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San Francisco Man Indicted For Selling Fake Derek Jeter and Nomar Garciaparra Baseball Bats on eBay, Harrassing E-Mails

The United States Attorney's Office for the Northern District of California announced that Herbert John Derungs, 31, of San Francisco, California, was indicted today by a federal grand jury in San Jose on charges of selling baseball bats in online auctions claiming, falsely, that the bats belonged to Derek Jeter and Nomar Garciaparra. Mr. Derungs was indicted on three\counts of fraud by wire, three counts of mail fraud, and one count of utilizing a telecommunications device in interstate communications with intent to threaten and harass in violation of Title 18, United States Code, Sections 1343 and 1341 and Title 47, United States Code, Section 223(a)(1)(C). According to the indictment, the criminal complaint, and an affidavit of a U.S. Postal Inspector, Mr. Derungs is alleged to have engaged in a scheme to defraud which includes the following allegations: Mr. Derungs ordered and obtained baseball bats in the names of Major League Baseball players Derek Jeter of the New York Yankees and Nomar Garciaparra of the Boston Red Sox from the Original Maple Bat Company in Ottawa, Ontario. Mr. Derungs offered Derek Jeter and Nomar Garciaparra game used bats for sale through the online auction company known as eBay, Inc., which is located in San Jose. Mr. Derungs falsely represented to potential buyers that the Derek Jeter and Nomar Garciaparra baseball bats were authentic and used during baseball games. Mr. Derungs is alleged to have sold the bats to buyers, but failed to disclose to the buyers the material facts that (a) the bats were not authentic, game used baseball bats of Major League Baseball players Derek Jeter and Nomar Garciaparra, and (b) Mr. Derungs had ordered and obtained the bats from The Original Maple Bat Company. Mr. Derungs sold the bats to a number of buyers, and in one instance sold 15 Derek Jeter and Nomar Garciaparra bats to a victim in exchange for $6,000 and Mark McGwire and Rogers Hornsby bats. Also according to the indictment, the criminal complaint, and the affidavit of a U.S. Postal Inspector, Mr. Derungs is alleged to have sent a series of harassing e-mails to an employee of the San Francisco Giants. According to court documents, Mr. Derungs applied for a job with the San Francisco Giants to give tours of Pacific Bell Park. After a San Francisco Giants employee sent Mr. Derungs a letter

indicating that someone else had been hired for that job, Mr. Derungs sent numerous abusive and insulting e-mails to that employee. This culminated in an e-mail wherein Mr. Derungs indicated that the employee is → as good as dead.→

The maximum statutory penalty for each count in violation of 18 U.S.C. §§ 1343 and 1341 is five years in prison and a fine of $250,000, plus restitution. The maximum statutory penalty for the count in violation of 47 U.S.C. § 223(a)(1)(C) is two years in prison and a fine of $250,000, plus restitution if appropriate. However, any sentence following conviction would be dictated by the Federal Sentencing Guidelines, which take into account a number of factors, and would be imposed in the discretion of the Court. An indictment simply contains allegations against an individual and, as with all defendants, Mr. Derungs must be presumed innocent unless and until convicted. Mr. Derungs was previously arrested on December 12, 2001, on a criminal complaint which was filed under seal on December 6, 2001. The criminal complaint and an affidavit of a U.S. Postal Inspector in support of the application for the criminal complaint were unsealed after Mr. Derungs was arrested and appeared before a U.S. Magistrate Judge in San Jose. Mr. Derungs was ordered to be kept in custody pending a detention hearing, which is scheduled for December 19, 2001, at 2:00 p.m. before U.S. Magistrate Richard Seeborg in San Jose. The United States is seeking detention pending trial without bail based on danger to the community. The prosecution is the result of an investigation by U.S. Postal Inspectors and agents of the Federal Bureau of Investigation. The investigation was overseen by the Computer Hacking and Intellectual Property (CHIP) Unit of the U.S. Attorney's Office. Ross W. Nadel, the Chief of the CHIP Unit, is the Assistant U.S. Attorney who is prosecuting the case with the assistance of Lauri Gomez. All press inquiries to the U.S. Attorney's Office should be directed to Assistant U.S. Attorney Ross W. Nadel, at (408) 535-5035 or Assistant U.S. Attorney Matthew J. Jacobs at (415) 436-7181.

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