

No. S241812

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**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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BRETT VORIS,  
*Plaintiff and Appellant,*

v.

GREG LAMPERT,  
*Defendant and Respondent.*

SUPREME COURT  
**FILED**

AUG 11 2017

Jorge Navarrete Clerk

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Deputy

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After a Decision by the Court of Appeal,  
Second Appellate District, Division Three, Case No. B265747

Appeal from the Superior Court for the County of Los Angeles, Case  
No. BC408562, The Honorable Michael L. Stern Presiding

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**APPELLANT'S REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF OPENING BRIEF; MEMORANDUM OF  
POINTS AND AUTHORITIES; DECLARATION OF REGINA  
YEH; PROPOSED ORDER**

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*Attorneys for Plaintiff and Appellant*

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**IN THE SUPREME COURT  
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BRETT VORIS,  
*Plaintiff and Appellant,*

v.

GREG LAMPERT,  
*Defendant and Respondent.*

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**TO ALL PARTIES AND THEIR COUNSEL OF  
RECORD:**

**PLEASE TAKE NOTICE** that, pursuant to California Evidence Code sections 452 and 459, California Rule of Court 8.252, and supporting case law, Plaintiff and Appellant Brett Voris (“Voriss”) hereby respectfully requests that the Court take judicial notice of the following materials cited in the Opening Brief on the Merits (“Opening Brief”), relevant to the issues presented for review:

- Kendall, Marissa, *When startups fail: what happens when the cash runs out*, THE MERCURY NEWS, Oct. 2, 2016, available at <http://www.mercurynews.com/2016/10/02/when-startups-fail-what-happens-when-the-cash-runs-out/>
- O’Neill, Casey and Hanley Chew, *WrkRiot: Rite Of Passage Or Federal Offense?*, Law360.com, June 16, 2017, available at <https://www.law360.com/articles/935203>; and

- Indictment at 1, *USA v. Isaac Choi* (N.D. Cal. June 1, 2017) Case 5:17-cr-00308-EJD).

This request is based on this Notice, the accompanying Memorandum of Points and Authorities, and the Declaration of Regina Yeh.

Dated: August 9, 2017

Respectfully submitted,

ANDERSON YEH PC  
Edward M. Anderson  
Regina Yeh

By: \_\_\_\_\_  
Regina Yeh  
*Attorneys for Plaintiff and Appellant  
Brett Voris*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Voris respectfully requests that this Court take judicial notice of the following materials cited in its Opening Brief. True and correct copies of these materials are attached as Exhibits A through C to the Declaration of Regina Yeh:

- Kendall, Marissa, *When startups fail: what happens when the cash runs out*, THE MERCURY NEWS, Oct. 2, 2016, available at <http://www.mercurynews.com/2016/10/02/when-startups-fail-what-happens-when-the-cash-runs-out/> (“Exhibit A”);
- O’Neill, Casey and Hanley Chew, *WrkRiot: Rite Of Passage Or Federal Offense?*, Law360.com, June 16, 2017, available at <https://www.law360.com/articles/935203> (“Exhibit B”); and
- Indictment at 1, *USA v. Isaac Choi* (N.D. Cal. June 1, 2017) Case 5:17-cr-00308-EJD) (“Exhibit C”).

Under California Rule of Court 8.252(a)(2)(C) and Evidence Code section 459, a reviewing court may take notice of anything that would be noticeable by a trial court under Evidence Code section 452. All of the materials cited above, which have not previously been presented in this case, fall under that provision. They are also relevant to the issues presented in this matter for the reasons stated below and in the Opening Brief. This Court should therefore grant Voris’s request.

## II. ARGUMENT

This Court may properly take judicial notice of items that meet the requirements of Evidence Code section 452. (*See* Evid. Code, § 459.)

### A. News Articles May be Judicially Noticed

Judicial notice of news articles is proper under Evidence Code section 452. Evidence Code section 452 states in pertinent part: “Judicial notice may be taken of the following matters ... (h) “Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (*See People v. Hardy* (1992) 2 Cal.4th 86, 174 fn. 24 [judicial notice of articles]; *see also Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408 [judicial notice of controversy as evidenced by articles in the press].)

The articles submitted under Exhibits A and B both discuss the incidence of startup company failures in California, as well as the impact that such failures may have on the employees of those startups. That these news articles address and discuss startup failures as a wide-ranging issue is a fact “not reasonably subject to dispute and [is] capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Code Civ. Proc., § 452, subd. (h); *see also Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 808 [taking judicial notice of news articles because the fact that news articles discussed certain topics relevant to the case were published was not reasonably subject to dispute]; *Schweitzer v. Westminster Invests.* (2007) 157 Cal.App.4th 1195, 1203 [taking judicial notice of various articles published by the California

Association of Realtors for limited purpose of demonstrating what advice had been given in those articles].)

These articles under Exhibit A and B are relevant to the issues presented in the Opening Brief. The recognition of failed startups and what happens to the employees of those startups in the news is potentially relevant to this Court's policy considerations of worker's wage protections in California, in connection with whether to recognize and approve of a wage conversion claim.

This Court should therefore judicially notice these articles.

#### **B. Federal Court Records May Be Judicially Noticed**

Judicial notice of federal court records is also proper under section 452. Evidence Code section 452 also states in pertinent part: "Judicial notice may be taken of the following matters ... (d) Records of ... (2) any court of record of the United States." (*See People v. Johnson* (2006) 38 Cal. 4th 1096, 1103 [granting request for judicial notice of court documents in Ninth Circuit Court of Appeals, in determining whether retrial or limited remand was appropriate for trial court's federal constitutional error on murder defendant's challenge to prosecutor's excusal of African American jurors].)

Exhibit C is the criminal indictment of Isaac Choi, founder and CEO of WrkRiot, one of the California-based startup companies cited in both of the articles under Exhibits A and B, filed in the Northern District of California. The indictment reflects that Choi had engaged in, *inter alia*, making fraudulent representations to WrkRiot employees regarding the company's ability to pay their salaries and other compensation so that they would continue working. (*See Ex. C at 2:12-14.*)

The fact of Isaac Choi's indictment is likewise relevant to this Court's considerations of policy considerations of worker's wage protections in California, in connection with whether to recognize and approve of a wage conversion claim.

### III. CONCLUSION

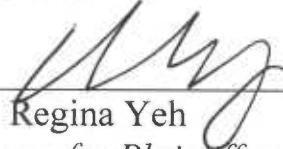
For the foregoing reasons, Voris respectfully requests that the Court take judicial notice of Exhibits A through C.

Dated: August 9, 2017

Respectfully submitted,

ANDERSON YEH PC  
Edward M. Anderson  
Regina Yeh

By: \_\_\_\_\_

  
Regina Yeh

*Attorneys for Plaintiff and Appellant  
Brett Voris*

**DECLARATION OF REGINA YEH, ESQ.**

I, REGINA YEH, declare as follows:

1. I am an attorney at the law firm of Anderson Yeh PC, counsel of record for Brett Voris. I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this Declaration and could and would testify competently to such facts under oath.

2. Attached hereto as Exhibit A is a true and correct copy of: Kendall, Marissa, *When startups fail: what happens when the cash runs out*, THE MERCURY NEWS, Oct. 2, 2016, available at <http://www.mercurynews.com/2016/10/02/when-startups-fail-what-happens-when-the-cash-runs-out/>.

3. Attached hereto as Exhibit B is a true and correct copy of: O'Neill, Casey and Hanley Chew, *WrkRiot: Rite Of Passage Or Federal Offense?*, Law360.com, June 16, 2017, available at <https://www.law360.com/articles/935203>.

4. Attached hereto as Exhibit C is a true and correct copy of the Indictment at 1, *USA v. Isaac Choi* (N.D. Cal. June 1, 2017) Case 5:17-cr-00308-EJD.

Executed on August 9, 2017 in Santa Monica, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Regina Yeh



# **Exhibit A**

Business

## When startups fail: what happens when the cash runs out



The high-tech Skully motorcycle helmet, as it appeared in product photography images on the company's website. The helmet featured a

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heads-up display, GPS-tracking, a rear-view camera and enhanced audio capability, all starting at about \$1,500. Skully is one of several Bay Area startups that ran out of cash and shut down in recent months. Experts say these failures prove not every entrepreneur can live the Silicon Valley dream. (Courtesy of Skully)

By **MARISA KENDALL** | [mkendall@bayareanewsgroup.com](mailto:mkendall@bayareanewsgroup.com) | Bay Area News Group  
 PUBLISHED: October 2, 2016 at 1:00 pm | UPDATED: October 3, 2016 at 8:41 am

Silicon Valley has long lured ambitious entrepreneurs into shiny co-working spaces and startup accelerators, promising them the chance to create the next Google, Facebook or Uber.

But the reality is most startups fail, a risk that some say is growing as funding that once poured into the booming tech market begins to slow. For founders and employees, the results can be devastating.

## Related Articles

### Ex-Pets.com CEO bounces back from failure

“It sounds good on paper, but that’s not really how it is,” Dr. Michael Freeman said of the Silicon Valley dream. A psychiatrist at UC San Francisco who studies and counsels entrepreneurs, Freeman likened the tech boom to the Gold Rush. “A lot of people in 1849 came to California looking for gold. And some people found it — and most didn’t.”

Lately, it’s the entrepreneurs in the “didn’t find gold” category who are making headlines. San Francisco-based smart motorcycle helmet maker Skully ran out of funds and shut down in August after its founders were accused of spending company money on luxury cars, vacations and strippers. Weeks later, job platform WrkRiot went offline after a former employee claimed the founders forged wire transfers because they couldn’t pay workers.

Those failures can be crushing for employees — and not just because they find themselves out of a job. Carlos Rodriguez, Skully’s former vice president of sales and marketing, said the company’s demise was especially

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- 6 Trump: US nuclea “more powerful th before”
- 7 Airlines flee as Ve crumbles
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painful because he was personally invested in Skully's mission to prevent motorcycle accidents.

He worked 80 or 90 hours a week, spending some nights in a hotel to be closer to work. His children had Skully stickers on their laptops. As the company fell apart, Rodriguez pulled himself away for a preplanned trip to France with his wife for their anniversary. On the plane, he was hit hard by what happened.

"I was looking out the window, and I just started bawling," Rodriguez said. "I was saddened for customers ... I was grieving for them. I was grieving for the work I put in for the development of this product. I was grieving for the time that I was away from my family."

Now Rodriguez works as an adviser for a few other tech companies, but they compensate him mostly in equity, forcing him to live off his savings while he hunts for another job. Despite his experiences at Skully, he's considering signing on with another small startup.

"You can have a greater impact," he said, "whereas in corporate America you're literally a name on a list."

Zirtual founder and CEO Maren Kate Donovan felt a similar heartbreak when her startup went under last year.

"It was very much like several deaths," she said. "It was the death of hopes and dreams. It was the death of a community that I and my co-founders had

spent five years building. ... It was absolutely devastating — definitely one of the worst things I've ever been through.”

Zirtual, a San Francisco- and Las Vegas-based startup, matched small-business owners with remote online assistants. The company ultimately was resurrected after being acquired by Startups.co, but Donovan didn't stay.

Silicon Valley hadn't prepared Donovan for failure. People rarely talk about startups that don't make it, Donovan said. Now she offers one piece of advice to other entrepreneurs: Get a therapist — you're going to need one.

Failures don't just affect the founders and employees — a startup's customers also pay the price when the company collapses.

Emilie Fairbanks, a lawyer who runs a small landlord-tenant law practice in Washington, D.C., used a Zirtual assistant for three years before waking up to an email that said the company was no more. Fairbanks panicked. She changed the passwords her assistant used, got a new credit card and ran damage control with clients who were used to emailing her assistant directly — and now were seeing their emails bounce back. It was disruptive, and Fairbanks worried it made her look unprofessional.

“It really has made me less willing to use other startup services,” she said.

Still, for entrepreneurs, failure is nearly a Silicon Valley rite of passage.

“The cost of failure has gone down pretty dramatically ... and that's a good thing in some respects, but that's also a bad thing,” said Harvard Business School professor and startup expert Shikhar Ghosh. “It creates a certain recklessness.”

Brisbane-based digital publishing company Mode Media, which was valued at \$1 billion and rumored to be on the verge of an initial public offering a few years ago, became another Silicon Valley casualty last month. Mode struck advertising deals between bloggers and third-party companies, posting ads on the blogs and doling out cash to the bloggers. When Mode shut down, many of those bloggers claimed they were owed thousands of dollars.

“I’ll be honest, I cried,” parenting blogger Jeanine Macintosh, of Toronto, wrote in an email. She says Mode owes her almost \$1,300 — a chunk of cash that could feed her large family for three weeks. “I just had baby number seven ... and count on every cent I do make from my blog.”

Sometimes the money runs out for employees, too. In a scathing blog post in August about an anonymous startup later revealed as WrkRiot, former employee Penny Kim described waiting for paychecks that never came as the company’s funds dried up and the founder made empty promises.

It’s not an uncommon complaint in Silicon Valley. Founders frequently put off paying employees as they wait out their next round of funding, even though the practice is illegal, said Santa Clara-based employment attorney Sebastian Miller. And if that funding falls through, often there’s no money left to pay those back wages.

Ghosh estimates that between 70 and 75 percent of venture-backed startups don’t return the money investors put in — and of those, more than half return nothing. Venture capital database CB Insights tracked more than 1,000 startups that raised seed rounds in 2009 and 2010, and found that by the end of 2015, less than half secured a second round of funding. Just 22 percent achieved a sale or IPO, and 1 percent reached a value of \$1 billion.

Startups may fail because there’s no market for their service or product, their technology doesn’t work or because they grow too quickly or too slowly. But personality also comes into play — entrepreneurs tend to have an appetite for risk, an elevated level of self-confidence and a tendency toward aggression, Freeman said. Those qualities can be effective in business, but they also can make a founder unwilling to compromise or listen to his or her board — factors that can lead to a company’s implosion.

Those personality traits also may be what keep some bruised and battered entrepreneurs coming back for more. After Zirtual crashed, Donovan considered jobs at large corporations. But in the end she signed on as chief operating officer at Roam, a startup that rents international co-living spaces.

“At the end of the day,” she said, “I’d much rather do something that’s a little high risk and really, really love what I’m doing.”

Tags: **Startups, Technology**

Marisa Kendall, business reporter, San Jose Mercury News, for her Wordpress profile. (Michael Malone/Bay Area News Group)

**Marisa Kendall** Marisa Kendall is a technology reporter for the Bay Area News Group, where she covers venture capital and startups. She has previously written about Silicon Valley court cases for The Recorder, and served as a crime reporter for The News-Press in Southwest Florida.

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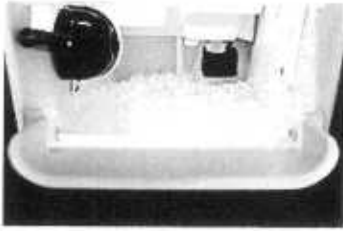
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## MORE IN BUSINESS

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August 09, 2017, 1:48 pm

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### Google's fired engineer gives first explanation of his inflammatory sexist memo

August 09, 2017, 1:34 pm

James Damore says he has been shamed by upper management for his views.

James Damore says he has been shamed by upper management for his views.



## Chinese firm to test driverless cars at Concord Naval Weapons Station

August 09, 2017, 10:23 am

Baidu joins Honda, EasyMile and Mercedes-Benz which have tested autonomous vehicles at GoMentum Station.

Baidu joins Honda, EasyMile and Mercedes-Benz which have tested autonomous vehicles at GoMentum Station.

## Airlines flee as Venezuela crumbles

August 09, 2017, 9:35 am

United Airlines, Avianca and Delta Air Lines have either stopped flying to Venezuela or said they would leave the country, while three others canceled flights on specific days as the nation descends into chaos.

United Airlines, Avianca and Delta Air Lines have either stopped flying to Venezuela or said they would leave the country, while three others canceled flights on specific days as the nation descends into chaos.

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## **Exhibit B**



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## WrkRiot: Rite Of Passage Or Federal Offense?

By Casey O'Neill and Hanley Chew

Law360, New York (June 16, 2017, 4:58 PM EDT) -- On June 7, the U.S. Department of Justice arrested Isaac Choi, the founder and former chief executive of the Silicon Valley startup, WrkRiot, on wire fraud charges.[1]

WrkRiot was a seed capital-backed firm based in Santa Clara, California, with approximately 25 employees. The company offered a web-based job search tool that sought to improve the online experience of candidates, recruiters and hiring managers, and in turn, their success rate. Choi hired personnel with recruiting industry and data science expertise to support the product.

The U.S. Attorney's Office for the Northern District of California and the Washington, D.C.-based Criminal Fraud Section of the DOJ contend that Choi misrepresented to WrkRiot employees and advisers that (a) he had received a degree from New York University; (b) he had worked at JP Morgan; (c) he personally had invested certain levels of capital; and (d) the company was capitalized adequately, with sufficient funds to operate at a loss and still make payroll — a claim Choi allegedly supported with fabricated wire transfer receipts which were sent to employees.

Although the indictment refers to conversations with external investors, those conversations did not generate venture investments. Rather, to support its allegations of a scheme to defraud, the government's indictment focuses on the recruitment and employment of, and the small sums of capital loaned and invested by, internal WrkRiot personnel. In that way, the government linked the allegedly false statements with the financial victims of the deception, as required by law.[2]

The facts of Choi are not particularly complex, and are far from groundbreaking. The indictment contains a handful of wire fraud counts for conduct that, if proven, amounts to simple deception at a small Silicon Valley company. As one commentator has noted, much of the conduct is par for the course in the Valley. For employees seeking to earn their stripes and fortune at a startup, experiences similar to those at WrkRiot are practically a "rite of passage."

A rite of passage indeed. And therein lies the novelty, and the importance, of this case from the perspective of a Bay Area criminal defense practitioner or a Silicon Valley entrepreneur. Choi has lessons to teach about the evolving landscape of criminal investigation and prosecution in the startup environment.

First, the matter came to light in August 2016 when WrkRiot's former head of marketing, who filed a state agency wage complaint and later was terminated, used the blog "Startup Grind" to publicize her experience at the company. The blog post described conversations with Choi about a fictitious marketing budget, missed payroll, cashier's checks in lieu of paystubs, false wire transfer confirmations, and internal dysfunction. The story gained traction, and ultimately The New York Times, Forbes and other mainstream outlets picked it up. The attention garnered by this story was so significant that two DOJ components eventually brought charges.

One of the two is an "away team" of financial crime prosecutors from the Fraud Section in



Casey O'Neill



Hanley Chew

Washington, D.C. Since this is not a case where the local U.S. Attorney's Office needs additional resources or expertise from the Fraud Section, it can be inferred that the August 2016 public commentary and news articles caused the Fraud Section to open its own matter. On WrkRiot's Facebook page, Choi rebutted his former marketing officer's blog post as the rantings of a disgruntled employee. While he was doing so, however, the media coverage attracted government scrutiny on the other side of the country, spurring the investigation and subsequent prosecution. The Choi indictment demonstrates the importance of addressing whistleblower complaints and employee dissent internally. Startups lacking sufficient infrastructure to do so, or those exhibiting a cavalier attitude toward such dissent, risk the prospect of internal strife attracting unwanted government attention.

Second, the Choi indictment can be viewed as a shot across the bow for early stage Silicon Valley startups. Most of the allegations and surrounding press criticize conduct that, while perhaps distasteful — e.g., liberties taken with a founder's LinkedIn profile, unsupported statements to recruits about capital prospects, and internal disorganization — does not rise to the level of chargeable federal criminal conduct. Silicon Valley was built on posturing, excessive optimism, and incubator chaos. Hacker News and Startup Grinder posts responding to the marketing officer's post paint WrkRiot as a colorful, but still typical, example of Silicon Valley antics.[3] In the government's view, however, industry norms were not sufficiently mitigating to foreclose charges, at least not where there was evidence of fabricated payroll materials.

Third, WrkRiot suggests the internal affairs of a Valley startup are no longer beyond reproach, if they ever were. Traditionally, federal fraud prosecution in the technology industry has targeted harm done to parties external to a company. For instance, public company securities and accounting fraud cases primarily vindicate external shareholders and investors.[4] In private company cases, the government has focused on high-dollar misstatements to venture capital, private equity or other arm's-length investors.[5]

Federal indictments targeting Valley startups are rare. Rarer still are indictments which vindicate only internal stakeholders at those startups. The posture of victims and the harm they suffer are key considerations for the government in evaluating whether to bring charges, and Choi is unusual because the matter seeks solely to redress harm done to company employees and advisers, and not to any external investors or counterparties. Anecdotal evidence suggests startups routinely recruit and retain talent, as Choi did here, with impressive and yet unsupportable statements about capital prospects and exit opportunities. This occurs all the more frequently where the employees are offered equity or options as part of their compensation package. It is no great leap from the allegations in Choi to a securities or wire fraud charge premised on the "foolish optimism" of statements in a conventional Valley recruiting process.[6]

If the allegations in Choi are proven, at sentencing, the government may ask San Jose's Judge Edward Davila to consider employees' opportunity cost, namely, alternative career opportunities foregone. But that harm is speculative and not readily quantifiable within a sentencing guidelines loss calculation. The calculation may include funds Choi borrowed from employees if his deception proximately caused a loss of principal, but that amount appears to be at most \$65,000, a modest sum.[7] Even assuming some cognizable loss based on vested compensation canceled and employee equity squandered, the available information suggests that the loss amount will not exceed a few hundred thousand dollars. This conservative loss figure, coupled with the inward-looking loss causation theory, further sets this case apart and invites discussion of the DOJ's focus on the Peninsula.

Ultimately, the government's success if Choi is litigated, and the length of any resulting sentence, will depend in part on whether a jury and judge accept the notion that Choi's conduct amounts to something more than conventional Silicon Valley antics, that is, this was more than an unfortunate rite of passage for WrkRiot employees. Regardless of the result, the Choi indictment demonstrates that on suitable facts, the DOJ will delve into the internal affairs of a startup despite only modest losses. Founders and their counsel should keep WrkRiot in mind, balancing zeal for product and capital and the need to survive, with the need for both investor-facing and internal restraint.

---

*Casey O'Neill and Hanley Chew are of counsel to Fenwick & West LLP in San Francisco and Mountain*

*View, California, respectively. Both are former federal prosecutors with the U.S. Attorney's Office for the Northern District of California. O'Neill previously served as a federal prosecutor with the U.S. Department of Justice, Criminal Division, Fraud Section, Securities & Financial Fraud Unit.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

[1] United States v. Choi, 17-CR-308-EJD (N.D. Cal.) (indictment filed June 1, 2017).

[2] See United States v. Lew, 875 F.2d 219, 221 (9th Cir. 1989) (financial victim must be the person deceived).

[3] See Katie Benner, A Silicon Valley Dream Collapses in Allegations of Fraud, The N.Y. Times, Aug. 31, 2016.

[4] See, e.g., United States v. Ruehle (In re Broadcom Corp. Options Backdating) (C.D. Cal. 2008).

[5] See, e.g., In re Theranos Inc. Investig. (N.D. Cal. 2016) (bioscience-related statements to external investors); In re Hampton Creek Inc. Investig. (N.D. Cal. 2016) (inventory-related accounting practices affecting external investors); United States v. Mills (Motionloft, Inc.) (N.D. Cal. 2014) (acquisition-related statements to external investors); United States v. Robb (Junglegames.com) (N.D. Cal. 2001) (revenue-related statements to external investors).

[6] Cf. Pompliano v. Snap Inc., No. 17-CV-3664-DMG (C.D. Cal. 2017) (alleging that hiring personnel misrepresented metrics concerning company's user base and growth during recruiting process).

[7] See Julie Bort, A Startup Burned Through \$700,000 . . . , Business Insider, Aug. 30, 2016.

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# **Exhibit C**



CR 17 00308 SVK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE UNITED STATES OF AMERICA FILED

vs.

ISAAC CHOI

JUN 01 2017

SUSAN Y. SOONG  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

INDICTMENT

COUNTS 1-5:

18 U.S.C. § 1343 – Wire Fraud

A true bill.

*Ch Ochoa*

Foreperson

Filed in open court this  
A.D. 2017

1<sup>st</sup> day of June  
*[Signature]*

United States Magistrate Judge

Bail. \$ No Bail Arrest Warrant

*1e*

SEALED BY ORDER  
OF COURT

FILED

JUN 01 2017

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

1 BRIAN J. STRETCH (CABN 163973)  
2 United States Attorney

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

EJD

11 **CR 17 00308**

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ISAAC CHOI,  
16 a/k/a Yi Suk Choi,  
17 a/k/a Yisuk Choi,  
18 a/k/a Yi Suk Chae,  
19 a/k/a Isaac Chae,

20 Defendant.

) No. )  
) )  
) VIOLATIONS: ) **SVK**  
) 18 U.S.C. § 1343 – Wire Fraud; 18 U.S.C.  
) § 981(a)(1)(C) and 28 U.S.C. § 2461(c) – Forfeiture  
) )  
) SAN JOSE VENUE )  
) )  
) (UNDER SEAL) )

21 INDICTMENT

22 The Grand Jury Charges that, at all relevant times:

23 1. ForOne Corporation d/b/a JobSonic d/b/a WrkRiot (“WrkRiot”) was a Northern  
24 California-based start-up technology company founded in or around December 2015 and January 2016.  
25 WrkRiot’s business purportedly focused on developing an online job search platform. WrkRiot had an  
26 office in Santa Clara, California, and employed individuals to build its software program and manage its  
27 various operations and marketing.

28 2. ISAAC CHOI a/k/a Yi Suk Choi a/k/a Yisuk Choi a/k/a Yi Suk Chae a/k/a Isaac Chae  
(hereinafter “CHOI”) was the founder and Chief Executive Officer (“CEO”) of WrkRiot. CHOI was

1 responsible for strategic and employment decisions at WrkRiot. CHOI was significantly involved in  
2 recruiting software engineers, marketing directors, and other employees to work for WrkRiot.

3 3. During late 2015 and 2016, CHOI repeatedly led efforts to raise as much as \$15 million  
4 in capital funding for WrkRiot from various investors and other persons in the Northern District of  
5 California area and elsewhere, including (but not limited to) various venture capital investment firms in  
6 or around California's San Francisco Bay Area.

7 THE SCHEME TO DEFRAUD

8 A. Overview and Purpose of the Scheme

9 4. From at least in or around November 2015 and continuing through at least in or around  
10 September 2016, defendant CHOI devised, intended to devise, and executed a scheme to (a) recruit  
11 various WrkRiot employees and to obtain money from WrkRiot employees under false pretenses and  
12 promises regarding the financial support for and stability of WrkRiot; and (b) maintain the employment  
13 of various WrkRiot employees by falsely claiming to have paid their earned salaries, bonuses, and other  
14 compensation.

15 B. Manner and Means of the Scheme

16 5. Beginning in or around December 2015, while speaking with investors and employees of  
17 WrkRiot, CHOI falsely claimed that he had access to significant personal wealth and was investing  
18 significant amounts of that money into the company. For example, CHOI falsely told others that he  
19 personally invested a significant amount of money into WrkRiot to allow the company to run without  
20 generating revenue while the company's product was being developed. CHOI claimed to others that his  
21 purported funding was significant enough to allow WrkRiot to operate for a substantial period of time  
22 without generating revenue.

23 6. After certain WrkRiot employees came to learn that WrkRiot's bank accounts did not  
24 contain the capital that CHOI claimed to have invested, CHOI stated that a significant portion of the  
25 money he pledged to invest was tied up overseas and elsewhere, which was why WrkRiot did not have  
26 immediate access to the money. CHOI made ongoing claims that he had sources of funding that would  
27 provide support for WrkRiot; none of these funding sources appeared.

1 7. On multiple occasions, CHOI induced WrkRiot employees to loan money to or invest in  
2 WrkRiot by falsely claiming that the money he intended to invest would shortly be forthcoming. In  
3 total, CHOI collected hundreds of thousands of dollars from his own employees through false  
4 representations about the company's financial health and his own ability to financially support WrkRiot  
5 in its early stages of development.

6 8. While recruiting and fundraising, CHOI misled individuals about his educational and  
7 work background in order to create the impression of having a high degree of business acumen. For  
8 example, CHOI falsely claimed that he attended and received a degree from New York University and  
9 had worked as an analyst at a major financial institution in New York.

10 9. Starting in or around July 2016, CHOI failed to pay various WrkRiot employees their  
11 promised salaries and other compensation. When employees questioned why they had not been paid,  
12 CHOI offered various false explanations about the delay.

13 10. In or around late July 2016, after failing to pay WrkRiot employees, CHOI asked  
14 WrkRiot employees for their banking information—including account and routing numbers—and  
15 claimed that he would send the missed wages directly via wire transfer to each employee's bank  
16 account. By approximately the beginning of August 2016, CHOI still had not paid WrkRiot's  
17 employees.

18 11. On or about August 4, 2016, CHOI, from WrkRiot's office in Santa Clara, sent a series of  
19 individualized emails to WrkRiot's employees. In each email, CHOI told the recipient employee that  
20 his or her payment was forthcoming via electronic funds transfer. Additionally, CHOI sent an  
21 attachment purporting to be a confirmation of a wire transfer from a U.S.-based bank to the bank  
22 account of the recipient WrkRiot employee. In reality, CHOI sent forged confirmations of wire transfers  
23 in order to induce WrkRiot employees to continue working for the company without being paid.

24 12. After sending various WrkRiot employees these emails with fictitious confirmations of  
25 wire transfers, CHOI walked around the WrkRiot office and asked employees to confirm that they had  
26 received the emails containing the purported confirmations.

27 CHARGES

28 COUNTS ONE THROUGH FIVE: (18 U.S.C. § 1343 – Wire Fraud)

1 13. Paragraphs 1 through 12 of this Indictment are hereby incorporated as if fully set forth  
 2 herein.

3 14. From at least in or around November 2015, the exact date being unknown to the Grand  
 4 Jury, through in or around September 2016, in the Northern District of California and elsewhere,  
 5 defendant ISAAC CHOI a/k/a Yi Suk Choi a/k/a Yisuk Choi a/k/a Yi Suk Chae a/k/a Isaac Chae, did  
 6 knowingly and willfully, and with the intent to defraud, having devised and intending to devise a scheme  
 7 and artifice to defraud, and to obtain money and property by means of materially false and fraudulent  
 8 pretenses, representations, and promises, knowing such pretenses, representations, and promises were  
 9 false and fraudulent when made, transmit and cause to be transmitted, by means of wire communications  
 10 in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purposes of  
 11 executing such scheme and artifice.

12 15. On or about the dates specified as to each count below,

13 ISAAC CHOI,  
 14 a/k/a Yi Suk Choi,  
 15 a/k/a Yisuk Choi,  
 a/k/a Yi Suk Chae,  
 a/k/a Isaac Chae,

16 in the Northern District of California and elsewhere, for the purpose of executing the aforesaid scheme  
 17 and artifice to defraud, did knowingly transmit and cause to be transmitted, by means of wire  
 18 communications in interstate and foreign commerce, certain writings, signs, signals, pictures and  
 19 sounds, as more particularly described below:

Count	Approximate Date	Description of Interstate Wire Communication
1	August 4, 2016	Email from CHOI (via computer servers outside the State of California) to WrkRiot Employee 1 (located within the State of California) with a falsified wire confirmation form attached.
2	August 4, 2016	Email from CHOI (via computer servers outside the State of California) to WrkRiot Employee 2 (located within the State of California) with a falsified wire confirmation form attached.
3	August 4, 2016	Email from CHOI (via computer servers outside the State of California) to WrkRiot Employee 3 (located within the State of California) with a falsified wire confirmation form attached.

1  
2 4 August 4, 2016 Email from CHOI (via computer servers outside the State of California) to WrkRiot Employee 4 (located within the State of California) with a falsified wire confirmation form attached.

3  
4 5 August 4, 2016 Email from CHOI (via computer servers outside the State of California) to WrkRiot Employee 5 (located within the State of California) with a falsified wire confirmation form attached.

6  
7 All in violation of Title 18, United States Code, Section 1343.

8 FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461(c))

9 16. For the purpose of alleging forfeiture to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) , and Title 28, United States Code, Section 2461(c), the United States hereby realleges and incorporates the factual allegations contained in paragraphs 1 through 15, to include Counts 1 through 5 of this Indictment.

10  
11  
12  
13 17. Upon conviction of the offenses alleged in Counts 1 through 5, namely, wire fraud, in violation of Title 18, United States Code, Section 1343, the defendant,

14  
15 ISAAC CHOI,  
16 a/k/a Yi Suk Choi,  
17 a/k/a Yisuk Choi,  
18 a/k/a Yi Suk Chae,  
19 a/k/a Isaac Chae,

20 shall forfeit to the United States any and all property, real or personal, which constitutes or is derived from proceeds traceable to the aforementioned offenses, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), and any property traceable to such property, including but not limited to a sum of money equal to the value of any property, real or personal, which constitutes or is derived from proceeds traceable to violations of Title 18, United States Code, Section 1343.

21  
22  
23  
24 18. If any of the property described above, as a result of any act or omission of the defendant, ISAAC CHOI:

- 25  
26 a. cannot be located upon the exercise of due diligence;  
27 b. has been transferred or sold to, or deposited with, a third party;  
28 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 that cannot be divided without difficulty;

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

DATED:

*June 1, 2017*

A TRUE BILL:

*Ch Oaks*  
FOREPERSON

BRIAN J. STRETCH  
United States Attorney

*[Signature]*  
JEFF NEDROW  
Chief, San Jose Branch Office

(Approved as to form: *[Signature]*  
AUSA Schenk

ANDREW WEISSMANN  
Chief Fraud Section, Criminal Division  
U.S. Department of Justice

*[Signature]*  
Cory E. Jacobs  
Trial Attorney  
Fraud Section, Criminal Division  
U.S. Department of Justice

L. Rush Atkinson  
Trial Attorney  
Fraud Section, Criminal Division  
U.S. Department of Justice

AO 257 (Rev. 6/78)

SEALED BY ORDER OF COURT

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY:  COMPLAINT  INFORMATION  INDICTMENT  SUPERSEDING

OFFENSE CHARGED

18 U.S.C. § 1343 (Wire Fraud); 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c) (Forfeiture)

Petty  Minor  Misdemeanor  Felony

PENALTY: 20 years imprisonment \$250,000 fine, or twice the gross gain or gross loss from the offense 3 years supervised release \$100 special assessment per count

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION

DEFENDANT - U.S.

Isaac Choi

DISTRICT COURT NUMBER

CR 17 00308

FILED JUN 01 2017

SUSAN Y. SOONG CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:

U.S. ATTORNEY  DEFENSE

SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person Furnishing Information on this form BRIAN J. STRETCH

U.S. Attorney  Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) JEFF SCHENK/CORY JACOBS

DEFENDANT

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding

- 1)  If not detained give date any prior summons was served on above charges
2)  Is a Fugitive
3)  Is on Bail or Release from (show District)

SVK

IS IN CUSTODY

- 4)  On this charge
5)  On another conviction }  Federal  State
6)  Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed?  Yes  No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS  NO PROCESS\*  WARRANT

Bail Amount: No Bail

If Summons, complete following:

Arraignment  Initial Appearance

Defendant Address:

\* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: Before Judge:

Comments:



No. S241812

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**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

---

BRETT VORIS,  
*Plaintiff and Appellant,*

v.

GREG LAMPERT,  
*Defendant and Respondent.*

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After a Decision by the Court of Appeal,  
Second Appellate District, Division Three, Case No. B265747

Appeal from the Superior Court for the County of Los Angeles, Case  
No. BC408562, The Honorable Michael L. Stern Presiding

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**[PROPOSED] ORDER GRANTING REQUEST FOR  
JUDICIAL NOTICE**

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Good cause appearing, it is HEREBY ORDERED that Plaintiff and Appellant Brett Voris's Request for Judicial Notice is granted. The Court will take judicial notice of Exhibits A through C contained in Voris's request.

Date: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice

## CERTIFICATE OF SERVICE

I, Regina Yeh, do hereby affirm I am employed in the County of Los Angeles, State of California. I am over 18 years of age and not a party to this action. My business address is Anderson Yeh PC, 401 Wilshire Blvd, 12<sup>th</sup> Floor, Santa Monica, California 90401. I am a member of the bar of this Court.

On August 10, 2017, I served the foregoing document:

**APPELLANT’S REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF OPENING BRIEF; MEMORANDUM OF  
POINTS AND AUTHORITIES; DECLARATION OF REGINA  
YEH, ESQ.; PROPOSED ORDER**

To the following persons by placing a true and correct copy of the document enclosed in sealed envelopes addressed as follows:

Robert Cooper Wilson, Elser, Moskowitz, Edelman & Dicker LLP 555 S. Flower Street, Suite 2900 Los Angeles, CA 90071	Counsel for Defendant and Respondent
--	---

Court of Appeal of California  
Second Appellate District  
Division Three  
Ronald Reagan State Building  
300 S. Spring Street  
2<sup>nd</sup> Floor, North Tower  
Los Angeles, CA 90013

Hon. Michael L. Stern  
Los Angeles Superior Court  
Department 62  
111 N. Hill Street  
Los Angeles, CA 90011

I deposited the sealed envelopes with the United States Postal Service, with postage thereon fully prepaid. I am a resident of the county where the mailing occurred. The envelope was placed in the mail at Santa Monica, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 10, 2017, in Santa Monica, California.

By:  \_\_\_\_\_  
Regina Yeh