

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

TRAVIS E. CORRELL, individually and doing
business as Horizon Establishment; et al.

Defendants,

and

BANNER SHIELD, LLC; et al.

Defendants Solely for Purposes of
Equitable Relief.

Lead Case

Case No.: 4:05-CV-472 RAS

**RECEIVER'S MOTION FOR
APPROVAL OF SETTLEMENT
AND PAYMENT OF FUNDS
SUBJECT TO FORFEITURE**

Consolidated Case

Case No.:4:07-cv-346 RAS

**RECEIVER'S MOTION FOR APPROVAL OF SETTLEMENT
AND PAYMENT OF FUNDS SUBJECT TO FORFEITURE**

S. Gregory Hays, the court-appointed Receiver in the above-styled action, submits this Motion for Approval of Settlement and Payment of Funds Subject to Forfeiture (“Motion for Approval”). In support of this Motion, the Receiver submits the following:

1. By Order dated December 7, 2005, S. Gregory Hays was appointed as the Receiver for Travis E. Correll, individually and d/b/a Horizon Establishment, Gregory W. Thompson, Harry Robinson “Robbie” Gowdey, individually and d/b/a Atlas and Jericho Productions, Dwight J. Johnson, Neulan D. Midkiff, Travis E. Correll & Company, Inc., The Net Worth Group, Inc., TNT Office Supply, Inc., Joshua Tree Group, LLC, and over certain assets of relief Defendants Banner Shield, LLC, Hospitality Management Group, Inc., Creative Wealth Ventures, LLC, and JTA Enterprises. (Order Appointing Receiver, ECF No. 7 (the “Receivership Order”).) After the SEC filed suit against Global Finance & Investments, Inc., *et*

al. in September 2007, the two cases were consolidated for administrative purposes; however, the actual receiverships have been administered separately.

2. In the course of the Receiver's investigation into sources of recovery for the Correll Receivership Estate, the Receiver discovered that Robert W. Dufresne had received a total of \$620,000.00 from Horizon Establishment and Eagles Nest Outreach ("Eagles Nest"), two entities associated with and/or controlled by Defendants in this action (collectively, Horizon Establishment and Eagles Nest are referred to herein as the "Receiver Defendants"). Specifically, Dufresne received \$350,000.00 from Horizon Establishment on October 15, 2004 and \$270,000.00 from Eagles Nest between March 31, 2005 and November 7, 2005.

3. Over several months, counsel for the Receiver negotiated the full recovery of the \$620,000.00 Dufresne received from the Defendants. Accordingly, by letters dated October 26, 2006 and March 6, 2007, Dufresne's counsel sent the Receiver checks in the amount of \$350,000.00 and \$270,000.00, which funds Dufresne had deposited into his counsel's trust account for the purpose of repaying the Correll receivership.

4. In or around September 2010, Jared F. Kary, Special Agent for the Federal Bureau of Investigation, notified the Receiver that Dufresne was under investigation.

5. On February 18, 2011, Dufresne pled guilty to one count each of mail fraud and money laundering before the United States District Court for the District of Minnesota (the "Minnesota District Court"). (*See* ECF Nos. 1 & 4, D. Minn., Case No. 0:11-cr-00046-MJD-1.)

6. On May 2, 2011, the United States filed a Motion for Preliminary Order of Forfeiture in the Minnesota District Court (ECF No. 15), which is attached hereto as Exhibit A. In sum, the monies paid to the Receiver were obtained by Dufresne as a result of the fraudulent scheme that is the subject of Dufresne's guilty plea. Agent Kary submitted an affidavit in

support of the United States' motion, which is attached hereto as Exhibit B. The affidavit traces the source of funds paid by Dufresne to the Correll receivership to three investors who provided funds "to Dufresne for the purpose of investing in real estate." (*See* Aff. ¶ 7.)

7. According to the affidavit, the first payment by Dufresne in the amount of \$350,000.00 is traceable to a wire transfer from investor DK's account to an account in the name of a Dufresne-controlled entity. (*See id.*) Ultimately, Dufresne used the funds provided by DK to purchase and obtain a first position on a construction loan, and later used the proceeds from the mortgagor's payoff to repay the Receiver. (*See id.*) Alternatively, the United States believes that the only other potential source of funds that could have covered Dufresne's \$350,000.00 payment to the Correll receivership is a check from investor AH in the amount of \$256,000.00, which was deposited into a Dufresne-controlled account the same date that a check payable to the law firm representing Dufresne, to repay the Receiver, cleared that account. (*See id.*)

8. The affidavit states that the second payment by Dufresne in the amount of \$270,000.00 is traceable to a \$282,772.00 check from investor TS to an account in the name of R William LLC, a Dufresne-controlled entity. (*See* Aff. ¶ 8.) Seventeen days later, Dufresne wrote a check from this account to the law firm representing him to repay the Correll receivership. (*See id.*)

9. The Minnesota District Court granted the United States' motion on May 18, 2011, and ordered that, among other things, the \$620,000.00 paid by Dufresne to the Receiver is property forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461(c). (*See* Order at 2, ECF No. 19, attached hereto as Exhibit C.)

10. After the Preliminary Order of Forfeiture was entered by the Minnesota District Court, the Receiver entered into negotiations with the United States in an attempt to reduce the

amount the Receiver must forfeit to the United States. (*See, e.g.*, June 20, 2012 letter from James Alexander to Natalie Sacha and July 26, 2012 letter from Sacha to Alexander, attached hereto as Exhibit D.)

11. Accordingly, the Receiver and the Government agreed to enter into a settlement that would be beneficial and fair to both the victims of the Correll Receivership and the victims of Dufresne's fraud. Pursuant to the terms of the Release and Settlement Agreement ("Settlement Agreement") executed by the Receiver and the United States, which is attached hereto as Exhibit E, the Receiver has agreed to pay to the United States \$368,070.05.

12. Consequently, the Receiver respectfully requests that this Court enter an Order granting this Motion for Approval and authorize the Receiver to pay the United States \$368,070.05. For the Court's convenience, a Proposed Order is attached as Exhibit F.

Respectfully submitted, this 14th day of August, 2012.

/s/ J. David Dantzler, Jr.
J. DAVID DANTZLER, JR.
Georgia Bar No. 205125
TROUTMAN SANDERS LLP
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/s/ Clark B. Will
CLARK B. WILL, P.C.
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Bryan Tower
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Attorneys for S. Gregory Hays, Receiver

CERTIFICATE OF SERVICE

I do hereby certify that on August 14, 2012, I electronically filed the foregoing document with the Clerk of this Court using the CM/ECF system, which will automatically send notification of such filing to the following:

Timothy S. McCole
Scott R. Baker

I further certify that on August 14, 2012, the foregoing has been served to the following non-CM/ECF participants by depositing a copy in the United States Mail with adequate postage thereon and addressed as follows:

William Clark
JTA Enterprises
16 Beech Place
Denville, NJ 07834

James S. Alexander
Assistant U.S. Attorney
U.S. Department of Justice
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55414

/s/ J. David Dantzler, Jr.

J. DAVID DANTZLER, JR.
Georgia Bar No. 205125

CERTIFICATE OF CONFERENCE

In accordance with Paragraph 17 of the Order Appointing Receiver, the Receiver consulted with counsel for the Securities and Exchange Commission prior to filing this Motion. The Securities and Exchange Commission does not oppose this Motion.

/s/ J. David Dantzler, Jr.

J. DAVID DANTZLER, JR.
Ga. State Bar No. 205125

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 11-46 (MJD)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	MOTION FOR PRELIMINARY
)	ORDER OF FORFEITURE
ROBERT W. DUFRESNE, III,)	
)	
Defendant.)	

The United States of America, by and through B. Todd Jones, United States Attorney for the District of Minnesota, and James S. Alexander, Assistant United States Attorney, respectfully moves this Court, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2, for a Preliminary Order of Forfeiture in the above-captioned case and in support thereof represents to the Court the following:

1. On February 7, 2011, a Felony Information was filed against Defendant Robert W. Dufresne III.

2. The Forfeiture Allegations of the Information sought the forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), in conjunction with 28 U.S.C. § 2461(c), of any property, real or personal, which constitutes or is derived from proceeds traceable to the mail fraud charged in Count 1 of the Information. The Forfeiture Allegations also sought the forfeiture, pursuant to 18 U.S.C. § 982(a)(1) of all property, real or personal, involved in the money laundering violation charged in Count 2 of the Information, and all property traceable to such property.

3. On February 18, 2011, the United States and the defendant entered into a Plea Agreement, whereby the defendant agreed to plead guilty to Counts 1 and 2 of the Information. The defendant agreed that from in or about October 2005 through in or about October 2008, he devised and participated in a scheme and artifice to defraud by:

(i) Seeking investors to supply funds purportedly for the purchase and sale of residential properties in Minnesota and other states, with the expectation that proceeds from the sale would be distributed to investors;

(ii) Instead of using the investors funds substantially as promised, spending the funds for other purposes that were not approved by investors, including using the funds for the defendant's personal benefit; and

(iii) Using funds from later investors to pay off earlier investments instead of for the purpose of properties or as otherwise promised.

Plea Agreement And Sentencing Stipulations ¶2a. The defendant agreed that the investors did not know and would not have approved of the use of their funds in the manner described above. *Id.* ¶2b. The defendant agreed that the total loss to investors was not less than \$5,241,749.15. *Id.* ¶2e.

4. As a part of his Plea Agreement, the defendant agreed to forfeit to the United States of America any property, real or

personal, which constitutes or is derived from proceeds traceable to the mail fraud charged in Count 1 of the Information, and all property, real or personal, involved in or traceable to the money laundering violation charged in Count 2 of the Information. The defendant agreed that the property to be forfeited includes, but is not limited to, the following property:

- a. \$3,900 in cash seized from his residence;
- b. \$350,000 in funds paid on or about September 18, 2006 to the court-appointed Receiver in connection with *Securities and Exchange Commission v. Travis E. Correll et al.*, Civil No. 4:05-cv-00472 (RAS) (Eastern District of Texas); and
- c. \$270,000 in funds paid on or about January 8, 2007 to the court-appointed Receiver in connection with *Securities and Exchange Commission v. Travis E. Correll et al.*, Civil No. 4:05-cv-00472 (RAS) (Eastern District of Texas).

Plea Agreement And Sentencing Stipulations ¶12. The defendant agreed that this property is forfeitable because it constitutes or is traceable to the proceeds of the mail fraud charged in Count 1 of the Information. The defendant agreed that this Court may enter a preliminary order of forfeiture for this property. *Id.* The United States specifically reserved its right to seek the forfeiture of additional property from the defendant, including a

money judgment forfeiture and the forfeiture of substitute assets.

Id. ¶16.

5. Rule 32.2(b) of the Federal Rules of Criminal Procedure provides that:

(b) Entering a Preliminary Order of Forfeiture.

(1) Forfeiture Phase of the Trial.

(A) Forfeiture Determinations. As soon as practical . . . after a plea of guilty or nolo contendere is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense.

. . .

(B) Evidence and Hearing. The court's determination may be based on evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable. If the forfeiture is contested, on either party's request the court must conduct a hearing after the verdict or finding of guilty.

(2) Preliminary Order.

(A) Contents of a Specific Order. If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture . . . directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the

order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

6. Based upon the Defendant's guilty plea, and the additional evidence set forth below, the United States requests that a personal money judgment forfeiture be entered against Defendant Robert Dufresne in the amount of \$5,241,749.15. The government also seeks an order forfeiting specific property traceable to the fraud, and other property which constitutes substitute assets.

ARGUMENT

I. A Personal Money Judgment Forfeiture Should Be Entered As To Defendant Robert Dufresne.

Federal law authorizes the forfeiture of "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense." 18 U.S.C. § 981(a)(1)(C). Mail fraud, in turn, is included within the definition of "specified unlawful activity." See 18 U.S.C. § 1956(c)(7)(A) (incorporating the offenses listed in section 1961(1)).¹

Criminal forfeiture is a part of sentencing, it is not a

¹Section 981(a)(1)(C) is a civil forfeiture provision. However, under 28 U.S.C. § 2461(c), the government may seek the criminal forfeiture of property in any instance where civil forfeiture is authorized. *United States v. Loren Jennings*, 487 F.3d 564, 585 (8th Cir. 2007).

substantive element of the offense. *Libretti v. United States*, 516 U.S. 29, 38-39 (1995). Since criminal forfeiture is an aspect of sentencing, the preponderance of the evidence standard of proof applies. *United States v. Phie Van Nguyen*, 602 F.3d 886, 903 (8th Cir. 2010); *United States v. Huber*, 462 F.3d 945, 949 (8th Cir. 2006) (rejecting argument that defendant was entitled to have the jury decide forfeiture beyond a reasonable doubt); *United States v. Bieri*, 21 F.3d 819, 822 (8th Cir. 1994) (preponderance of the evidence standard applies to criminal forfeiture).

Third party claims to property, if any, are addressed in an ancillary proceeding, and are not at issue at this stage of the proceeding. See 21 U.S.C. § 853(n), incorporated by 18 U.S.C. § 982(b)(1) and by 28 U.S.C. § 2461(c); Fed. R. Crim. P. 32.2(c). The preliminary order of forfeiture is entered "without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c)." Fed. R. Crim. P. 32.2(b)(2)(A).

Forfeiture under either a fraud or money laundering theory may involve the forfeiture of specific property, and may also include a money judgment. *Huber*, 404 F.3d at 1056 ("Forfeiture under section 982(a)(1) in a money-laundering case allows the government to obtain a money judgment representing the value of all property 'involved in' the offense, including 'the money or other property

being laundered.'"); *Jennings*, 487 F.3d at 586 (affirming money judgment for amount of proceeds defendant derived from "honest services" mail fraud scheme); *United States v. Moyer*, 313 F.3d 1082, 1083 (8th Cir. 2002) (upholding money laundering forfeiture of amount equal to the amount defendant embezzled from pension plan and then used to pay personal creditors in violation of section 1957); *United States v. Vampire Nation*, 451 F.3d 189, 202 (3d Cir. 2006) (as an *in personam* order, a forfeiture order may take the form of a judgment for a sum of money equal to the proceeds the defendant obtained from the offense, even if he no longer has those proceeds, or any other assets, at the time he is sentenced).

A money judgment forfeiture should be entered against defendant Robert Dufresne in the amount of \$5,241,749.15. Defendant Dufresne pled guilty to wire fraud, and agreed in his plea agreement that total loss to investors as a result of the scheme to defraud was not less than \$5,241,749.15.

Criminal proceeds means property that a defendant obtained as a result of the commission of the offense. As described by the Eighth Circuit:

We think the better view is the one that defines proceeds as the gross receipts of the illegal activity. As noted above, the RICO Act calls for the forfeiture of "any proceeds which the person obtained, directly or indirectly, from the racketeering activity." . . . The legislative history of the 1984 amendments to RICO state that "the term 'proceeds' has been used in lieu of the term 'profits' in order to alleviate the unreasonable burden on the government of proving net profits. It should not be necessary for the prosecutor to prove what

the defendant's overhead expenses were. . . .Reading the word 'proceeds' broadly has the benefit of punishing . . . all convicted criminals who receive income from illegal activity, and not merely those whose criminal activity turns a profit.

United States v. Simmons, 154 F.3d 765, 770-71 (8th Cir. 1998); *United States v. Whatley*, 133 F.3d 601, 606 (8th Cir. 1998) ("the district court found that the defendants' business was a conspiracy to commit wire fraud, and we are not inclined to allow the defendants a profit for defrauding people or a credit for money spent perpetuating a fraud."); *Huber*, 404 F.3d at 1058 (defendant not entitled to offset expenses, "even if the expenses were legitimately incurred by Huber, they would not reduce the amount subject to forfeiture"); *United States v. Hively*, 437 F.3d 752, 763 (8th Cir. 2006); 18 U.S.C. § 981(a)(2)(A).

Based upon well-established Eighth Circuit precedent, the government could seek a personal money judgment forfeiture against the defendant in the amount of the gross proceeds of the scheme. However, given the large amount of the money judgment being sought, and since the defendant will also be subject to criminal restitution,² the government will limit its request for a personal

²Criminal forfeiture and restitution are separate aspects of criminal sentencing which are both mandatory. See e.g. *United States v. Taylor*, 582 F.3d 558 (5th Cir. 2009). Moreover, forfeiture and restitution serve different purposes. See e.g. *United States v. Nicolo*, 597 F.Supp.2d 342, 347 (W.D.N.Y. 2009) (Restitution is remedial in nature, and its goal is to restore the victim's loss, whereas forfeiture is punitive and "seeks to disgorge any profits the offender realized from his illegal activity . . . restitution is calculated based on the victim's

money judgment forfeiture to \$5,241,749.15.

II. Forfeiture Of Property Traceable To Fraud Proceeds

This motion also seeks the forfeiture of assets which constitute, or are directly traceable to, fraud proceeds received by the Defendant. As noted above, Federal law authorizes the forfeiture of any property that constitutes, or is traceable to, fraud proceeds. 18 U.S.C. § 981(a)(1)(C), in conjunction with 28 U.S.C. § 2461(c).

Defendant Dufresne specifically agreed to the forfeiture of the following assets to the United States:

- a. \$3,900 in cash seized from his residence;
- b. \$350,000 in funds paid on or about September 18, 2006 to the court-appointed Receiver in connection with *Securities and Exchange Commission v. Travis E. Correll et al.*, Civil No. 4:05-cv-00472 (RAS) (Eastern District of Texas); and
- c. \$270,000 in funds paid on or about January 8, 2007 to the court-appointed Receiver in connection with *Securities and Exchange Commission v. Travis E. Correll et al.*, Civil No. 4:05-cv-00472 (RAS) (Eastern District of Texas).

Plea Agreement And Sentencing Stipulations ¶12.

loss, while forfeiture is based on the offender's gain.") *citing United States v. Weber*, 536 F.3d 584, 603 (7th Cir. 2008).

This motion also seeks the forfeiture of several additional assets which the FBI has determined were purchased with fraud proceeds.

2006 Polaris, Sportsman 800, serial number 4XAMH76A66A650609

The FBI has determined that on or about October 18, 2005, Defendant Dufresne issued check #5050, in the amount of \$10,314.68, payable to Garceau's Hardware & Power, which was used to purchase an ATV. See Affidavit of Jared F. Kary ("Kary Aff.") ¶¶11-12. This ATV was purchased with fraud proceeds.

9' Pool Table Whole Log

Defendant Dufresne purchased a pool table with fraud proceeds. On or about July 31, 2007, the Defendant purchased a Stilly 9' whole log pool table, along with various accessories and wall decorations, from Peters Billiards. Kary Aff. ¶13. The purchase price was \$13,995.70. The purchase was charged to a credit card, and the Defendant later paid the credit card bill with fraud proceeds. *Id.*

2008 Jeep Cherokee, Vehicle Identification Number (VIN 1J8HR58278C216037, MN License Plate 335-ACN

Defendant also used fraud proceeds to pay the loan that was used to purchase a 2008 Jeep Cherokee. Kary Aff. ¶14. The FBI's investigation as determined that \$6,600 of the payments made on the loan of this vehicle were funded with fraud proceeds. *Id.*

III. Forfeiture Of Property As Substitute Assets.

This motion also seeks an order forfeiting certain property as substitute assets pursuant to 21 U.S.C. § 853(p). The forfeiture of substitute assets is being sought in lieu of fraud proceeds that have been dissipated and cannot be located for forfeiture.

The applicable statute in these proceedings, 21 U.S.C. § 853(p), provides as follows:

(p) Forfeiture of substitute property

(1) In general.

Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant-

- (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.

(2) Substitute property

In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of

paragraph (1), as applicable.³

The forfeiture of substitute property is governed by Rule 32.2(e) of the Federal Rules of Criminal Procedure:

(e) Subsequently Located Property; Substitute Property.

(1) In General. On the government's motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that:

(A) is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered; or

(B) is substitute property that qualifies for forfeiture under an applicable statute.

Rule 32.2(e) (1) (B) provides that the court may enter an order of forfeiture or amend an existing order forfeiture at any time to order the forfeiture of substitute assets. Thus the order may be entered after a preliminary order of forfeiture is entered but before it is final as to the defendant; after the order is final as to the defendant and while it is on appeal; and after an appeal is final. See *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (court retains authority to order forfeiture of substitute assets after appeal is filed); *United States v. Voigt*, 89 F.3d 1050 (3d Cir. 1996) (following *Hurley*; court may amend order of forfeiture at any time to include substitute assets).

³21 U.S.C. § 853(n) is part of the drug forfeiture statute. However, the provisions of section 853, including the substitute property provision, is applicable here because it is incorporated by reference by 28 U.S.C. § 2461(c).

The court may order the forfeiture of substitute assets to satisfy a money judgment where the money judgment represents the value of the proceeds of the offense, or property involved in the commission of the offense. See *United States v. Candelaria-Silva*, 166 F.3d 19 (1st Cir. 1999) (once the Government has obtained a money judgment, it may forfeit defendant's real property in partial satisfaction of that judgment); *United States v. Baker*, 227 F.3d 955 (7th Cir. 2000) (same); *United States v. Numisgroup Intl. Corp*, 169 F. Supp.2d 133 (E.D.N.Y. 2001) (Rule 32.2(e) authorizes forfeiture of substitute assets to satisfy a money judgment, including a judgment based on the value of the missing proceeds and the value of the missing facilitating property).

The FBI has undertaken extensive efforts to locate assets owned or controlled by Defendant Dufresne. Kary Aff. ¶15. The government has obtained extensive bank records and other financial records relating to Dufresne and his businesses. Additional assets may be identified for forfeiture. However, despite the government's efforts, the substantial majority of the proceeds of Defendant Dufresne's fraud cannot be located. Most of the proceeds have been spent, or have been dissipated or transferred. *Id.*

The United States has, however, identified certain assets that are owned by Defendant Dufresne, which are subject to forfeiture as substitute assets pursuant to 21 U.S.C. § 853(p) and Fed. R. Crim. P. 32.2(e). These assets, which are summarized in the Affidavit of

Jared Kary at paragraph 16, include the following assets which have been observed at Dufresne's residence:

- a. a 2007 Chevrolet Corvette VIN 1G1YY36U375130075, MN License Plate SPICYL;
- b. a 2007 Ford Mustang VIN 1ZVHT88S075222319, MN License Plate GONBAD;
- c. a 2010 Harley Davidson VIN 1HD1KH412AB626394, MN License Plate 68459MG;
- d. a 2010 GMC Sierra 1500 Denali VIN 3GTRKXE28AG250510, MN License Plate DUNDEAL; and
- e. During the search of Goodview Avenue S. Cottage Grove, Minnesota 55016 a yellow rolling tool chest, Snap-On brand was observed in the garage of the residence. These tools are believed to belong to Defendant Robert Dufresne.

Kary Aff. ¶16. As explained in the Affidavit of Jared Kary, these assets belong to Defendant Dufresne, or to business entities that he controls.

As explained above, any third party that has a claim to an asset subject to criminal forfeiture is entitled to assert that claim in the ancillary proceeding mandated by 21 U.S.C. § 853(n) and Fed. R. Crim. P. 32.2(c). Therefore, any third party with an interest in the property that the government seeks to criminally forfeit in this action will have an opportunity to assert their

claim to the property.

IV. Motion To Allow Entry Onto Real Property To Effect The Seizure Of Property Subject To Forfeiture.

There is reason to believe that most of the specific items of property that the government seeks to forfeit in this motion is currently located at a residence located on Goodview Avenue South, in Cottage Grove, Minnesota.⁴ Specifically, most of the items of property were observed at this residence during a search warrant that was conducted on June 23, 2010. Kary Aff. ¶9. More recently, on February 17, 2011, investigators learned that Defendant Dufresne and/or Lisa Dufresne were attempting to dispose of property purchased with investor money. Kary Aff. ¶19. The property was listed for sale on Craigslist, and the estate sale was scheduled to take place on Saturday February 19, 2011, at the residence located on Goodview Avenue, Cottage Grove, Minnesota. *Id.*

The government seeks authority from this Court to enter the real property located on Goodview Avenue, Cottage Grove, Minnesota to effectuate the seizure of property. Upon entry of an order of forfeiture, "the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions

⁴The government has already seized the \$3,900 that the Defendant agreed to forfeit in his Plea Agreement. In addition, \$620,000 in funds is under the control of the court-appointed receiver connection with *Securities and Exchange Commission v. Travis E. Correll et al.*, Civil No. 4:05-cv-00472 (RAS) (Eastern District of Texas). The U.S. Attorney's Office has been in contact with counsel for the Receiver, and will be working with the Receiver to obtain the release of the \$620,000 in funds.

as the court shall deem proper." In addition, following the entry of a forfeiture order, the court may "upon application of the United States, enter such appropriate restraining orders of injunctions, require the execution of satisfactory performance bonds, appoint receivers . . . or take any other action to protect the interest of the United States in the property ordered forfeited." 21 U.S.C. § 853(g), incorporated by 28 U.S.C. § 2461(c).

Based upon the above, there is reason to believe that one or more vehicles and other items subject to forfeiture may be located on the property and premises located Goodview Avenue, Cottage Grove, Minnesota. It is therefore requested that this court include in the preliminary order of forfeiture authorization for the U.S. Marshals Service and the FBI to enter on the property for the limited purpose of allowing government agents to search for and seize any of the items subject to forfeiture that are located on the property.

WHEREFORE, the United States moves this Court for a Preliminary Order of Forfeiture forfeiting the above-described property to the United States.

Respectfully submitted,

Dated: May 2, 2011

B. TODD JONES
United States Attorney

s/ James S. Alexander

BY: JAMES S. ALEXANDER
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EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 11-46 (MJD)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	AFFIDAVIT OF
)	JARED F. KARY
ROBERT W. DUFRESNE, III,)	
)	
Defendant.)	

Introduction

Your affiant, Jared F. Kary, being first duly sworn under oath, states the following:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed for over 3 years. As a Special Agent with the FBI, my duties and responsibilities have included conducting criminal investigations of individuals and business entities for possible violations of Federal laws, particularly those laws found in Title 18, United States Code. I have been assigned to the FBI's Minneapolis, Minnesota field office, during which time I have been assigned to a White Collar Crime squad with responsibility for investigating violations such as Bank Fraud, Wire Fraud, Mail Fraud, Securities/Investment Fraud, Money Laundering, and Public Corruption.

I have learned the facts in this case by my personal investigation, which has included personally interviewing witnesses, reviewing documents obtained from financial institutions

and other entities and by communicating with other investigators about matters they have learned.

2. I am the case agent assigned to the investigation of Robert William Dufresne III.

3. On February 18, 2011 Robert William Dufresne III pled guilty to violations of Title 18, United States Code, Sections 1341 and 1957.

4. This affidavit is submitted in support of a motion for a preliminary order of forfeiture for the following assets which constitute or are traceable to proceeds of fraud:

- a. Funds in the amount of \$620,000 paid to the court-appointed receiver in connection with *Securities and Exchange Commission v. Travis E. Correll et al.*, Civil No. 4:05-cv-00472 (RAS) (Eastern District of Texas);
- b. 2006 Polaris, Sportsman 800, serial number 4XAMH76A66A650609;
- c. 9' Pool Table Whole Log; and
- d. 2008 Jeep Cherokee, Vehicle Identification Number (VIN 1J8HR58278C216037, MN License Plate 335-ACN.

5. This affidavit is also submitted in support of a preliminary order for the following assets, as substitute assets pursuant to 21 U.S.C. § 853(p):

- a. 2007 Chevrolet Corvette VIN 1G1YY36U375130075, MN License Plate SPICYL;
- b. 2007 Ford Mustang VIN 1ZVHT88S075222319, MN License Plate GONBAD;
- c. 2010 Harley Davidson VIN 1HD1KH412AB626394, MN License Plate 68459MG;
- d. 2010 GMC Sierra 1500 Denali VIN 3GTRKXE28AG250510, MN License Plate DUNDEAL;
- e. Snap-On tools set with tools.

Funds Repaid To The Receiver For Travis E. Correll With Funds Fraudulently Obtained From Investors.

6. Defendant Dufresne paid a total of \$620,000 to the court-appointed Receiver in connection with a civil action commenced by the U.S. Securities and Exchange Commission. *Securities and Exchange Commission v. Travis E. Correll et al.*, Civil No. 4:05-cv-00472 (RAS) (Eastern District of Texas). These payments were funded with the proceeds of fraud.

7. On September 18, 2006, an R William LLC check, in the amount of \$350,000, and payable to Milner and Finn, cleared University Bank account, #2123110. This was a repayment by Dufresne of \$350,000 to the court-appointed Receiver in connection with *Securities and Exchange Commission v. Travis E. Correll*. Milner and Finn is a law firm that was retained by Dufresne.

Milner and Finn paid the funds received from Dufresne to the court-appointed Receiver for Travis Correll. The account balance in the R William LLC bank account on September 18, 2006 was \$625,710.78, which consisted of funds which investors DK and AH provided to Dufresne for the purposes of investing in real estate. Dufresne obtained funds from investors DK and AH through the following transactions:

- On December 20, 2005, Investor DK entered into a Secured Revolving Credit Note with Dufresne and Estate Acquisition Services (E.A.S). Based on the Credit Note and promises made by Dufresne, Investor DK believed that his invested funds would be used for the business purposes surrounding acquiring estate property (probate real estate) for resale (as stated on the note).
- On December 30, 2005, Investor DK wire transferred \$350,000 from his Wings Financial Federal Credit Union, account xxxx0103 to Dufresne's Estate Acquisition Service LLC located at University Bank, account xxx0103. The account balance of the E.A.S. Bank account prior to the Investor DK's deposit was \$64.74.
- On January 6, 2006, Dufresne wire transferred \$326,782.00 from the Estate Acquisition Service LLC, University Bank, account xxx0103 to Hospitality Solution's US Bank account, xxxx7615, controlled by Randy Teinert.
- On January 9, 2006, an official check for \$326,782.00 was issued from the Hospitality Solution's US Bank account xxxx7615, payable to E.A.S., and subsequently deposited in Assured Financial's bank account at M&I Bank, account xxxx6317.
- The check issued to Assured Financial gave R William LLC, the first position on a construction loan for address XXXX Goodview Ave S. Cottage Grove, Minnesota. R William

LLC is a Dufresne controlled LLC. XXXX Goodview Ave S. Cottage Grove, Minnesota is a property adjacent to Dufresne's residence located at XXXX Goodview Ave S. Cottage Grove, Minnesota.

- Dufresne's neighbor (building at XXXX Goodview Ave S.) was in a dispute with the construction company over increased costs related to the construction. With Assured Financial's Assignment of Mortgage to R William LLC, Dufresne attempted to foreclose on his neighbor's property. Litigation between the neighbor and the construction company prevented the foreclosure.
- The neighbor won the litigation and was able to purchase the property "as is." On August 30, 2006, through Columbia Title, the neighbor closed on the property XXXX Goodview Ave S. Cottage Grove, Minnesota. From the closing Dufresne received a check for \$354,530.96, representing the mortgage payoff. On September 6, 2006, the \$354,530.96 check was deposited in R William LLC, University Bank account xxxx3110.
- The bank records for the R William account reflect that the only other funds available that could cover the \$350,000 payment to Milner and Finn were from Investor AH. Investor AH believed his funds were being used for business purposes surrounding acquiring probate or non-probate real estate property for resale. Investor AH gave Dufresne a check for \$256,000 for business purposes surrounding acquiring probate or non-probate real estate property for resale. On September 18, 2006, Dufresne deposited Investor AH's \$256,000 check into the R William LLC account at University Bank, account xxxx3110. September 18, 2006, is the same day that the R William LLC \$350,000 check to Milner and Finn cleared the R William LLC bank account.

8. On or about January 8, 2007, Defendant Dufresne paid \$270,000 to the court-appointed Receiver in connection with

Securities and Exchange Commission v. Travis E. Correll. This payment was funded with funds fraudulently obtained from investor TS:

- On December 22, 2006, Investor TS entered into a Revolving Credit Note with Robert Dufresne and Capture LLC, a Dufresne company. Based on the Revolving Credit Note and promises made by Dufresne, Investor TS believed that funds provided would be used for the business purposes surrounding real estate projects as stated on the note.
- On December 22, 2006, Dufresne deposited a check for \$282,772.00 from the Investor TS's bank account at Bremer Bank, account xxxx7200, to Dufresne's R William LLC, University Bank, account xxx3110. The account balance of the R William LLC bank account prior to the investor deposit was \$44,180.77 from Investor JG.
- On January 8, 2007, using the Investor TS's funds, Dufresne wrote a check from the R William LLC, University Bank, account xxx3110, to Milner & Finn for the purposes of paying back the Travis Correll receivership.

Additional Asset Purchased With Fraud Proceeds

9. On June 23, 2010, during a federal search warrant of XXXX Goodview Avenue S. Cottage Grove, Minnesota 55016, the following items were located at Robert Dufresne's residence:

- a. 2006 Polaris, Sportsman 800, serial number 4XAMH76A66A650609;
- b. 9' Pool Table Whole Log;
- c. 2008 Jeep Cherokee, Vehicle Identification Number (VIN) 1J8HR58278C216037, MN License Plate 335-ACN;
- d. 2007 Chevrolet Corvette VIN 1G1YY36U375130075, MN License Plate SPICYL;

- e. 2007 Ford Mustang VIN 1ZVHT88S075222319, MN License Plate GONBAD;
- f. 2010 Harley Davidson VIN 1HD1KH412AB626394, MN License Plate 68459MG;
- g. 2010 GMC Sierra 1500 Denali VIN 3GTRKXE28AG250510 MN License Plate DUNDEAL; and
- h. Snap-On tools set with tools.

10. Based on additional investigation, it has been determined that some of the assets identified above were purchased with proceeds of Defendant Dufresne's fraud, as follows.

A. Purchase of ATV

11. The 2006 Polaris, Sportsman 800 ATV, identified above was purchased with fraud proceeds. On or about October 11, 2005, an investor provided Dufresne with \$350,000.00 which Dufresne deposited into Estate Acquisition Service (EAS) LLC account xxxxx0103, a Robert Dufresne controlled account at University Bank. The investor believed that Dufresne would use the \$350,000 to buy real property. The EAS account had a zero balance prior to the \$350,000 deposit.

12. On or about October 18, 2005, Dufresne issued a \$10,314.68 check, #5050, to Garceau's Hardware & Power from the EAS account at University National Bank to purchase an ATV.

B. Purchase Of Pool Table

13. Defendant Dufresne also purchased a pool table with fraud proceeds. On or about July 31, 2007, a Stilly 9' Whole Log Table, along with various accessories and wall decorations, was purchased from Peters Billiards for \$13,995.70. The purchase was paid for using an American Express credit card ending in xxxxx1012 with the last name Dufresne. On August 30, 2007, an investor provided Dufresne with two checks, payable to R William LLC, totaling \$65,000 for a real estate investment. Dufresne transferred \$23,300 from the R William LLC account to Capture LLC. On September 7, 2007, a \$17,651.23 electronic payment was made from the Capture LLC account to American Express, for payment on credit card ending in xxxxx1012.

C. 2008 Jeep Cherokee, Vehicle Identification Number (VIN) 1J8HR58278C216037, MN License Plate 335-ACN.

14. A 2008 Jeep Cherokee, Vehicle Identification Number (VIN) 1J8HR58278C216037, MN License Plate 335-ACN, is a vehicle that has been used by Lisa Dufresne and has been stored at XXXX Goodview Avenue S. Cottage Grove, Minnesota 55016. Proceeds of fraud were used to pay on the loan on the vehicle. The FBI's investigation has determined that \$6,600 of the payments towards this vehicle were funded with fraud proceeds, since they were funded with money that Defendant Dufresne received from investors.

Forfeiture of Substitute Assets

15. The United States has undertaken extensive efforts to locate assets relating to Defendant Robert Dufresne. The government has obtained extensive bank and other financial records relating to Dufresne and his businesses, and has conducted an asset investigation using numerous databases and other investigative resources. Additional assets may be located for forfeiture. However, despite the extensive efforts of the United States, and despite the substantial assets that have been seized or restrained, the substantial majority of the proceeds of Defendant Dufresne's fraud cannot be located. Most of the proceeds have been spent, or have been dissipated or transferred.

16. The FBI's investigation has identified certain assets belonging to Defendant Dufresne which are subject to forfeiture as substitute assets, in lieu of the fraud proceeds which have been spent or transferred.

- a. a 2007 Chevrolet Corvette VIN 1G1YY36U375130075, MN License Plate SPICYL was located at Dufresne's residence and registered to New Roads, LLC. Documents obtained at the search of XXXX Goodview Avenue S. Cottage Grove, Minnesota 55016 indicate that Robert Dufresne is the proprietor of New Roads, LLC using an address of 8362

Tamarack Village 119-221 Woodbury, MN, an address used by Dufresne to incorporate multiple LLCs. 8362 Tamarack Village 119-221 Woodbury, MN is a UPS Store where Dufresne had a mailbox. Dufresne also uses the Tamarack Village address as his address on his driver's license;

- b. a 2007 Ford Mustang VIN 1ZVHT88S075222319, MN License Plate GONBAD, was located at Dufresne's residence and registered to Cruzin LLC, a corporation that is owned and controlled by Robert Dufresne. Cruzin LLC uses a register address of 2994 Rice Street, St. Paul, MN, 55113, an address leased by Dufresne to conduct business operations for IREA;
- c. a 2010 Harley Davidson VIN 1HD1KH412AB626394, MN License Plate 68459MG was located at Dufresne's residence and registered to B is Free LLC, a Dufresne registered LLC, which used the address 2994 Rice Street, St. Paul, MN, 55113;
- d. a 2010 GMC Sierra 1500 Denali VIN 3GTRKXE28AG250510, MN License Plate DUNDEAL was located at Dufresne's residence and registered to Robert Dufresne using an address of 8362 Tamarack Village 119-221 Woodbury, MN;

- e. During the search of XXXX Goodview Avenue S. Cottage Grove, Minnesota 55016 a yellow rolling tool chest, Snap-On brand was observed in the garage of the residence. These tools are believed to belong to Defendant Robert Dufresne.

17. On August 22, 2010, investigators learned that Dufresne and/or Lisa Dufresne were attempting to dispose of property purchased with investor money. The property was listed for sale on Craigslist. The following are the description as they were listed on Craigslist:

- a. ATV Polaris 800 4X4 Lmted. Edition with - \$7000 (St Paul); and
- b. 9' Pool Table Whole Log - \$6,000 (St Paul).

18. On September 1, 2010 the United States Attorney's office notified Dufresne's attorney, Tim Webb, about the listing on Craigslist, and requested that Dufresne not dispose of any assets that were purchased from the proceeds of the fraud.

19. On February 17, 2011 investigators learned that Dufresne and/or Lisa Dufresne were again attempting to dispose of property purchased with investor money. The property was listed for sale on Craigslist and the estate sale was to take place on Saturday February 19, 2011, at XXXX Goodview Avenue, Cottage Grove, Minnesota.

20. Since the date of the Defendant's guilty plea, the United States has attempted to schedule an interview with the Defendant to determine the location of assets, and to identify additional assets. The Defendant has not cooperated with these requests to be interviewed.

21. Based upon the guilty plea of Defendant Robert Dufresne, and the additional information provided above, the assets identified above are subject to forfeiture to the United States, as proceeds of fraud, or as substitute assets for fraud proceeds that have been dissipated or are otherwise unavailable for forfeiture.

FURTHER YOUR AFFIANT SAYETH NOT.

s/ Jared Kary
JARED KARY, Special Agent
Federal Bureau of Investigation

SUBSCRIBED and SWORN TO before me

this 29th day of April, 2011

s/ Cindy A. Loken

NOTARY PUBLIC

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 11-46 (MJD)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	PRELIMINARY ORDER
)	OF FORFEITURE
ROBERT W. DUFRESNE, III,)	
)	
Defendant.)	

Based on the United States' motion for a Preliminary Order of Forfeiture; on the Plea Agreement entered into between the United States and Defendant Robert W. Dufresne, III; on the Court having found that certain property is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and 21 U.S.C. § 853(p); and on the Court's determination that, based on the Plea Agreement entered into by the defendant and based on all of the files and records of this proceeding, the government has established the requisite nexus between such property and the offense to which the defendant has pled guilty,

IT IS HEREBY ORDERED that:

1. The motion of the United States for a preliminary order of forfeiture is GRANTED;
2. Defendant Robert Dufresne is ordered to pay a personal money judgment forfeiture in the amount of \$5,241,749.15 as a result of his conviction of Count 1 of the criminal Information. The defendant shall be given a credit against this money judgment amount for the net forfeited value of each specific asset finally

forfeited in this action;

3. The following property is forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), in conjunction with 28 U.S.C. § 2461(c):

- a. Funds in the amount of \$620,000 paid to the court-appointed receiver in connection with *Securities and Exchange Commission v. Travis E. Correll et al.*, Civil No. 4:05-cv-00472 (RAS) (Eastern District of Texas);
- b. 2006 Polaris, Sportsman 800, serial number 4XAMH76A66A650609;
- c. 9' Pool Table Whole Log; and
- d. 2008 Jeep Cherokee, Vehicle Identification Number (VIN 1J8HR58278C216037, MN License Plate 335-ACN;

4. The following property is forfeited to the United States as substitute property pursuant to 18 U.S.C. § 981(a)(1)(C), 21 U.S.C. § 853(p) and 28 U.S.C. § 2461(c):

- a. 2007 Chevrolet Corvette VIN 1G1YY36U375130075, MN License Plate SPICYL;
- b. 2007 Ford Mustang VIN 1ZVHT88S075222319, MN License Plate GONBAD;
- c. 2010 Harley Davidson VIN 1HD1KH412AB626394, MN License Plate 68459MG;
- d. 2010 GMC Sierra 1500 Denali VIN 3GTRKXE28AG250510, MN License Plate DUNDEAL;

e. Snap-On tools set with tools;

5. The United States Marshals Service, the Federal Bureau of Investigation, or their authorized designees may seize the foregoing property and maintain custody and control of the property pending the entry of a Final Order of Forfeiture;

6. The United States Marshals Service, the Federal Bureau of Investigation, and/or their authorized designees are authorized to enter onto the premises known 7025 Goodview Avenue South, Cottage Grove, Minnesota 55016, including any garage, shed or other structure located on the property, on one or more occasions, as is necessary in order to seize the above-described property. In making this seizure, the United States Marshals Service, the Federal Bureau of Investigation, and/or their authorized designees may, if necessary, use reasonable force to allow entry into any garage, shed or other structure located on the property of sufficient size to contain an automobile.

7. The United States shall, pursuant to 21 U.S.C. § 853(n)(1), as incorporated by 28 U.S.C. § 2461(c), publish and give notice of this Order and its intent to dispose of the foregoing property in such manner as the Attorney General may direct;

8. Pursuant to Fed. R. Crim. P. 32.2(b)(4)(A) and (B), this Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing, and shall be made a part of the sentence and included in the judgment;

9. Following the Court's disposition of all petitions filed pursuant to 21 U.S.C. § 853(n)(2) or, if no petitions are filed, following the expiration of the time period specified within which to file such petitions, the United States shall have clear title to the foregoing property and may warrant good title to any subsequent purchaser or transferee; and

10. This Court shall retain jurisdiction to enforce this Order, and to amend it as necessary pursuant to Fed. R. Crim. P. 32.2(e).

Dated: May 18, 2011

s/Michael J. Davis
Michael J. Davis, Chief Judge
United States District Court

EXHIBIT D



*United States Attorney
District of Minnesota*

600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
www.usdoj.gov/usao/mn

(612) 664-5600

June 20, 2012

Natalie D. Sacha
Troutman Sanders LLP
600 Peachtree Street NE, Suite 5200
Atlanta, GA 30308-2216

Re: United States v. Robert W. Dufresne, III
Criminal No. 11-46 (MJD)

Dear Ms. Sacha:

I am writing to follow up on resolving the issue concerning the \$620,000 that Robert W. Dufresne paid back to the Travis Correll Receivership. As you know, Chief Judge Michael Davis has entered a Preliminary Order of Forfeiture forfeiting these funds to the United States, based on the fact that Robert Dufresne repaid the \$620,000 with fraud proceeds. Claims by third parties to assets are typically resolved in the ancillary proceeding of the criminal case, which is governed by 21 U.S.C. § 853(n) and Fed. R. Crim. P. 32.2(c). However, we recognize that this case presents an atypical situation, where two governmental agencies, the SEC and the Department of Justice, are both seeking to maximize the recovery for victims of different fraud schemes. It is my understanding that the SEC Receiver previously offered to return \$200,000 of the \$620,000 that Dufresne paid back to the Travis Correll Receivership.

The U.S. Attorney's Office for the District of Minnesota would propose a settlement which seeks to treat the victims of the two fraud schemes in a substantially similar manner. I understand that the overall victim loss for the Travis Correll victims is approximately \$68,000,000, and that the expected return to these victims is approximately 8%. We would propose that the Travis Correll Receiver agree to return sufficient funds such that the victims of Robert Dufresne fraud will also receive approximately 8% in criminal restitution. Chief Judge Michael Davis ordered \$6,599,217 in restitution in connection with the sentencing of Robert Dufresne. Despite the efforts of the FBI and other agencies, only approximately \$60,000 has been recovered to date for

the Dufresne victims. Although we will continue with our efforts to recover assets, we are not aware of significant additional assets to be recovered at this point in time.

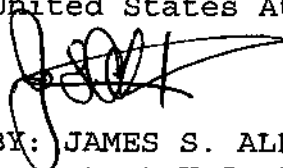
In light of the above, we would propose that the SEC Receiver agree to return \$470,000 to be forfeited in connection with the Dufresne criminal prosecution. This would result in the Dufresne victims receiving compensation on a par with the compensation that the victims of the Travis Correll fraud scheme will receive. The \$470,000 is calculated to be 8% of the total Dufresne restitution amount of \$6,599,217, less the \$60,000 representing the value of the assets that have been recovered in connection with the Dufresne case. (The total amount recovered is actually somewhat less than \$60,000, since costs and expenses relating to the sale of several assets have not been deducted from this figure).

As we have discussed, it is not our goal to retain the forfeited funds for the United States. Pursuant to 28 C.F.R. Part 9, we will be seeking the approval of the Department of Justice, Asset Forfeiture and Money Laundering Section, to turn the proceeds of the forfeited assets over to the Clerk of Court to be applied to the restitution order entered at the sentencing of Robert Dufresne.

I am available to discuss the resolution of this issue at your convenience.

Very truly yours,

B. TODD JONES
United States Attorney



BY: JAMES S. ALEXANDER
Assistant U.S. Attorney
Attorney ID No. 166145
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TROUTMAN SANDERS

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July 26, 2012

VIA U.S. MAIL AND EMAIL

James S. Alexander
Assistant U.S. Attorney
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Jim.Alexander@usdoj.gov

**Re: United States v. Robert W. Dufresne, III
Criminal No. 11-46**

Dear Jim:

As you know, this firm represents S. Gregory Hays, the court-appointed receiver for Travis E. Correll (the "Receiver") in the enforcement action filed by the United States Securities and Exchange Commission ("SEC") in the Eastern District of Texas, *SEC v. Travis Correll*, Case No. 4:05-cv-472. I am writing in response to your letter of June 20, 2012 regarding the \$620,000 that Chief Judge Michael Davis of the District of Minnesota ordered the Receiver to forfeit to the United States because Robert W. Dufresne used proceeds from a fraud he orchestrated to repay the Receiver. (*See United States v. Dufresne*, Preliminary Order of Forfeiture, ECF No. 19.) Initially, the Receiver offered to return \$200,000 to the United States in an effort to resolve this matter. In your response of June 20th, you proposed that the Receiver agree to return \$470,000 to the United States. The Receiver understands that \$470,000 would represent 8% of Dufresne's total restitution judgment¹ and that the figure is based on the United States' assumption that 8% is the expected return for the victims of the Correll receivership after the Receiver makes his final distribution.

Previously, the Receiver estimated that the expected return to Correll's investors after the final distribution would be between 6.5% – 8%. As we have discussed in teleconferences and email correspondence, so far the Receiver has distributed \$3.4 million to Correll's investors,

¹ Pursuant to the initial Judgment in the Dufresne criminal proceeding, Dufresne was ordered to pay restitution in the amount of \$6,599,217. An Amended Judgment was entered on June 26, 2012, which reduced Dufresne's restitution amount to \$6,115,286.48. The Receiver understands that the United States' June 20, 2012 offer was based on the initial Dufresne restitution amount of \$6,599,217.

TROUTMAN
SANDERS

James S. Alexander
July 26, 2012
Page 2

which resulted in a 5% return of their investments. The Receiver has revised his estimate for the final distribution and he now believes that the final distribution will be approximately 2% (1.97%). Thus, the Receiver estimates that the expected return for Correll investors will be approximately 7% after the final distribution.

Given that the estimated final distribution to the Correll investors is 2% (not 3%), and that the expected return to the Correll investors is 7% (not 8%), the Receiver proposes that the Receiver and the United States Attorney's Office for the District of Minnesota agree to resolve this matter in exchange for the Receiver's return of \$368,070.05 to be forfeited in connection with the Dufresne criminal proceeding. This figure represents 7% of the Dufresne restitution amount, which was reduced to \$6,115,286.48 pursuant to an Amended Judgment, ECF No. 64, entered on June 26, 2012, less \$60,000, which is the value of other assets recovered by the government in the Dufresne action. The Receiver is hopeful that this matter can be resolved in the near future, as the Receiver believes that this offer reflects the United States' desire to treat the victims of the Dufresne and Correll fraud schemes in a substantially similar manner. If the United States is amenable to this offer, the Receiver will prepare a settlement agreement and release for your review and signature.

Please let me know if you have any questions or would like to discuss this offer further.

Sincerely,



Natalie D. Sacha

cc: B. Todd Jones, Esq., United States Attorney for the District of Minnesota
S. Gregory Hays
J. David Dantzler, Esq.

EXHIBIT E

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is dated as of August 10, 2012 by and between S. Gregory Hays, as "Receiver" of Travis E. Correll, individually and d/b/a Horizon Establishment, Gregory W. Thompson, Harry Robinson "Robbie" Gowdey, individually and d/b/a Atlas and Jericho Productions, Dwight J. Johnson, Neulan D. Midkiff, Travis E. Correll & Company, Inc., The Net Worth Group, Inc., TNT Office Supply, Inc., Joshua Tree Group, LLC, and over certain assets of relief Defendants Banner Shield, LLC, Hospitality Management Group, Inc., Creative Wealth Ventures, LLC, and JTA Enterprises (collectively "Correll") and the United States Attorney for the District of Minnesota (the "United States") (the Receiver and the United States will be referenced collectively as the "Parties").

RECITALS

WHEREAS, the Receiver was appointed by the United States District Court for the Eastern District of Texas (the "Court" in a civil enforcement action styled *Securities and Exchange Commission v. Travis E. Correll, et. al.*, Civil Action No. 4:05-cv-472-RAS (the "Enforcement Action");

WHEREAS, in the course of his investigation, the Receiver discovered that Robert W. Dufresne ("Dufresne") had received a total of \$620,000 from Horizon Establishment and Eagles Nest Outreach, two entities associated with and/or controlled by Defendants in the Enforcement Action, which funds were to be used as an investment for the purchase and subsequent resale of residential properties. The proceeds from the sales were to be distributed by Dufresne to the Receiver Defendants;

WHEREAS, through negotiations with counsel for Dufresne, the Receiver obtained a full recovery of the \$620,000 from Dufresne;

WHEREAS, on February 18, 2011, Dufresne pled guilty to one count each of mail fraud and money laundering before the United States District Court for the District of Minnesota (the "Minnesota District Court") (*see* ECF Nos. 1 & 4, D. Minn., Case No. 0:11-cr-00046-MJD-1);

WHEREAS, on May 18, 2011, the Minnesota District Court entered a Preliminary Order of Forfeiture (the "Forfeiture Order") holding that the \$620,000 Dufresne returned to the Correll Receivership Estate was forfeited to the United States because Dufresne had used funds obtained as a result of his fraudulent investment scheme to repay the Receiver;

WHEREAS, the Receiver and the United States entered into negotiations to achieve a resolution of the issues related to the Forfeiture Order that would be beneficial and fair to both the victims of the Correll Receivership and the victims of Dufresne's fraud;

WHEREAS, the payment of the sum outlined below will result in the victims of Dufresne's fraud and the victims of the Correll Receivership receiving approximately the same pro rata compensation for their losses;

WHEREAS, the Receiver and the United States now desire to resolve all matters related to the Forfeiture Order without incurring further expense and other risks of litigation; and

WHEREAS, the Receiver has determined through his investigation that the terms of the settlement and compromise set forth in this Agreement are in the best interest of the Correll Receivership Estate and, ultimately, the investors who invested in the fraudulent investment scheme that is the subject of the Enforcement Action;

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein described, and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, the parties do hereby mutually agree as follows:

ARTICLE 1 **SETTLEMENT TERMS**

1.1 **Payment.** Subject to the provisions of this Section 1.1, the Receiver shall pay the United States \$368,070.05. The Receiver's obligation to make such payment is expressly conditioned upon the entry of a final order by the Court approving the terms of this settlement and authorizing the Receiver to make the payment provided for herein. Payment shall be to the United States and delivered to the U.S. Marshals Service for the District of Minnesota within ten (10) days of the entry of a final, non-appealable order approving the terms of this agreement.

1.2 **Motion for Approval to Pay Funds Subject to Forfeiture.** The Receiver agrees to file a motion seeking the Court's approval of the settlement and compromise of the Receiver's obligations pursuant to the terms of the Forfeiture Order within seven (7) calendar days of the execution of this Agreement by both Parties.

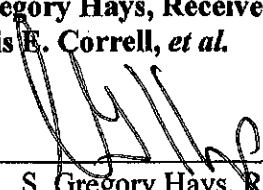
ARTICLE 2 **RELEASES**

2.1 **Release; Waiver of Claim by the Receiver.** The Receiver, on behalf of himself and his successors and assigns, as well as on behalf of the Correll Receivership Estate, hereby forever releases, discharges, and acquits the United States from any and all claims, demands, or causes of action that the Receiver may now have or which may hereafter accrue on account of, in connection with, or which in any way may grow out of the Forfeiture Order, including the Receiver's right to pursue a petition for remission from forfeiture or other relief from forfeiture pursuant to 21 U.S.C. § 853(n) and Fed. R. Crim. P. 32.2(c). The Receiver agrees to waive notice of forfeiture pursuant to Fed. R. Crim. P. 32.2(b)(6), and agrees that the Minnesota District Court may enter a final order of forfeiture as to the \$368,070.05 to be paid under the terms of this agreement. Notwithstanding the foregoing, nothing herein is intended to nor should be construed to release any other person or entity who was in any way affiliated with Correll, or who worked on or provided services in connection with Correll's Bank Deposit Program, which is at issue in the Enforcement Action.

2.2 **Release; Waiver of Claim by the United States.** The United States hereby releases, discharges, and acquits the Receiver, his employees, agents, attorneys, and assigns, as well as the Correll Receivership Estate, from any and all claims, demands, or causes of action that the United States ever had, may have, or now has arising from or related to the Forfeiture Order.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.


**S. Gregory Hays, Receiver for
Travis E. Correll, et al.**

By: 

S. Gregory Hays, Receiver

Date: 8-12-12

**B. Todd Jones
United States Attorney
District of Minnesota**

By: 

James S. Alexander
Assistant U.S. Attorney

Date: August 10, 2012

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,
vs.

TRAVIS E. CORRELL, individually and doing
business as Horizon Establishment; et al.

Defendants,
and

BANNER SHIELD, LLC; et al.

Defendants Solely for Purposes of
Equitable Relief.

Lead Case

Case No.: 4:05-CV-472 RAS

**RECEIVER'S MOTION FOR
APPROVAL OF SETTLEMENT
AND PAYMENT OF FUNDS
SUBJECT TO FORFEITURE**

Consolidated Case

Case No.:4:07-cv-346 RAS

**[PROPOSED] ORDER GRANTING RECEIVER'S MOTION FOR APPROVAL
OF SETTLEMENT AND PAYMENT OF FUNDS SUBJECT TO FORFEITURE**

The Court, having read and considered the Receiver's Motion for Approval of Settlement and Payment of Funds Subject to Forfeiture ("Motion for Approval") and the Release and Settlement Agreement ("Settlement Agreement") attached thereto, finds that:

1. The Court approves of the Release and Settlement Agreement executed by the Receiver and the United States; and
2. The Receiver is authorized to pay the United States \$368,070.05.

Accordingly, IT IS HEREBY ORDERED that the Motion for Approval is GRANTED.

SUBMITTED BY:

TROUTMAN SANDERS LLP

J. DAVID DANTZLER, JR.

Georgia Bar No. 205125

600 Peachtree Street, N.E., Suite 5200

Atlanta, GA 30308-2216

Tel: (404) 885-3000

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,
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