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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

October 2020 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZACHARY JOSEPH HORWITZ,
aka "Zach Avery,"

Defendant.

CR 2:21-cr-00214-MCS

I N D I C T M E N T

[15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. § 240.10b-5: Securities Fraud; 18 U.S.C. § 1343: Wire Fraud; 18 U.S.C. § 1028A(a)(1): Aggravated Identity Theft; 18 U.S.C. §§ 981(a)(1)(C), 982, 1028 and 28 U.S.C. § 2461(c): Criminal Forfeiture]

The Grand Jury charges:

COUNTS ONE THROUGH FIVE

[15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5]

A. INTRODUCTORY ALLEGATIONS

At times relevant to this Indictment:

1. Defendant ZACHARY JOSEPH HORWITZ, also known as "Zach Avery," was a resident of Los Angeles, California.

2. linMM Capital, LLC ("linMM Capital"), was a California limited liability company defendant HORWITZ created in September 2013 and operated from his residence in Los Angeles, California.

Defendant HORWITZ was linMM Capital's sole manager.

1 3. Defendant HORWITZ had sole control over a City National
2 Bank account in the name of linMM Capital domiciled in Los Angeles,
3 California (the "linMM Capital Account").

4 4. In connection with the purported purchasing and licensing
5 of film distribution rights, linMM Capital issued promissory notes
6 that constituted "securities" within the meaning of the Securities
7 Exchange Act of 1934.

8 B. THE SCHEME TO DEFRAUD

9 5. Beginning on a date unknown, but no later than in or about
10 October 2014, and continuing through at least on or about April 6,
11 2021, in Los Angeles County, within the Central District of
12 California, and elsewhere, defendant HORWITZ, knowingly and
13 willfully, directly and indirectly, by the use of the means and
14 instrumentalities of interstate commerce and the mails, in connection
15 with the purchase and sale of securities, used and employed
16 manipulative and deceptive devices and contrivances by: (1) employing
17 a scheme to defraud; (2) making untrue statements of material facts
18 and omitting to state material facts necessary in order to make the
19 statements made, in light of the circumstances under which they were
20 made, not misleading; and (3) engaging in acts, practices, and
21 courses of business which operated and would operate as a fraud and
22 deceit upon purchasers and prospective purchasers of securities (the
23 "victim-investors"), by causing materially false and fraudulent
24 statements and material omissions to be made to the victim-investors
25 about defendant HORWITZ's use of victim-investors' investments.

26 6. The scheme to defraud operated, in substance, as follows:

27 a. Defendant HORWITZ falsely represented to victim-
28 investors that linMM Capital was in the business of purchasing

1 distribution rights to films, typically in the post-production stage
2 of development, which linMM Capital would then profitably license to
3 online streaming platforms such as HBO and Netflix for further
4 distribution in regions outside the United States.

5 b. Defendant HORWITZ solicited investments from the
6 victim-investors by offering to sell them promissory notes issued by
7 linMM Capital that defendant HORWITZ guaranteed would generate a
8 specified return on a specified maturity date. Defendant HORWITZ
9 represented, promised, and maintained the pretense that linMM Capital
10 would satisfy its obligations under each note through the profits
11 linMM Capital would obtain by acquiring and licensing the
12 distribution rights to the film(s) specified as the collateral for
13 the note.

14 c. To support his false representations and induce
15 victim-investors to purchase the promissory notes, defendant HORWITZ
16 provided victim-investors with fraudulent copies of purported license
17 agreements between linMM Capital and the sales agents for the
18 production companies of the films identified in the promissory notes.
19 In fact, as defendant HORWITZ then knew, these license agreements
20 were fake because linMM Capital had not acquired the film
21 distribution rights that constituted the purported collateral for the
22 promissory notes and had not entered into the asserted license
23 agreements with the identified sales agents.

24 d. Further to induce victim-investors to purchase the
25 promissory notes and to convince the victim-investors that linMM
26 Capital was a successful business able to honor its obligations under
27 the promissory notes, defendant HORWITZ falsely represented to the
28 victim-investors that online streaming platforms had already entered

1 or committed to enter into distribution agreements with linMM
2 Capital. Defendant HORWITZ provided victim-investors with copies of
3 these purported preexisting distribution agreements when, in fact, as
4 defendant HORWITZ knew, linMM Capital had not entered into the
5 asserted distribution agreements with the online streaming platforms
6 and the purported copies of the distribution agreements were fake.

7 e. Defendant HORWITZ directed the victim-investors to
8 send the money to purchase the promissory notes to linMM Capital bank
9 accounts by means of interstate wire transfers.

10 f. Defendant HORWITZ operated linMM Capital as a Ponzi
11 scheme, in which the vast majority of its incoming revenue comprised
12 victim-investor funds that defendant HORWITZ used not to purchase
13 film distribution rights as he had represented and promised he would
14 but instead to pay returns to prior victim-investors, maintain linMM
15 Capital's appearance of legitimate operations, and make distributions
16 to himself which he used to pay for an opulent lifestyle. Defendant
17 HORWITZ operated linMM Capital in this way to further the fraudulent
18 scheme and deceive the victim-investors into believing that their
19 investments were performing as defendant HORWITZ had represented and
20 promised they would, thus preventing the victim-investors from
21 discovering that linMM Capital was a Ponzi scheme.

22 g. In furtherance of the scheme and in order to lull the
23 victim-investors into believing their funds were safely invested as
24 he had promised, defendant HORWITZ falsely sought to reassure victim-
25 investors that any missed payments on promissory notes were caused by
26 audits, restructurings, and other temporary actions at the online
27 streaming platforms, and that payment on the notes would resume. To
28 support these false claims, defendant HORWITZ sent the victim-

1 investors emails and text messages regarding progress on these
 2 purported actions and the resumption of payments, which he claimed
 3 had been sent to him by representatives of the online streaming
 4 platforms. In fact, as defendant HORWITZ knew, he had not been in
 5 communication with the online streaming platforms about audits,
 6 restructurings, or other actions that purportedly delayed payments,
 7 and the correspondence he was supposedly forwarding was fake.

8 7. In executing the fraudulent scheme described above,
 9 defendant HORWITZ, operating through linMM Capital, fraudulently
 10 obtained custody and control of hundreds of millions of dollars from
 11 victim-investors and caused the victim-investors to lose
 12 approximately \$230 million.

13 C. EXECUTIONS OF THE FRAUDULENT SCHEME

14 On or about the dates set forth below, within the Central District of
 15 California, and elsewhere, for the purpose of executing the above-
 16 described scheme to defraud, and in furtherance of the manipulative
 17 and deceptive devices described above, defendant HORWITZ directly and
 18 indirectly caused the following uses of a means and instrumentality
 19 of interstate commerce in connection with the purchase and sale of
 20 securities:

COUNT	DATE	DESCRIPTION
ONE	12/14/2018	Transfer of approximately \$1,425,500 from Investor 1, by means of interstate wire communication, to the linMM Capital Account to purchase a promissory note secured by the assignment of rights to the film "Active Measures."

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COUNT	DATE	DESCRIPTION
TWO	05/29/2019	Transfer of approximately \$2,000,475 from Investor 2, by means of interstate wire communication, to the linMM Capital Account to purchase interests in promissory notes secured by the assignment of rights to the films "Watch List," "Run with the Hunted," and "Artic."
THREE	06/13/2019	Transfer of approximately \$740,500 from Investor 3, by means of interstate wire communication, to the linMM Capital Account to purchase a promissory note secured by the assignment of rights to the film "Behind the Walls."
FOUR	08/12/2019	Transfer of approximately \$746,200 from Investor 1, by means of interstate wire communication, to the linMM Capital Account to purchase a promissory note secured by the assignment of rights to the film "Wild Rose."
FIVE	09/27/2019	Transfer of approximately \$742,250 from Investor 1, by means of interstate wire communication, to the linMM Capital Account to purchase a promissory note secured by the assignment of rights to the film "Bitter Harvest."

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COUNTS SIX THROUGH ELEVEN

[18 U.S.C. § 1343]

8. The Grand Jury incorporates paragraphs 1 through 4 and 6 through 8 of this Indictment here.

A. THE SCHEME TO DEFRAUD

9. Beginning on a date unknown, but no later than in or about October 2014, and continuing through at least on or about April 6, 2021, in Los Angeles County, within the Central District of California, and elsewhere, defendant HORWITZ, knowingly and with the intent to defraud, devised, participated in, and executed a scheme to defraud victim-investors as to material matters, and to obtain money and property by means of material false and fraudulent pretenses, representations, promises, and the concealment of material facts.

10. The scheme to defraud operated, in substance, as described in paragraphs 6 and 7 of this Indictment.

B. USE OF INTERSTATE WIRES

11. On or about the dates set forth below, within the Central District of California, and elsewhere, for the purpose of executing the above-described scheme to defraud, defendant HORWITZ transmitted

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1 and caused the transmission of the following items by means of wire
 2 communication in interstate commerce:

COUNT	DATE	INTERSTATE WIRING
SIX	12/14/2018	Transfer of approximately \$1,425,500 from Investor 1, by means of interstate wire communication, to the linMM Capital Account.
SEVEN	05/29/2019	Transfer of approximately \$2,000,475 from Investor 2, by means of interstate wire communication, to the linMM Capital Account.
EIGHT	06/13/2019	Transfer of approximately \$740,500 from Investor 3, by means of interstate wire communication, to the linMM Capital Account.
NINE	08/12/2019	Transfer of approximately \$746,200 from Investor 1, by means of interstate wire communication, to the linMM Capital Account.
TEN	09/27/2019	Transfer of approximately \$742,250 from Investor 1, by means of interstate wire communication, to the linMM Capital Account.
ELEVEN	01/28/2020	Email from defendant HORWITZ to representatives of Investor 1 containing false correspondence with HBO personnel.

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COUNT TWELVE

[18 U.S.C. § 1028A(a) (1)]

12. Beginning no later than on or about December 14, 2018, and continuing through at least December 21, 2018, in Los Angeles County, within the Central District of California, and elsewhere, defendant ZACHARY JOSEPH HORWITZ, also known as "Zach Avery," knowingly possessed, transferred, and used, without lawful authority, means of identification that defendant HORWITZ knew belonged to another person, that is, the name and signature of victim F.M., during and in relation to the offense of Wire Fraud, a felony violation of Title 18, United States Code, Section 1343, as charged in Count Six of this Indictment.

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COUNT THIRTEEN

[18 U.S.C. § 1028A(a) (1)]

13. On or about January 28, 2020, in Los Angeles County, within the Central District of California, and elsewhere, defendant ZACHARY JOSEPH HORWITZ, also known as "Zach Avery," knowingly possessed, transferred, and used, without lawful authority, means of identification that defendant HORWITZ knew belonged to another person, that is, the names of victims C.M., V.C., and J.C., during and in relation to the offense of Wire Fraud, a felony violation of Title 18, United States Code, Section 1343, as charged in Count Eleven of this Indictment.

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FORFEITURE ALLEGATION ONE

[18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c)]

14. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given that the United States of America will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), in the event of the conviction of defendant ZACHARY JOSEPH HORWITZ, also known as "Zach Avery," of the offenses set forth in any of Counts One through Eleven of this Indictment.

15. Defendant HORWITZ, if so convicted, shall forfeit to the United States of America the following:

a. All right, title, and interest in any and all property, real or personal, constituting, or derived from, any proceeds traceable to the offense; and

b. To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph (a).

16. Pursuant to Title 18, United States Code, Section 981(a)(1)(c), as incorporated by Title 28, United States Code, Section 2461(c), if so convicted, defendant HORWITZ shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as the result of any act or omission of defendant HORWITZ, the property described in the preceding paragraph, or any portion thereof: (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to or deposited with a third party; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in

1 value; or (e) has been commingled with other property that cannot be
2 divided without difficulty.

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FORFEITURE ALLEGATION TWO

[18 U.S.C. §§ 982, 1028]

17. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given that the United States of America will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Sections 982 and 1028, in the event of the conviction of defendant ZACHARY JOSEPH HORWITZ, also known as "Zach Avery," of the offenses set forth in either of Counts Twelve or Thirteen of this Indictment.

18. Defendant HORWITZ, if so convicted, shall forfeit to the United States of America the following:

a. All right, title and interest in any and all property, real or personal, constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the offense;

b. Any personal property used or intended to be used to commit the offense; and

c. To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraphs (a) and (b).

19. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Sections 982(b) and 1028(g), defendant HORWITZ, if so convicted, shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as the result of any act or omission of defendant HORWITZ, the property described in the preceding paragraph, or any portion thereof: (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to or deposited with a third party; (c) has been placed beyond the jurisdiction of the

1 court; (d) has been substantially diminished in value; or (e) has
2 been commingled with other property that cannot be divided without
3 difficulty.

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A TRUE BILL

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/S/

Foreperson


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TRACY L. WILKISON
Acting United States Attorney

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Scott M. Garinger
Deputy Chief, Criminal Division For:

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BRANDON D. FOX
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