Malibu Wakesetter 247-LSV boat and a 2006 Extreme boat trailer. Relying, in part, on the fraudulent loan application and false financial statement, Mid Oregon Federal Credit Union approved the loan and advanced loan proceeds in the amount of \$56,323.

#### **EXECUTION OF THE SCHEME AND ARTIFICE TO DEFRAUD**

43. On or about April 24, 2006 and on or about May 26, 2006, in the District of Oregon, defendant FITZSIMONS for purposes of knowingly executing and attempting to execute a material scheme to defraud and to obtain monies and funds owned and under the custody and control of Mid Oregon Federal Credit Union by means of material false and fraudulent pretenses, representations, promises, and omissions knowingly signed and submitted a fraudulent loan application and a fraudulent financial statement to Mid Oregon Federal Credit Union to induce Mid Oregon Federal Credit Union to fund a loan for a 2006 Malibu Wakesetter 247-LSV boat and a 2006 Extreme boat trailer.

All in violation of 18 U.S.C. §§ 1344 and 2.

## COUNTS TWENTY THROUGH TWENTY-THREE

### (Money Laundering)

44. On or about the dates set for below, in the District of Oregon and elsewhere, defendants listed below knowingly engaged and attempted to engage in a monetary transaction in and affecting interstate commerce in criminally derived property that was of a value greater than \$10,000 and was derived from specified unlawful activity (bank fraud) at the financial institutions involving the transactions set forth in each count below:

COUNT	DEFENDANTS	MONETARY TRANSACTION
20	FITZSIMONS and EGELAND	On or about December 15, 2004, FITZSIMONS purchased a cashier's check from Community First Bank for \$160,676 and used that check to buy two Dodge Vipers.
21	FITZSIMONS	On or about May 8, 2006, FITZSIMONS wrote DSD check #14120 on DSD's Community First Bank checking account for \$140,000 for the down payment for a 2006 Ferrari F430 Spider F1.
22	EGELAND	On or about May 5, 2006, EGELAND wrote DSD check #14114 on DSD's Community First Bank checking account for \$55,000 for the final settlement of his divorce.
23	FITZSIMONS	On or about May 26, 2006, FITZSIMONS purchased a cashier's check for \$69,323 from Mid Oregon Federal Credit Union for the purchase of a 2006 Malibu Wakesetter 247-LSV boat and a 2006 Extreme boat trailer.

All in violation of 18 U.S.C. §§ 1957 and 2.

## FIRST FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Counts 1-18 of this Indictment, defendants TYLER FITZSIMONS, SHANNON EGELAND, JEREMY KENDALL, and JOHN PARTIN shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to the following:

### PROCEEDS

A sum of money equal to \$4,205,000 in United States currency, representing the amount of proceeds obtained as a result of the offense for which the defendants are jointly and severally liable.

If the above-described forfeitable property, 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;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendants up to the value of the forfeitable property described above.

## SECOND FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Counts 20-23 of this Indictment, defendants FITZSIMONS and EGELAND shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(1), all property, real and personal, involved in the money laundering offenses and all property traceable to such property, including but not limited to the following:

1. PROCEEDS:

A sum of money equal to \$55,000 in United States currency, representing the amount of proceeds obtained as a result of the offense.

2. CONVEYANCES:

One 2005 Dodge Viper, Oregon License # CK00020 , VIN #1B3JZ65Z65V500423.

One 2005 Dodge Viper, Oregon License # JODIRT, VIN #1B3JZ65Z45V500422.

One 2006 Ferrari F430 Spider F1, Oregon License # 982CME, VIN #ZFFEW59A760146578 .

One 2006 Extreme Boat Trailer, Oregon License # U383719, VIN #5DBBB27296R000240.

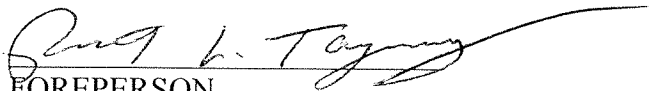
One 2006 Malibu Wakesetter 247 LSV, Serial #MB2W5636B606.

46. If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

- (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; it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above.

DATED this 19 day of November 2009.

  
FOREPERSON

Presented by:

KENT S. ROBINSON  
Acting United States Attorney

  
SCOTT E. BRADFORD  
Assistant U.S. Attorney