14419279 B: 11591 P: 2823 Total Pages: 9E
08/05/2025 02:15 PM By: BRobere Fees: $40.00
Rachelle Hobbs Recorder, Salt Lake County, Utah
Return To: MAX BARBER MSB TR
1028 S 1900 E SLC UT 84108

WHEN RECORDED, MAIL TO:
MAX BARBER MSB TR
1028 S 1900 E SLC UT 84108

4643-45 South Highland Drive
Salt Lake City Utah 84117

LIS PENDENS

NOTICE IS HEREBY GIVEN, pursuant to Utah Code § 78B-6-1303, that an action is pending in the United States Bankruptcy Court for the District of Utah, and Third Judicial District Court Salt Lake County, State of Utah, the outcome of which will affect the title to or the right of possession of the real properties described herein.

1. Claimant: Max Warren Barber

2. Defendants/Adverse Parties: HYBRID INTERNATIONAL, LLC, DAVID KNUDSON, GRAVITY CAPITAL, LLC, JAMIS MELWOOD JONSON et al

3. Court: United States Bankruptcy Court for the District of Utah Case Number: 25-21749
Third Judicial District Court Salt Lake County, State of Utah Case Number: 24-0902124 MI

4. Claimant seeks to:
(1) Void "wrongful lien." Utah Code § 38-9-102, Case 24-0902124 ; Case No. 25-21749
(2) Void illegal foreclosure sale, arising from the Breach of a Court Ordered Stipulation. Trustee Sale conducted on or about July 22, 2025,- Case No. 25-21749

Case No. 25-21749 - Violation of Automatic Stay
Max Warren Barber Bankruptcy Case No. 25-21749 - Breach of Court Ordered Stipulation

(3) declare any resulting trustee's deed void ab initio, and quiet title to the real properties described below in the name of the Claimant, merit of actions reference:

(1) *See 2:19-cv-02077-JCM-EJY ECF No.114, 114-1, 119*

(2) *See FTC vs David Knudson 2:99-cv-00579-JTG ECF No. 3 and,*

See USA vs Jamis Melwood Johnson 2:09-cr-00133-CW ECF No. 232, 523, [redacted]

5. Properties Affected: The real properties affected by this action are situated in the County of Salt Lake, State of Utah, and are described as follows:

(1) **Commonly known as: 4643-45 South Highland Drive, Holladay Utah 84117**

Tax Parcel No.: 22044790020000

Legal Description:

BEGINNING AT A POINT IN THE CENTER OF HIGHLAND DRIVE, WEST 165 FEET AND NORTH 14 DEG. 05' WEST 717.73 FEET FROM THE SOUTHWEST CORNER OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 14 DEG. 05' WEST 97.53 FEET, THENCE NORTH 89 DEG. EAST 353.9 FEET; THENCE SOUTH 14 DEG. 05' EAST 97.53 FEET; THENCE SOUTH 89 DEG. WEST 353.9 FEET TO BEGINNING. LESS AND EXCEPTING LAND CONVEYED IN THAT CERTAIN WARRANTY DEED RECORDED JULY 28, 1987 AS ENTRY NO. 4497379 IN BOOK 5945 AT PAGE 144. ALSO LESS AND EXCEPTING LAND CONVEYED TO THAT CERTAIN WARRANTY DEED RECORDED NOVEMBER 27, 1996 AS ENTRY NO. 6516309 IN BOOK 7545 AT PAGE 1178.

(2) **Commonly known as: 1028 South 1900 East, Salt Lake City, Utah 84108**

Tax Parcel No.: 16094270100000

Legal Description:

LOT 12, BLOCK 2, YALECREST HEIGHTS SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

(3) **Commonly known as: 1836 East Yale Ave, Salt Lake City Utah 84108**

Tax Parcel No.: 16-09-429-005-0000

Legal Description:

LOT 8, UPPER YALE THIRD ADDITION, and ALSO COMMENCING AT SOUTHEAST CORNER OF SAID LOT 8; THENCE SOUTH 40.5 FT; THENCE WEST 60 FEET; THENCE NORTH 40.5 FEET; THENCE EAST 60 FEET TO THE POINT OF BEGINNING.

DATED this 6th day of August, 2025.

Max Warren Barber

STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

On this 6th day of August, 2025, personally appeared before me Max Warren Barber, who being by me duly sworn did say that he is the person who signed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public

Residing in:

(SEAL)

EDUARDO ROJAS
Notary Public - State of Utah
Commission Number: 744078
My Commission Expires on
August 18, 2028

Adam D. Ford (*Pro Hac Vice Pending*)
FORD & CRANE PLLC
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Attorneys for Max and Warren Barber

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HYBRID INTERNATIONAL, LLC, a Texas limited liability company; JONATHAN SCHULTZ, an individual, Plaintiffs, vs. SCOTIA INTERNATIONAL OF NEVADA, INC., a Utah corporation; WARREN BARBER, an individual; MAX BARBER, an individual; DOES I THROUGH X; and ROE business entities I through X, inclusive, Defendants.	Case No. 2:19-CV-02077-JCM-EJY **DEFENDANTS MAX BARBER AND WARREN BARBER'S RENEWED MOTION TO VACATE OR SET ASIDE JUDGMENT** ORAL ARGUMENT REQUESTED

Defendants Warren Barber and Max Barber (collectively, the "Individual Defendants"), through counsel, move to vacate or set aside the Court's September 21, 2022 Order granting

summary judgment (ECF No. 100) and the March 20, 2023 Judgment (ECF No. 108) awarding $500,000 against Scotia and $500,000 in punitive damages against all defendants jointly and severally, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. This Motion relies on the facts and legal authority in the Memorandum of Points and Authorities below.

Bankruptcy Disclosure and Compliance with Automatic Stay

Max Barber is a debtor in a pending Chapter 13 proceeding in the United States Bankruptcy Court for the District of Utah, Case No. 25-21749. This Motion, a defensive effort to vacate a judgment against him, does not violate the automatic stay as it seeks to reduce liability, benefiting the estate. See *In re Palmdale Hills Prop.*, 654 F.3d 868, 874-75 (9th Cir. 2011). Thus, filing and adjudicating this Motion is proper.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction and Summary

The Court should vacate its March 20, 2023 Judgment ("Judgment") (ECF No. 108) and underlying September 21, 2022 Order granting summary judgment (ECF No. 100) pursuant to Rule 60(b)(6) based on newly discovered extraordinary circumstances demonstrating the Judgment enforces an illegal scheme orchestrated by Plaintiff Jonathan Schultz, involving international criminal activities. Enforcement of this Judgment is against public policy, manifestly unjust, and harms innocent third parties. The circumstances in this case present precisely the type of situation that warrants such relief.

Two significant revelations have emerged since the entry of judgment that fundamentally undermine its validity:

First, overwhelming evidence now demonstrates that the entire business relationship underlying this lawsuit was part of an illegal gold smuggling operation orchestrated by Plaintiff Jonathan Schultz. The "carbon fines" project—which formed the basis of the parties' relationship and this lawsuit—was merely a front for unlawful activities tied to an international criminal enterprise that violated both U.S. and South African law. As a matter of public policy and established legal principles, courts will not enforce contracts that further illegal purposes or activities. The Judgment, based on a purported business relationship rooted in illegality, is therefore unenforceable as a matter of law.

Second, the financial transactions between the parties reveal a complex web of payments flowing in both directions that fundamentally contradict the narrative presented to this Court during the litigation.

Recently uncovered evidence shows substantial payments from Hybrid-related entities to Scotia (including hundreds of thousands of dollars from Schultz's criminally indicted companies in South Africa), as well as payments from Scotia to Hybrid and its related entities totaling $556,000, demonstrating that the simplified narrative of a straightforward investment and breach presented to the Court during the original proceedings was materially incomplete and misleading.

II. BACKGROUND AND STATEMENT OF FACTS

A. The Underlying Business Relationship and Initial Transactions (2019)

Dorothy Barber, the wife of Warren Barber and mother of Max Barber, served as Scotia International of Nevada, Inc.'s ("Scotia") Chief Financial Officer until October 2021, exclusively

managing its financial operations and bank accounts. (Max Decl., ¶ 3). Warren, whose expertise was focused on field operations, did not handle Scotia's finances and deferred all financial matters to Dorothy. (Max Decl., ¶ 5). Max was frequently abroad, notably in Dubai during this period, and was cc'ed on communications regarding payment requests and invoices from Hybrid International, LLC ("Hybrid"). (Max Decl., ¶ 6). Max was aware that payments were being requested and made to Hybrid and believed these invoices were legitimate and justified for actual work performed, assuming Dorothy and Warren were fully managing Scotia's financial and operational affairs. (Max Decl., ¶¶ 6--7). Max was unaware of any deposits into Scotia's accounts, particularly those from indicted South African companies, as Dorothy controlled all incoming transactions. (Max Decl., ¶ 8). The Individual Defendants trusted Dorothy implicitly to manage Scotia's financial affairs, a responsibility she had reliably held for decades. (Max Decl., ¶ 4). Unknown to them, Dorothy began experiencing symptoms of early-onset dementia as early as 2018, later diagnosed after a series of mini strokes, which impaired her ability to properly investigate or document transactions. (Max Decl., ¶ 9). Warren was not managing finances at all, focusing solely on field operations, a fact Max did not realize at the time. (Max Decl., ¶ 5).

In early 2019, Plaintiffs Hybrid and Jonathan Schultz ("Schultz") initiated discussions with Scotia regarding a purported "carbon fines" project. On April 1, 2019, Schultz emailed the Individual Defendants, stating, "On the side I'm wanting to send gold to the USA so long to get moving on a few fronts." (See Exhibit 2, page 2). The following day, April 2, 2019, Schultz sent another email explicitly outlining his plans: "I am also going to start shipping material from South Africa to the USA and so on. This we can add to our business venture." He further

mentioned, "To add to the equation, I'm wanting to set up a gold and diamond office in Las Vegas where we can so long enter the market on the jewellery side and start acquiring market share." (See Exhibit 2, Schultz Email dated April 2, 2019). These emails reveal that what appeared to be a legitimate business venture was a façade for an illegal gold smuggling operation from South Africa to the United States.

Notably, as acknowledged in the June 13, 2024 letter from Ian Levitt Attorneys (on behalf of their client Schultz) to BusinessDay, Schultz left South Africa in April 2019—approximately two months before the initial $500,000 transfer from Hybrid to Scotia and before any South African legal documents mentioned him. This timing is critical: Schultz had already established his departure from South Africa precisely when he began engaging with the Individual Defendants regarding the purported "carbon fines" project.

Schultz remained abroad for two years before he was first mentioned in any South African legal documents in November 2021. This sequence demonstrates that Schultz was methodically establishing U.S. operations while deliberately distancing himself from South Africa, further supporting the conclusion that the entire business relationship was designed as a vehicle for moving funds between jurisdictions.

In May 2019, Schultz established Fine Line International LLC in Nevada, concurrent with negotiations with Scotia, but did not disclose this entity to the Barbers. Corporate records also show Schultz's attorneys listed as officers or agents for several entities, including Schultz Refiners LLC and Hybrid International LLC, raising questions about their awareness of his illicit operations.

On June 13, 2019, Hybrid wired $500,000 to Scotia as a purported investment. The next day, June 14, 2019, Hybrid Diamonds and Gold (Pty) Ltd, a South African company later indicted for illegal gold trading, wired $234,970 to Scotia from Firstrand Bank in South Africa. (See Exhibit 3, Scotia Wells Fargo Bank Statement). Additional wire transfers came from an Elloflex account, a company where Schultz was a director, which rented premises used for illegal gold transactions. (See Exhibit 4). Max was unaware of these deposits, as Dorothy managed all incoming transactions. (Max Decl., ¶ 8). Between June 27 and September 30, 2019, Scotia paid $556,000 to Plaintiffs' entities, as detailed in Section F. (Ex. 4).

Max was aware of these payments through communications but believed they were for legitimate work, unaware of Dorothy's dementia-impaired oversight or the illicit nature of the deposits. (Max Decl., ¶¶ 6, 14). These transactions, managed by Dorothy, were not properly investigated or documented due to her cognitive decline. (Max Decl., ¶ 10).

Hybrid Diamonds and Gold (Pty) Ltd.—the very South-African entity that wired R 234,970 (≈ US $234,970) into Scotia's account on 14 June 2019—is specifically named in Paragraph 15.4 of the Stilfontein Magistrate's Court "Warrant for Arrest and Seizure" dated 3 November 2021 lists "2013/069671/07 HYBRID DIAMONDS AND GOLD (Pty) Ltd" among the targets. Even Schultz's own attorneys acknowledge this fact in their June 13, 2024 letter to BusinessDay, confirming that this company was listed in the "Warrant for Arrest and Seizure." The letter further admits that Schultz was a director of companies involved in the South African investigation, particularly noting he was a "previous director" of a company responsible for rental agreements regarding premises used by Gregory Fourie "to conduct his illegal gold

transactions." These admissions establish direct corporate connections between Schultz's U.S. operations, his South African business interests, and companies specifically named in South African criminal investigations, underscoring the inextricable connection between Plaintiffs' U.S. operations and alleged criminal conduct abroad, and further supporting vacatur of a judgment that would aid an international money-laundering scheme.

In August 2019, Schultz sold gold bars to Status Collection & Co. Inc. for over $480,000, as evidenced by invoices from Hybrid International LLC dated August 19, 2019. (See Exhibits 7 and 8, Hybrid International Invoices and Bank Statement). Jeremiah Spelman of Status Collection stated that Schultz described labeling precious metals shipments as "carbon fines" to expedite them and failed to provide import/customs paperwork, concluding that Schultz smuggled gold into the U.S. to further his criminal activities. (See Exhibit 6, Spelman Statement). This confirms the "carbon fines" project was a cover for illegal gold smuggling.

B. South African Criminal Developments and Commencement of US Litigation (2019)

On November 8, 2019, Gregorie Fourie, an employee of Cham Bridging (a company owned and directed by Schultz), was arrested in South Africa as part of the "Ginger" investigation into illegal gold transactions. Authorities seized unwrought gold worth R500,000, R900,000 in cash, and gold transaction notes reflecting R25 million in illegal transactions. (Document, p. 13). That same day, Schultz registered Hybrid International LLC in Florida, appointing associates David Comite and Nicholas Kelly as officers, suggesting an attempt to create corporate layers amid increasing legal scrutiny. (Document, p. 28).

On November 21, 2019, just days after Fourie's arrest, Plaintiffs filed this lawsuit against Scotia, alleging breach of contract and misrepresentation. (Document, p. 13). The timing suggests Schultz sought to sever ties with his mining operations and recover funds related to his illegal activities through the U.S. legal system. Following these events, Schultz abruptly reinvented himself as an artist, abandoning his mining ventures. (Document, p. 13).

C. Litigation Progress and Further Criminal Activities (2019)

On July 30, 2020, Schultz Refiners, LLC (a Texas company) was voluntarily dissolved, shortly after its South African counterpart was indicted. (Document, p. 14). On August 31, 2020, Plaintiffs filed their First Amended Complaint, alleging breach of contract against Scotia and intentional misrepresentation against Scotia, Warren, and Max Barber, based on claims that the Individual Defendants induced Hybrid's $500,000 investment, which Scotia failed to repay. (ECF 46, ¶¶ 31-42).

After Scotia and the Individual Defendants failed to timely respond to Plaintiffs' Requests for Admission, the Court deemed the requests admitted. (ECF 71). The Individual Defendants' attempt to withdraw these admissions was unsuccessful. (ECF 77, 83). No further discovery occurred. (Document, p. 14).

As detailed in Section J.C, South African authorities issued a warrant for Schultz's arrest on November 3, 2021, for over 1,409 charges, with Hybrid Diamonds and Gold also indicted. (Ex. 9).

The legal proceedings related to Schultz have followed a complex path. As acknowledged in correspondence from Schultz's own attorneys dated June 13, 2024, on March

31, 2022, South African authorities stated they would seek Schultz's extradition, with the matter initially postponed to July 11, 2022. By that date, certain charges might then have been provisionally withdrawn. Schultz then brought an application before the Gauteng Division of the High Court under case number 2022-002804, seeking procedural rights regarding any potential extradition request. While the High Court initially rejected Schultz's arguments about which state functionary could make such an extradition request, the Supreme Court of Appeal subsequently upheld his position, confirming that only the Minister of Justice could lawfully initiate such a request. This procedural ruling has effectively delayed formal extradition proceedings through technical legal maneuvering, allowing Schultz to remain in the United States while continuing to benefit from this Court's judgment. The elaborate legal proceedings in South Africa, combined with Schultz's immigration case in Nebraska, demonstrate a calculated strategy to remain beyond the reach of South African authorities while using the U.S. legal system to recover funds related to his South African operations.

Notably, even Schultz's own attorneys have acknowledged his connection to these investigations. In their June 13, 2024 letter to BusinessDay, they admit that Schultz was listed in a South African affidavit as part of the bullet point stating "[t]he following individuals and entities form part of the investigation." While the letter attempts to distinguish between being "part of the investigation" and being a "suspect," this admission nevertheless confirms Schultz's involvement with the very companies and transactions under criminal investigation in South Africa. The fact that the South African government continues to seek Schultz's extradition speaks for itself. The direct partial admission directly connects Schultz to the questionable

activities underlying this case and contradicts the narrative presented to this Court during the original proceedings—that Schultz was simply an investor with a legitimate business interest in a "carbon fines" project.

D. Summary Judgment and Final Judgment (2021--2023)

On September 23, 2021, Plaintiffs moved for summary judgment, citing the admitted Requests to argue no disputed facts existed. (ECF 85, pp. 2--10). On September 21, 2022, the Court granted summary judgment against Scotia for breach of contract and against the Individual Defendants for intentional misrepresentation. (ECF 100). In its Order, the Court found that "a valid and enforceable contract existed between the parties" and that "plaintiffs suffered damages when Scotia refused to return the $500,000" (ECF 100, p. 11). The Court also determined that all defendants made false representations "with the intention plaintiffs would rely on them and pay defendants the $500,000 under their contract" (ECF 100, p. 14).

On March 20, 2023, the Court entered final Judgment, awarding Plaintiffs $500,000 against Scotia and $500,000 in punitive damages against Scotia, Warren, and Max, jointly and severally. (ECF 108). The Court's Order on monetary judgment (ECF 107) stated that "compensatory damages in the amount of $500,000 are appropriate for plaintiffs' breach of contract claim" and that "punitive damages for defendants' intentional misrepresentation in the amount of $500,000 are appropriate" under NRS 42.005. The Court specifically noted that "plaintiffs gave Scotia $500,000 pursuant to a valid, enforceable contract, Scotia did not perform, and plaintiffs received no benefit therefrom." (ECF 107, p. 2).

The new evidence of illegality and financial transactions, detailed in Section F, undermines the Court's findings on the contract's enforceability and damages. (ECF 107).

E. Collection Efforts and Discovery of Dorothy Barber's Condition (2023)

Following the March 20, 2023 Judgment, Plaintiffs aggressively pursued collection, domesticating the Judgment in New York and Utah, obtaining writs of execution, garnishment, and attachment, recording liens, and filing fraudulent transfer lawsuits. (See Max Decl. ¶¶ 17). Plaintiffs' actions included seizing personal items from Max's family, such as a Mother's Day card, cash, jewelry, clothing, and electronic equipment needed by Max's special needs daughter, with seized property valued over $400,000, including an aircraft and a 1974 Porsche. (Max Decl., ¶¶ 18, 22).

As noted in Section J.A, Dorothy Barber's early-onset dementia, diagnosed in mid-2023 after symptoms began in 2018, impaired her ability to manage Scotia's finances, including the $556,000 payments to Plaintiffs. (Max Decl., ¶¶ 10, 16)

F. Further Developments and Discovery of Critical Evidence (2024--2025)

Dorothy Barber passed away on January 15, 2024. (Max Decl., ¶ 12). In March 2024, while reviewing Dorothy's files and records following her passing, Max Barber discovered comprehensive financial records showing that Dorothy had caused Scotia to make five separate payments totaling $556,000 to Plaintiffs in 2019 (the "2019 Payments"). (Max Decl., ¶ 13). Max was aware in 2019 of these payments through communications regarding invoices but believed they were legitimate and justified for work performed, assuming Dorothy and Warren were properly managing Scotia's affairs. (Max Decl., ¶¶ 5-6). Until this discovery, Max was entirely

unaware of the deposits from Hybrid and indicted South African companies, such as Hybrid Diamonds and Gold (Pty) Ltd, into Scotia's accounts, as Dorothy exclusively controlled incoming transactions. (Max Decl., ¶ 15).

Dorothy exclusively managed Scotia's financial operations and bank accounts. (Max Decl., ¶ 3). Warren Barber, whose expertise and responsibilities were entirely focused on field operations, had never handled Scotia's finances and did not comprehend the financial communications sent to him, consistently deferring these matters to Dorothy. (Max Decl., ¶4). Max was frequently abroad, notably in Dubai, and was cc'ed on payment-related communications but had no knowledge of deposits or reason to question the legitimacy of invoices. (Max Decl., ¶¶ 6, 8). The Individual Defendants trusted Dorothy implicitly to manage Scotia's financial affairs, a responsibility she had reliably held for decades. (Max Decl., ¶ 4). However, unknown to the Individual Defendants, Dorothy's cognitive abilities were deteriorating due to early-onset dementia, diagnosed after she suffered a series of mini strokes, with symptoms likely beginning as early as 2018. (Max Decl., ¶ 10). Consequently, Dorothy was merely receiving and responding to invoices without proper investigation, documentation, or meaningful communication with the Individual Defendants. (Max Decl., ¶ 11).

Upon reviewing the complete financial records in March 2024, Max Barber realized that Schultz had effectively orchestrated the return of Hybrid's entire $500,000 investment plus an additional $56,000 through payments linked to illicit deposits, before filing this lawsuit claiming Scotia had failed to repay the investment. (Max Decl., ¶ 14). Max also discovered that the

invoices he believed were legitimate were not for actual work, as Dorothy's dementia had impaired her oversight. (Max Decl., ¶ 13).

The financial records reveal a complex web of transfers that fundamentally contradict the simplified narrative presented to this Court during litigation. In total, Scotia made five separate payments totaling $556,000 to Plaintiffs and their related entities between June 27, 2019, and September 30, 2019—just weeks after receiving Hybrid's initial $500,000 investment. These payments included: (1) $230,000 to Schultz Refiners LLC on June 27, 2019; (2) $72,000 to Hybrid International LLC on June 13, 2019; (3) $65,000 to Hybrid International LLC on August 23, 2019; (4) $58,000 to Hybrid International LLC on September 11, 2019; and (5) $131,000 to Hybrid International LLC on September 30, 2019. The aggregate total of these outbound payments exceeds the inbound investment by $56,000, demonstrating that, contrary to the claims in this lawsuit, Plaintiffs not only recovered their entire investment but received an additional $56,000 before ever filing this action.

These financial records directly contradict the Court's findings in its March 20, 2023 Order (ECF 107) that "plaintiffs gave Scotia $500,000 pursuant to a valid, enforceable contract. Scotia did not perform, and plaintiffs received no benefit therefrom." The evidence now shows that plaintiffs received their entire investment back, plus an additional $56,000, rendering the Court's finding of damages based on Scotia's failure to return the $500,000 factually incorrect.

Further evidence emerged highlighting Schultz's illegal operations, particularly through bank records demonstrating that on June 14, 2019—just one day after Hybrid's initial $500,000 transfer—Hybrid Diamonds and Gold (Pty) Ltd, a South African company later indicted for

illegal gold trading, wired an additional $234,970 to Scotia. (See Exhibit 4, Wells Fargo Bank Statement). This direct financial link, unknown to Max until 2024, strongly suggests the entire "carbon fines" project was a front for laundering proceeds from illegal gold trading activities. (Max Decl., ¶ 15).

Significant additional developments have emerged regarding Schultz's illegal operations and his high-stakes efforts to evade legal accountability in South Africa. The State wants to extradite Schultz from Las Vegas, where he has been living a glamorous life since 2019, to stand trial for charges including contravening the Prevention of Organised Crime Act and the Precious Metals Act, as well as theft and fraud. While he evades these serious charges, he has been portrayed as a "celebrity artist", pictured alongside legendary actor Robert de Niro.

Schultz has engaged in protracted litigation in South Africa to frustrate his extradition. The Supreme Court of Appeal (SCA), which ruled that only the justice minister, not the National Prosecuting Authority (NPA), had the power to request an extradition. This ruling, however, created a significant problem for the South African government, as it left 89 other pending extradition requests in jeopardy

Faced with this crisis, South Africa's National Director of Public Prosecutions (NDPP), Shamila Batohi, made a "sharp about-turn". After initially indicating the state would drop its appeal of the SCA ruling, the NDPP revived it, filing papers with the Constitutional Court—South Africa's highest court—to continue the legal battle. The NDPP stated that the "interests of justice favour the reinstatement of the appeal" and that it was an "error" to consider dropping it.

because the NPA's pending extradition requests "cannot simply be reissued without an exceptional amount of labour and delay."

This series of events demonstrates that Schultz is not the subject of a minor or dormant investigation. Rather, he is at the very center of a high-stakes legal battle in South Africa's highest courts, a battle South African authorities are determined to win to ensure he faces justice and to preserve the integrity of their entire extradition system. These facts, combined with his filing of an immigration case in the U.S. District Court of Nebraska (Case No. 4:24-cv-03066) on April 8, 2024, confirm his calculated strategy to use every available means to shield himself from prosecution while simultaneously using this Court's judgment for his financial benefit

In June 2024, the respected South African publication BusinessDay detailed Schultz's deliberate escape to Las Vegas specifically to evade prosecution, reporting on the active efforts of South African authorities to extradite him. As reported in a March 2024 article discussing South African extradition proceedings, "The State wants to extradite the South African-born artist from Las Vegas, where he has been living a glamorous life, rubbing shoulders with the rich and famous, since 2019, to stand trial alongside a group charged with contravening the Prevention of Organized Crime Act and the Precious Metals Act, as well as theft and fraud." (Exhibit 12)[1] This confirms the serious nature of the criminal charges Schultz faces in South Africa and his calculated efforts to remain beyond the reach of South African authorities while using this Court's judgment to his financial benefit. (Exhibit 11).

[1] Also found at https://www.news24.com/southafrica/news/ndpp-shamila-batohis-about-turn-in-lynchpin-extradition-case-20250324

Early in 2024, the U.S. Department of Homeland Security approached the Individual Defendants seeking their cooperation in a comprehensive investigation into Jonathan Schultz's illegal activities. It was this approach that gave Defendants the first hint of the depth of Schultz's illegal scheme in which they were tricked into being an unwitting part of. Alongside publicly available South African Court Documents, these revelations have confirmed Schultz's extensive involvement in illegal enterprises directly linked to the underlying contracts in this lawsuit. (Max Decl., ¶ 20).

Schultz's pattern of corporate restructuring further evidences deliberate attempts to evade legal accountability. Notably, on November 8, 2019—the exact day his associate Gregorie Fourie was arrested for the Stilfontein gold robbery—Schultz registered Hybrid International LLC in Florida, appointing associates David Comite and Nicholas Kelly as officers. This registration's timing strongly indicates a calculated effort to create corporate layers in response to tightening legal scrutiny.

Jeremiah Spelman, who directly engaged with Schultz in 2019, provided a statement confirming Schultz's illegal activities. Spelman stated that Schultz explicitly mentioned expediting precious metal shipments by falsely labeling them as carbon fines and repeatedly failed to provide required customs documentation, clearly indicating that Schultz smuggled gold into the U.S., furthering his criminal activities through American entities. (See Exhibit 6, Spelman Statement).

Schultz's deliberate use of various name permutations, the frequent dissolution and reincorporation of companies across multiple jurisdictions, and the active involvement of

Schultz's attorneys as officers in numerous entities raises serious questions about their knowledge and complicity in his broader illegal operations.

Corporate records reveal Schultz established Fine Line International LLC in Nevada in May 2019, concurrently negotiating with Scotia, but he never disclosed this entity to the Barbers. Schultz's attorneys were notably listed as officers or agents for several of these entities, including Schultz Refiners LLC and Hybrid International LLC, raising further suspicion regarding their awareness of Schultz's extensive illicit operations.

Ultimately, these detailed discoveries comprehensively illustrate that Schultz's pursuit of this lawsuit was fundamentally part of a broader, calculated scheme to exploit the U.S. legal system to launder and recover funds associated with illegal gold smuggling and related criminal enterprises in both the U.S. and South Africa.

III. LEGAL STANDARD FOR RULE 60(b)(6) RELIEF

Rule 60(b)(6) "gives the district court power to vacate judgments whenever such action is appropriate to accomplish justice." *Henson v. Fid. Nat'l Fin., Inc.*, 943 F.3d 434, 443 (9th Cir. 2019) (Internal citations omitted.). "Rule 60(b)(6) serves as 'a grand reservoir of equitable power to do justice in a particular case'. *Johnson v. Spencer*, 950 F.3d 680, 700–702 (10th Cir. 2020) and is available in all civil actions, not just those that can be characterized as "equitable" actions. Courts should liberally construe this power in favor of the party seeking relief from judgment so substantial justice may be accomplished. See, *Moore's Federal Practice* § 60.48 (3d ed. 2020). Indeed, district courts have both the power and the duty to "vacate judgments whenever such

action is appropriate to accomplish justice." *Phelps v. Alameida*, 569 F.3d 1120, 1135 (9th Cir. 2009)."

The Supreme Court has established that relief under Rule 60(b)(6) requires a showing of "extraordinary circumstances." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005). So long as a movant shows "extraordinary circumstances" justifying the reopening of a final judgment, clause (6), like Rule 60(b) generally, "should be liberally applied to situations not covered by the preceding five clauses [found in the rule] so that . . . the district court . . . has power to grant relief from a judgment whenever, under all the surrounding circumstances, such action is appropriate in the furtherance of justice." *Henson*, 943 F.3d at 443 (quoting *Fleming v. Gulf Oil Corp.*, 547 F.2d 908, 912 (10th Cir. 1977)); see also *Good Luck Nursing Home, Inc. v. Harris*, 636 F.2d 572, 577 (D.C. Cir. 1980) ("Rule 60(b) was intended to preserve the delicate balance between the sanctity of final judgments and the incessant command of the court's conscience that justice be done in light of all the facts.") (Internal citations omitted.).

"Extraordinary circumstances occur where there are other compelling reasons for opening the judgment that prevented the movant from raising the basis of the motion during the pendency of the case." *Martinez v. Shinn*, 33 F.4th 1254, 1262 (9th Cir. 2022) (citation and internal quotation marks omitted). Such circumstances exist where a party "presents a previously undisclosed fact so central to the litigation that it shows the initial judgment to have been manifestly unjust." *People for the Ethical Treatment of Animals v. U.S. Dep't of Health and Human Servs.*, 226 F. Supp. 3d 39, 47 (D.D.C. 2017). This is true "even though the original failure to present that information was inexcusable." *Id.* (citation omitted).

The Ninth Circuit has recognized that Rule 60(b)(6) relief is particularly warranted where "it is no longer equitable that the judgment should have prospective application." *Jeff D. v. Kempthorne*, 365 F.3d 844, 851-52 (9th Cir. 2004).

Additionally, "[t]he case for reconsideration is especially strong where the effect of the error, if not corrected, would be to harm the interests of third parties, as opposed to the erring litigant." *People for the Ethical Treatment of Animals*, 226 F. Supp. 3d at 47.

Courts will not enforce contracts that are illegal or against public policy. "No court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it." *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 77 (1982) (Internal citation omitted.) ("It is also well established... that a federal court has a duty to determine whether a contract violates federal law before enforcing it.").

The Supreme Court of Nevada has likewise held that Nevada contract law dictates that courts should not enforce contracts made for illegal purposes. Nevada follows the general rule that "contracts made in contravention of the law do not create a right of action." *Loomis v. Lange Fin. Corp.*, 109 Nev. 1121, 865 P.2d 1161 (1993), quoting *Vincent v. Santa Cruz*, 98 Nev. 338, 241, 647 P.2d 379, 381 (1982). ("No court should be required to serve as paymaster of the wages of crime") (Internal citation omitted.)

IV. ARGUMENT

A. Extraordinary Circumstances Warrant Relief Under Rule 60(b)(6)

Two extraordinary circumstances warrant relief under Rule 60(b)(6) in this case:

1) The Judgment Is Based on an Illegal Scheme and Is Therefore Unenforceable

The newly discovered evidence of Jonathan Schultz's criminal enterprise renders the Judgment unenforceable as a matter of law. It is a bedrock principle of American jurisprudence that courts will not enforce contracts that further illegal purposes. The evidence now demonstrates that the entire business relationship between the parties was predicated on an illegal scheme to smuggle gold from South Africa to the United States:

Schultz's own emails explicitly discuss shipping gold from South Africa to the United States as part of the business relationship with the Individual Defendants.

Bank records show a wire transfer from Hybrid Diamonds and Gold (Pty) Ltd---a South African company now indicted for illegal gold trading---to Scotia on June 14, 2019, just one day after Hybrid's initial $500,000 investment. This timing and pattern of transactions strongly suggests the funds were part of a money laundering operation.

South African authorities have charged Schultz with over 1,409 charges related to theft, fraud, money laundering, and illegal dealing in precious metals. The South African High Court confirmed Schultz's involvement in this criminal enterprise in Case Number 2022-002804 (Exhibits 5, 11). The matter is of such importance that South Africa's National Director of Public Prosecutions has revived an appeal to the nation's Constitutional Court to ensure Schultz's extradition see Exhibit 12.

Jeremiah Spelman, who purchased gold from Schultz in August 2019, has provided a statement confirming that Schultz described using "carbon fines" as a cover for expediting

precious metals shipments and refused to provide customs documentation for the gold he had brought into the United States and sold to Spelman.

The U.S. Department of Homeland Security has approached the Individual Defendants seeking cooperation in an ongoing investigation into Schultz's illegal activities.

This evidence directly contradicts the Court's finding in its September 21, 2022 Order (ECF 100) that "a valid and enforceable contract existed between the parties," as illegal contracts are neither valid nor enforceable under both federal and Nevada law.

This evidence establishes that the "carbon fines" project was not a legitimate business venture but rather a front for illegal gold smuggling. The Court should not enforce a judgment that would reward Schultz for his illegal conduct and enable him to profit from his criminal activities.

The Ninth Circuit has consistently refused to enforce contracts that facilitate illegal activity. See *Bassidji v. Goe*, 413 F.3d 928, 936-37 (9th Cir. 2005) (holding that contracts that violate public policy, including those that facilitate illegal conduct, are unenforceable). "Contracts made in contravention of the law do not create a right of action." *Loomis v. Lange Fin. Corp.*, 109 Nev. 1121, 865 P.2d 1161 (1993). Nevada courts refuse to be arbiters of disputes arising from illegal agreements, as doing so would undermine public policy. *Id.*

The parties' relationship was fundamentally premised on an illegal scheme, making any purported contract or agreement between them void and unenforceable. The Judgment, which enforces obligations arising from this illegal relationship, must therefore be set aside.

2) The Interests of Third Parties Are Being Harmed

The case for reconsideration is "especially strong where the effect of the error, if not corrected, would be to harm the interests of third parties, as opposed to the erring litigant." *People for the Ethical Treatment of Animals*, 226 F. Supp. 3d at 47. Here, Plaintiffs' aggressive collection efforts have directly harmed innocent third parties, including Max's wife and children. Plaintiffs have seized personal items belonging to Max's wife and children, including a Mother's Day card, jewelry, clothing, and electronic equipment needed by Max's special needs daughter for school. These actions demonstrate the significant harm being inflicted on innocent third parties as a result of the Judgment.

Further allowing Schultz to continue to profit from collecting on the judgment issued by this Court enables him to continue to evade extradition and avoid facing the criminal charges he faces in South Africa. The effect of the judgment is to assist a fugitive from justice frustrate the prosecution of the law for the benefit of the people of South Africa—and allows Schultz to continue to engage in dubious business activities in the United States.

The Individual Defendants Could Not Have Raised These Issues During the Pendency of the Case

The Individual Defendants could not have raised these issues during the pendency of the case because they were unaware of the true nature of Schultz's operations and the extent of his criminal activities until after the Judgment was entered. The full extent of Schultz's criminal enterprise only came to light after the Judgment was entered, when the U.S. Department of Homeland Security approached the Individual Defendants in late 2024. Schultz deliberately

concealed his criminal activities from the Court and the Individual Defendants during the litigation.

Additionally, the evidence of Dorothy Barber's dementia and the comprehensive financial records showing Scotia's repayment of the entire $500,000 plus an additional $56,000 only came to light after Dorothy's passing in January 2024, when Max Barber discovered these records while going through her files in March 2024. This crucial evidence, which directly contradicts the Court's finding that "plaintiffs suffered damages when Scotia refused to return the $500,000" (ECF 100, p. 11), was unavailable during the pendency of the case.

Even if Defendants could have raised these issues earlier, relief is warranted under Rule 60(b)(6) when previously undisclosed facts show the judgment to be manifestly unjust, as discussed in Section K. See, *People for the Ethical Treatment of Animals*, 226 F. Supp. 3d at 47.

B. The Judgment Creates Unjust Enrichment and a Double Recovery

The Plaintiffs have already recovered more than they invested, even before counting the collections they have achieved in attempting to enforce the judgment. The uncontested banking records tell a simple story: Inbound: On 13 June 2019 Hybrid International LLC wired US $500,000 to Scotia. Outbound: Between 27 June 2019 and 30 September 2019 Scotia remitted a total of US $556,000 back to the same plaintiff group—comprised of (a) US $230,000 to Schultz Refiners LLC on 27 June 2019, and (b) four payments to Hybrid International LLC of US $72,000 (13 June 2019), US $65,000 (23 Aug 2019), US $58,000 (11 Sept 2019), and US $131,000 (30 Sept 2019). The aggregate outbound payments thus exceed the inbound investment by US $56,000. Plaintiff suffered no damages at all.

This financial evidence directly contradicts the Court's findings in its March 20, 2023 Order (ECF 107) that "compensatory damages in the amount of $500,000 are appropriate for plaintiffs' breach of contract claim" because "plaintiffs gave Scotia $500,000 pursuant to a valid, enforceable contract, Scotia did not perform, and plaintiffs received no benefit therefrom."

Two wires from Elioflex (Pty) Ltd (US $174,000 and US $162,000) and the US $234,970 wire from Hybrid Diamonds and Gold (Pty) Ltd came from South-African companies that are neither plaintiffs nor assignees of Hybrid International LLC. Those transfers cannot form the basis of Hybrid's claimed damages in this Court. Allowing the Judgment to stand therefore permits Plaintiffs to "double-dip," recovering their $500,000 investment plus the $56,000 premium already returned—an inequitable windfall squarely foreclosed by Rule 60(b)(6) jurisprudence.2

Because Plaintiffs have already been made whole (and more), enforcement of the Judgment produces precisely the kind of unjust enrichment that Rule 60(b)(6) exists to prevent. Equity therefore demands that the Judgment be vacated.

C. Timeliness of the Motion

This motion is brought within a reasonable time after the discovery of the new evidence. The Individual Defendants only became aware of the full extent of Schultz's criminal enterprise after the U.S. Department of Homeland Security's approach in late 2024 and subsequent investigation into publicly available South African court records. The evidence of Scotia's return of the $500,000 plus an additional $56,000 was only discovered in March 2024 after Dorothy

Barber's passing. Given these extraordinary circumstances, the timing of this motion is reasonable and justified.

V. CONCLUSION

Based on the foregoing, the Individual Defendants respectfully request that the Court vacate or set aside the March 20, 2023 Judgment (ECF No. 108) and the underlying September 21, 2022 Order granting summary judgment (ECF No. 100). As the Ninth Circuit has recognized, Rule 60(b)(6) serves as "a grand reservoir of equitable power to do justice in a particular case" and should be "liberally applied" to "accomplish justice."3

The newly discovered evidence of the illegal nature of the parties' business relationship constitutes the type of extraordinary circumstance that warrants relief under Rule 60(b)(6). In fact, the Court must "vacate judgments whenever such action is appropriate to accomplish justice."4 Such is the present case.

To allow this judgment to stand would reward Schultz for an illegal scheme that exploited this Court's processes, undermining both justice and public policy. As the Nevada Supreme Court has recognized, Nevada contract law dictates that courts should not enforce contracts made for illegal purposes.5

For these reasons, the Individual Defendants request that the Court vacate the Judgment, stay its enforcement pending further proceedings, and permit discovery into these critical issues.

DATED this 26th day of June, 2025.

/s/ Jeffrey Whitehead

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 26th day of June, 2025, I caused a true and correct copy of the foregoing MOTION TO VACATE OR SET ASIDE JUDGMENT to be filed with the Court via CM/ECF, which caused notice to be served on all counsel of record via the Court's Notice of Electronic Filing [NEF], including the following:

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Exhibit 1: Declaration of Max Barber

Exhibit 2: Schultz Email dated April 2, 2019 (discussing shipping gold from South Africa)

Exhibit 3: Wells Fargo Bank Statement showing June 13-14, 2019 wire transfers

Exhibit 4: Ledger of Payments between Scotia and Hybrid/Schultz entities

Exhibit 5: South African High Court Case Number 2022-002804 confirming Schultz's criminal enterprise

Exhibit 6: Statement of Jeremiah Spelman regarding gold purchases from Schultz

Exhibit 7: Hybrid International Invoices to Status Collection & Co. (August 19, 2019)

Exhibit 8: Bank Statement showing payment from Status Collection to Hybrid

Exhibit 9: South African Charging Documents

Exhibit 10: South African court documents regarding extradition proceeding

Exhibit 11: News Article article regarding Schultz-related criminal case and extradition efforts

Exhibit 12: News24 Articles (25th Feb & 24 March) on continued extradition efforts.

Exhibit 13: Johnathan Shultz's business registrations and corporate restructuring, seemingly designed to evade legal accountability. His attorney is noted as co-director/officer, raising questions about the attorney-client relationship.

Exhibit 14: Evidence of Johnathan Schultz original entrance into the Precious Metals Business in 2017 March 7th contradicting his past Affidavits

Exhibit 15: 24th May 2022, Affidavit of Johnathan R Schultz

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HYBRID INTERNATIONAL, LLC, a Texas limited liability company; JOHNATHAN SCHULTZ, an individual, Plaintiffs, vs. SCOTIA INTERNATIONAL OF NEVADA, INC., a Utah corporation; WARREN BARBER, an individual; MAX BARBER, an individual; DOES I THROUGH X; and ROE business entities I through X, inclusive, Defendants.	Case No. 2:19-CV-02077-JCM-EJY **REPLY MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE JUDGMENT (ECF 114)**

Defendants Warren Barber and Max Barber (collectively, the "Individual Defendants"), through counsel, respectfully reply in support of their Renewed Motion to Set Aside Judgment

(the "Motion", ECF 114) pursuant to Federal Rule of Civil Procedure 60(b)(6) and argue as follows:

RESPONSE TO STATEMENT OF FACTS/PROCEDURAL HISTORY IN PLAINTIFFS' OPPOSITION

The Opposition filed by Plaintiffs Hybrid International, LLC and Jonathan Schultz largely evades the substantive arguments raised in the Motion, relying instead on procedural technicalities, ad hominem attacks, and mischaracterizations of the evidence. The Opposition does not refute the core allegations of illegality underlying the parties' business relationship, nor does it contest the post-judgment discovery of critical evidence that renders the judgment manifestly unjust. Plaintiffs fail to address how enforcement of the judgment furthers an illegal scheme, harms innocent third parties, and results in unjust enrichment. As detailed below, these omissions and deflections confirm the extraordinary circumstances warranting relief under Rule 60(b)(6), a provision designed to accomplish justice where, as here, new evidence reveals the judgment's fundamental inequity.

ARGUMENT

I. THE OPPOSITION FAILS TO REFUTE SCHULTZ'S INDICTMENT AND ONGOING EXTRADITION EFFORTS IN SOUTH AFRICA

The Opposition does not deny that Jonathan Schultz has been indicted in South Africa on over 1,409 charges, including fraud, theft, money laundering, and violations of the Precious Metals Act and Prevention of Organized Crime Act, alongside his companies and business associates such as Hybrid Diamonds and Gold (Pty) Ltd. and Gregorie Fourie. Instead, Plaintiffs attempt to minimize these facts by emphasizing procedural delays in the South African courts,

without contesting the indictment's existence or its direct tie to the "carbon fines" project at the heart of this case.

Similarly, the Opposition does not deny that the government of South Africa continues to seek Schultz's extradition to face these criminal charges, which stem from the same illegal gold smuggling and carbon fines export business that formed the basis of the parties' agreement. Plaintiffs acknowledge the extradition proceedings but dismiss them as stalled by technical rulings, such as the Supreme Court of Appeal's decision on extradition authority, without explaining why this does not underscore the scheme's illegality. These non-denials concede the validity of Defendants' evidence, including South African court documents and affidavits (Motion Exs. 5, 9-12), and fail to rebut how the judgment enforces obligations arising from an indicted criminal enterprise.

Under Ninth Circuit precedent, contracts facilitating illegal conduct are unenforceable as a matter of public policy, and the Opposition's procedural deflections do not alter this reality. See *Bassidji v. Goe*, 413 F.3d 928, 936-37 (9th Cir. 2005).

II. THE OPPOSITION IGNORES EVIDENCE OF ILLEGAL GOLD IMPORTATION AND THE CENTRAL ROLE OF CARBON FINES IN THE SCHEME

The Opposition does not deny that the gold Schultz imported into the United States and that the Barbers assisted in selling to Jeremiah Spelman was brought into the country illegally, forming part of the same scheme for which Schultz was indicted in South Africa. Plaintiffs offer no rebuttal to Spelman's sworn statement detailing Schultz's use of "carbon fines" labeling to expedite smuggling and his failure to provide customs documentation (Motion Ex. 6), nor do

they contest the bank records linking these transactions to indicted South African entities (Motion Exs. 3-4).

Furthermore, the Opposition does not deny that importing carbon fines into the United States was a key component of the business deal between Hybrid and the Barbers, as evidenced by Schultz's own emails explicitly discussing shipping materials from South Africa as part of the venture (Motion Ex. 2).

By failing to differentiate between this newly discovered evidence of the scheme's overarching illegality and routine breach-of-contract details that might have surfaced in discovery, the Opposition conflates the issues and avoids addressing how the carbon fines facade voids the entire agreement ab initio. This evasion highlights the manifest injustice of upholding a judgment that rewards such conduct, particularly where the evidence of illegality—bolstered by the U.S. Department of Homeland Security's 2024 investigation—only crystallized post-judgment (Motion Max Decl. ¶20).

III. THE OPPOSITION RELIES ON AD HOMINEM ATTACKS RATHER THAN SUBSTANTIVE EVIDENCE

Although the Opposition repeatedly labels the Barbers as "fraudsters", Plaintiffs produce no evidence of any wrongdoing by the Barbers beyond their and prior counsel's failure to meet deadlines in the litigation. Such *ad hominem* attacks do not suffice to rebut the arguments in the Motion, as they distract from the uncontroverted evidence of Schultz's scheme without addressing its merits. The Opposition's Exhibit affidavit alleging unsubstantiated and unrelated frauds lacks relevance to the illegality at issue here and serves only to impugn character rather than refute facts. The Barbers have never been found to have committed fraud or theft or

anything similar in any judicial proceeding. The Florida case is a civil case, and Mr. Barber expects the case to be dismissed shortly. Unlike Mr. Schultz, the Barbers have never been criminally charged related to any business activity.

Ninth Circuit authority confirms that tactical or negligent inaction alone does not preclude Rule 60(b)(6) relief where, as here, extraordinary circumstances reveal deeper injustice. See *Laurino v. Syringa Gen. Hosp.*, 279 F.3d 750, 754 (9th Cir. 2002).

Defendants respectfully request that the Court disregard these inflammatory tactics and focus on the substantive evidence, potentially imposing sanctions under Federal Rule of Civil Procedure 11 for baseless assertions that prolong this litigation without advancing resolution.

IV. THE OPPOSITION DOES NOT CONTEST POST-JUDGMENT DISCOVERY OF THE SCHEME'S ILLEGALITY

The Opposition does not deny that Schultz's criminal indictment in South Africa and the illegality of his role in importing carbon fines into the United States only became known to the Barbers after the judgment was entered. Plaintiffs fail to explain how it would have been reasonable for the Barbers to uncover Schultz's foreign illegal activities through standard discovery in this breach-of-contract suit, particularly given Dorothy Barber's undiagnosed dementia impairing financial oversight until her 2024 death (Motion Max Decl. ¶¶9-13). By dismissing this evidence as not "newly discovered" without engaging its timing or the Barbers' inability to access it earlier, the Opposition overlooks Rule 60(b)(6)'s allowance for relief based on facts central to the litigation that show the judgment to be manifestly unjust, even if prior presentation was inexcusable. See *People for the Ethical Treatment of Animals v. U.S. Dep't of Health & Human Servs.*, 226 F. Supp. 3d 39, 47 (D.D.C. 2017).

This post-judgment revelation, including the DHS's 2024 approach (Motion Max Decl. ¶20), distinguishes the illegality evidence from contract details and mandates vacatur to prevent judicial endorsement of criminality.

V. THE TIMELINE OF DISCOVERY CONFIRMS DEFENDANTS COULD NOT HAVE KNOWN OF THE SCHEME'S ILLEGALITY DURING THE ORIGINAL LITIGATION

The Opposition fails to contest the timeline of Defendants' discovery of the key facts underlying this Motion, which demonstrates that the illegality of Schultz's scheme was unknowable during the pre-judgment discovery phase when admissions were deemed admitted in 2021.

As detailed in Max Barber's Declaration and supporting exhibits, the Barbers' awareness of these facts arose entirely after the March 20, 2023 judgment, rendering them "newly discovered" under Rule 60(b)(6) and excusing any prior inaction. Plaintiffs do not explain how routine discovery in a breach-of-contract dispute could have uncovered foreign indictments, extradition proceedings, or a U.S. Department of Homeland Security investigation that had not yet materialized.

The timeline is as follows: (1) In mid-2023, well after the judgment, the Barbers first learned of Dorothy Barber's early-onset dementia diagnosis, with symptoms dating back to 2018, which explained her impaired oversight of the 2019 financial transactions and why incomplete records were not questioned earlier (Motion Max Decl. ¶¶9-10,16); (2) On January 15, 2024, Dorothy's death enabled access to her files, leading to the March 2024 discovery of comprehensive bank records showing Scotia's $556,000 repayments to Hybrid entities,

exceeding the $500,000 investment and contradicting the judgment's no-repayment finding (Motion pp. 12-14; Max Decl. ¶¶12-15; Ex. 4); (3) In early 2024, the DHS approached the Barbers for cooperation in its investigation into Schultz's smuggling, marking the first revelation of the scheme's criminal depth and prompting review of South African records (Motion p. 16; Max Decl. ¶20); (4) By June 2024, media reports detailed Schultz's evasion and extradition efforts tied to the carbon fines facade (Motion Ex. 11); and (5) Through 2024 and into 2025, escalating South African developments, including procedural rulings delaying but not halting extradition, confirmed the indictment's link to the parties' deal (Motion Exs. 5,10-12).

This sequence establishes that the illegality evidence—Schultz's 2021 indictment on 1,409 charges, his companies' involvement, and the carbon fines smuggling cover—only fully emerged post-judgment, with critical U.S. and South African confirmations in 2024-2025. The Opposition does not refute that these facts were inaccessible during discovery, nor does it suggest how Defendants could reasonably have anticipated or uncovered a foreign criminal probe in a domestic contract suit. By ignoring this timeline, Plaintiffs concede that the evidence qualifies as extraordinary circumstances warranting relief, as it reveals the judgment's role in enforcing an illegal scheme unknown at the time of the deemed admissions. See *People for the Ethical Treatment of Animals v. U.S. Dep't of Health & Human Servs.*, 226 F. Supp. 3d 39, 47 (D.D.C. 2017) (relief appropriate for post-judgment facts showing manifest injustice, even if prior inaction was inexcusable).

VI. THE OPPOSITION'S PIONEER FACTORS ANALYSIS MISAPPLIES THE STANDARD AND WEIGHS IN FAVOR OF RELIEF

The Opposition's reliance on the Pioneer factors analysis overlooks a critical distinction in the application of Federal Rule of Civil Procedure 60(b). The Supreme Court's decision in *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993), primarily interprets the term "excusable neglect" as used in Rule 60(b)(1), providing a framework for evaluating delays attributable to inadvertence or mistake within that subsection's one-year limitation period. In contrast, Rule 60(b)(6) serves as a broader, equitable catch-all provision, authorizing relief for "any other reason that justifies relief" in extraordinary circumstances, without the rigid constraints of (b)(1).

While courts may draw guidance from Pioneer's factors—such as prejudice, delay, reason, and good faith—to assess timeliness under (b)(6), these factors are not dispositive or controlling; instead, the rule empowers the court to vacate a judgment whenever necessary to accomplish justice, particularly where, as here, post-judgment evidence reveals the original judgment to be manifestly unjust by enforcing obligations arising from an illegal scheme. See *Henson v. Fidelity National Financial, Inc.*, 943 F.3d 434, 443 (9th Cir. 2019) (emphasizing Rule 60(b)(6) as a "grand reservoir of equitable power that allows courts to grant relief from a final judgment for 'any' reason that 'justifies relief.'").

Even under Pioneer, however, the factors support granting relief, as the Opposition's analysis overlooks the post-judgment nature of the evidence and exaggerates prejudice while downplaying Defendants' diligence in light of newly discovered facts.

With respect to the danger of prejudice to Hybrid, the Opposition emphasizes domesticated judgments and collection efforts, including seizures of property and substantial costs incurred. Plaintiffs do not refute, however, that vacatur would primarily unwind benefits derived from an illegal scheme, not impose undue hardship. The seized assets, such as family heirlooms and items belonging to innocent third parties, can be restored without irreparable harm to Hybrid, particularly where the evidence shows Hybrid recovered its investment plus $556,000 pre-litigation through the 2019 repayments. Any relitigation burden is outweighed by the public policy against enforcing judgments tied to criminal enterprises, and Hybrid's ongoing collection from a potentially voidable judgment does not constitute cognizable prejudice under Rule 60(b)(6). See *Jeff D. v. Kempthorne*, 365 F.3d 844, 851-52 (9th Cir. 2004) (relief warranted where prospective application is inequitable).

As to the length of delay, the Opposition claims over two years since the March 20, 2023 judgment renders the Motion untimely. Plaintiffs fail to address, however, that the delay aligns with the timeline of discovery: Dorothy Barber's death in January 2024 enabled access to financial records in March 2024, and the DHS investigation and South African extradition updates emerged in early 2024 and continued into 2025. This Motion, filed June 27, 2025, falls within a reasonable time post-discovery, especially under Rule 60(b)(6)'s flexible standard for "extraordinary circumstances" unavailable earlier. The Opposition's rigid two-year focus ignores this context, and courts have granted relief after similar or longer delays where evidence was genuinely new. See *Martinez v. Shinn*, 33 F.4th 1254, 1262 (9th Cir. 2022) (delay excused by compelling post-judgment reasons).

On the reason for the delay, the Opposition asserts no compelling reason was offered, dismissing Defendants' explanations as excuses previously rejected. Plaintiffs do not refute, however, the uncontroverted evidence of Dorothy's dementia impairing financial oversight since 2018, diagnosed mid-2023, or the post-judgment revelations from the DHS and South African proceedings. These facts were unknowable during discovery, as foreign indictments and U.S. investigations had not fully materialized, and routine contract litigation would not uncover them. The delay stems directly from this late discovery, not neglect, providing a compelling equitable basis for relief.

Finally, as to good faith, the Opposition alleges a pattern of bad-faith conduct, citing prior litigation failures and unrelated fraud accusations. Plaintiffs produce no evidence, however, linking such conduct to the current Motion's merits, relying instead on *ad hominem* characterizations without rebutting the illegality evidence. Defendants have acted in good faith by promptly filing upon discovering the facts, withdrawing the prior motion when warranted, and presenting unrefuted documentation. Any past procedural lapses do not negate the extraordinary circumstances here, where good faith is evidenced by the Motion's focus on justice over evasion.

In sum, the Pioneer factors, even if applicable, favor Defendants and underscore the need for vacatur to prevent manifest injustice.

VII. THE OPPOSITION'S PROCEDURAL ARGUMENTS MISCONSTRUE RULE 60(b)(6) AND OVERLOOK THE MOTION'S NOVEL BASIS

By the Opposition's logic, any judgment, no matter how clearly in furtherance of a later-discovered illegal scheme, could not be overturned based on new evidence, a position that contravenes Rule 60(b)(6)'s equitable purpose to preserve justice over rigid finality. See *Good Luck Nursing Home, Inc. v. Harris*, 636 F.2d 572, 577 (D.C. Cir. 1980). The Opposition's procedural arguments, including untimeliness and res judicata, fail to recognize that the Renewed Motion is not based on the same facts as the previous motion, which centered on the Barbers' knowledge of payments from Hybrid to Scotia and was withdrawn upon realizing their inclusion (although not their full comprehension) in related communications. While the fact of Scotia's repayments exceeding $500,000 remains relevant as a secondary point illustrating unjust enrichment, the Renewed Motion's primary basis is the entire scheme's illegality from inception—a novel, post-judgment revelation that reframes the prior facts and demands relief.

Plaintiffs' conflation of these issues underscores their avoidance of the merits, warranting denial of their procedural defenses.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant the Renewed Motion to Vacate or Set Aside Judgment, deny the Opposition in its entirety, and award such further relief as it deems just and proper, including an evidentiary hearing if necessary to resolve any disputed facts.

DATED this 28th day of July, 2025.

/s/ Jeffrey Whitehead

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 29th day of July, 2025, I caused a true and correct copy of the foregoing REPLY MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE JUDGMENT to be filed with the Court via CM/ECF, which caused notice to be served on all counsel of record via the Court's Notice of Electronic Filing [NEF], including the following:

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WASATCH CREDIT CORP., a Utah Corporation, WASATCH EQUITIES CORP., a Utah Corporation, WASATCH LOANS, INC., a Utah Corporation, WASATCH RECOVERY CORP., a Utah Corporation, RHK FAMILY TRUST, a Trust, and DAVID KNUDSON and HOLLY KNUDSON, as Individuals and as Trustees of the RHK FAMILY TRUST,

Defendants.

2-99CV579G

Case No.

STIPULATED FINAL JUDGMENT AND ORDER

Plaintiff, Federal Trade Commission ("Commission"), has filed a Complaint for a permanent injunction and other equitable relief pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), and Section 108(c) of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1607(c), alleging that defendants have violated TILA, 15 U.S.C. §§ 1601-1666j, as amended, including but not limited to the Home Ownership and Equity Protection Act of 1994 ("HOEPA"), as amended, TILA's implementing Regulation Z, 12 C.F.R. 226, as amended, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as amended.

3

Plaintiff and defendants, by and through their respective counsel, have agreed to entry of this Stipulated Final Judgment and Order ("Order") by this Court, without trial or adjudication of any issue of fact or law. The said parties having requested the Court to enter this Order, it is therefore ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over defendants and the subject matter of this action. Venue in the District of Utah is proper.

2. The Complaint states a claim upon which relief may be granted under Sections 101 to 171 of TILA, 15 U.S.C. §§ 1601-1666j, and Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

3. The Commission has the authority under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), and Section 108(c) of TILA, 15 U.S.C. § 1607(c), to seek the relief it has requested.

4. The activities of defendants are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44

5. Defendants, while neither admitting nor denying any of the allegations of wrongdoing set forth in the Complaint, stipulate and agree to entry of this Order.

6. Plaintiff and defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and defendants waive any right that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

7. Entry of this Order is in the public interest.

DEFINITIONS

As used in this Order:

A. The terms "amount financed," "annual percentage rate," "closed-end credit," "consumer," "consumer credit," "consummation," "credit," "creditor," "dwelling," "finance charge," "mortgage," "open-end credit," "payment schedule," "person," "points and fees," "residential mortgage transaction," "reverse mortgage transaction," "security interest," and "total of payments" are defined as set forth in Sections 103 and 128 of TILA, 15 U.S.C. §§ 1602 and

1638, and Sections 226.2, 226.4, 226.18, 226.22, 226.32, and 226.33 of Regulation Z, 12 C.F.R. §§ 226.2, 226.4, 226.18, 226.22, 226.32, and 226.33.

B. The term "HOEPA" means the Home Ownership and Equity Protection Act of 1994 which, inter alia, amended TILA by adding Section 129 of TILA, 15 U.S.C. § 1639, and is implemented by, inter alia, Sections 226.31 and 226.32 of Regulation Z, 12 C.F.R. §§ 226.31 and 226.32.

C. The term "HOEPA mortgage loan" means a consumer credit transaction consummated on or after October 1, 1995, that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction or an open-end credit plan, in which: (1) the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or (2) the total points and fees payable by the consumer at or before loan closing will exceed the greater of 8% of the total loan amount or $400 (adjusted annually by the Board of Governors of the Federal Reserve System ("FRB") on January 1 by the annual percentage change in the Consumer Price Index that was reported on June 1 of the preceding year), which is covered by HOEPA, pursuant to Section 129 of TILA, 15 U.S.C. § 1639, and Section 226.32 of Regulation Z, 12 C.F.R. § 226.32. As used herein, the "total loan amount" is calculated as described in Section 226.32(a)(1)(ii)-1 of the FRB Official Staff Commentary on Regulation Z, 12 C.F.R. § 226.32(a)(1)(ii)-1, Supp. 1.

D. The term "open HOEPA mortgage loan" means a HOEPA mortgage loan that, on the date of entry of this Order, has not been paid off in full or foreclosed upon.

E. The term "Regulation Z" means the regulation the FRB promulgated to implement TILA and HOEPA, 12 C.F.R. 226, as amended. The term also includes the FRB Official Staff Commentary on Regulation Z, 12 C.F.R. 226, Supp. 1, as amended.

F. The term "TILA" means the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as amended.

ORDER

I.

Injunction Against HOEPA and Related FTC Act Violations

IT IS THEREFORE ORDERED that defendants, and each of them, their successors, assigns, officers, agents, servants, employees, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any business, entity, corporation, subsidiary, division or other device, in connection with offering or making any HOEPA mortgage loan, are permanently restrained and enjoined from:

A. Failing to provide the notice required by Section 129(a)(1) of TILA, 15 U.S.C. § 1639(a)(1), and Section 226.32(c)(1) of Regulation Z, 12 C.F.R. § 226.32(c)(1), and Section 5 of the FTC Act, 15 U.S.C. § 45(a);

B. Failing to disclose, or accurately disclose, the annual percentage rate, as required by Section 129(a)(2) of TILA, 15 U.S.C. § 1639(a)(2), and Section 226.32(c)(2) of Regulation Z, 12 C.F.R. § 226.32(c)(2), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

C. Failing to disclose, or accurately disclose, the regular payment amount, as required by Section 129(a)(2) of TILA, 15 U.S.C. § 1639(a)(2), and Section 226.32(c)(3) of Regulation Z, 12 C.F.R. § 226.32(c)(3), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

D. Failing to make any disclosure described in Section I.A through I.C of this Order clearly and conspicuously in writing at least three days prior to consummation of a HOEPA mortgage loan transaction, as required by Section 129(b)(1) of TILA, 15 U.S.C. § 1639(b)(1), and Section 226.31(b) and (c)(1) of Regulation Z, 12 C.F.R. § 226.31(b) and (c)(1), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

E. Modifying or waiving the three-day waiting period between delivery of disclosures required by HOEPA and consummation of a HOEPA mortgage loan transaction without receiving a dated written statement that describes a bona fide personal financial emergency, specifically modifies or waives the waiting period, and bears the signatures of all of the consumers entitled to the waiting period, in violation of Section 129(b)(3) of TILA, 15

U.S.C. § 1639(b)(3), and Section 226.31(c)(1)(iii) of Regulation Z, 12 C.F.R. § 226.31(c)(1)(iii), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

F. Including a prohibited "balloon payment" provision, in violation of Section 129(e) of TILA, 15 U.S.C. § 1639(e), and Section 226.32(d)(1) of Regulation Z, 12 C.F.R. § 226.32(d)(1), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

G. Including a prohibited "increased interest rate" provision, in violation of Section 129(d) of TILA, 15 U.S.C. § 1639(d), and Section 226.32(d)(4) of Regulation Z, 12 C.F.R. § 226.32(d)(4), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

H. Engaging in a pattern or practice of extending credit to a consumer based on the consumer's collateral if, considering the consumer's current and expected income, current obligations, and employment status, the consumer will be unable to make the scheduled payments to repay the obligation, in violation of Section 129(h) of TILA, 15 U.S.C. § 1639(h), and Section 226.32(e)(1) of Regulation Z, 12 C.F.R. § 226.32(e)(1), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); and

I. Failing to comply with any other provision of HOEPA.

II.

Injunction Against TILA and Related FTC Act Violations

IT IS FURTHER ORDERED that defendants, and each of them, their successors, assigns, officers, agents, servants, employees, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any business, entity, corporation, subsidiary, division or other device, in connection with offering or extending consumer credit, are permanently restrained and enjoined from:

A. Failing to make TILA disclosures in writing before consummation of a consumer credit transaction, as required by Sections 121(a) and 128(b)(1) of TILA, 15 U.S.C. §§ 1631(a) and 1638(b)(1), and Sections 226.17(a) and (b) and 226.18 of Regulation Z, 12 C.F.R. §§ 226.17(a) and (b) and 226.18, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

B. Failing to disclose, or accurately disclose, the identity of the creditor making the disclosures, as required by Section 128(a)(1) of TILA, 15 U.S.C. § 1638(a)(1), and Section 226.18(a) of Regulation Z, 12 C.F.R. § 226.18(a), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

C. Failing to disclose, or accurately disclose, the amount financed, as required by Section 128(a)(2) of TILA, 15 U.S.C. § 1638(a)(2), and Section 226.18(b) of Regulation Z, 12 C.F.R. § 226.18(b), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

D. Failing to disclose, or accurately disclose, the finance charge, as required by Sections 106 and 128(a)(3) of TILA, 15 U.S.C. §§ 1605 and 1638(a)(3), and Sections 226.4 and 226.18(d) of Regulation Z, 12 C.F.R. §§ 226.4 and 226.18(d), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

E. Failing to disclose, or accurately disclose, the annual percentage rate, as required by Sections 107 and 128(a)(4) of TILA, 15 U.S.C. §§ 1606 and 1638(a)(4), and Sections 226.18(e) and 226.22 of Regulation Z, 12 C.F.R. §§ 226.18(e) and 226.22, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

F. Failing to disclose, or accurately disclose, the payment schedule, as required by Section 128(a)(6) of TILA, 15 U.S.C. § 1638(a)(6), and Section 226.18(g) of Regulation Z, 12 C.F.R. § 226.18(g), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

G. Failing to disclose, or accurately disclose, the total of payments, as required by Section 128(a)(5) of TILA, 15 U.S.C. § 1638(a)(5), and Section 226.18(h) of Regulation Z, 12 C.F.R. § 226.18(h), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

H. Failing to disclose, or accurately disclose, whether or not a penalty may be imposed if the obligation is prepaid in full, as required by Section 128(a)(11) of TILA, 15 U.S.C. § 1638(a)(11), and Section 226.18(k)(1) of Regulation Z, 12 C.F.R. § 226.18(k)(1), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

I. Failing to disclose, or accurately disclose, any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge,

as required by Section 128(a)(10) of TILA, 15 U.S.C. § 1638(a)(10), and Section 226.18(l) of Regulation Z, 12 C.F.R. § 226.18(l), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

J. Failing to disclose, or accurately disclose, the fact that the creditor has or will acquire a security interest in the consumer's principal dwelling, as required by Section 128(a)(9) of TILA, 15 U.S.C. § 1638(a)(9), and Section 226.18(m) of Regulation Z, 12 C.F.R. § 226.18(m), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

K. Making any consumer credit disclosure that does not reflect the terms of the legal obligation between the parties, in violation of Section 226.17(c)(1) of Regulation Z, 12 C.F.R. § 226.17(c)(1), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

L. Failing to deliver the required notice of the right to rescind a consumer credit transaction in which a security interest is or will be retained or acquired in the consumer's principal dwelling, as required by Section 125(a) of TILA, 15 U.S.C. § 1635(a), and Section 226.23(b) of Regulation Z, 12 C.F.R. § 226.23(b), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

M. Failing to deliver two copies of the required notice of the right to rescind to each consumer entitled to rescind, as required by Section 125(a) of TILA, 15 U.S.C. § 1635(a), and Sections 226.17(d) and 226.23(b) of Regulation Z, 12 C.F.R. §§ 226.17(d) and 226.23(b), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

N. Disbursing money before the TILA rescission period has expired, in violation of Section 125 of TILA, 15 U.S.C. § 1635, and Section 226.23(c) of Regulation Z, 12 C.F.R. § 226.23(c), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

O. Modifying or waiving a consumer's right to rescind without receiving a dated written statement that describes a bona fide personal financial emergency, specifically modifies or waives the right to rescind, and bears the signatures of all of the consumers entitled to rescind, in violation of Section 125(d) of TILA, 15 U.S.C. § 1635(d), and Section 226.23(e) of Regulation Z, 12 C.F.R. § 226.23(e), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

P. Engaging in any practice that deprives a consumer of the right to rescind, in violation of Section 125(a) of TILA, 15 U.S.C. § 1635(a), and Section 226.23(a) of Regulation Z, 12 C.F.R. § 226.23(a), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

Q. Retaining, collecting, or threatening to retain or collect any amount in connection with a consumer credit transaction rescinded by a consumer pursuant to TILA, in violation of Section 125(b) of TILA, 15 U.S.C. § 1635(b), and Section 226.23(d)(1) of Regulation Z, 12 C.F.R. § 226.23(d)(1), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

R. Failing to retain evidence of compliance with Regulation Z, as required by Section 226.25(a) of Regulation Z, 12 C.F.R. § 226.25(a); and

S. Failing to comply with any other provision of TILA or Regulation Z.

III.

Injunction Against FTC Act Violations

IT IS FURTHER ORDERED that defendants, and each of them, their successors, assigns, officers, agents, servants, employees, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any business, entity, corporation, subsidiary, division or other device, in connection with advertising, offering, brokering or extending credit, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, are permanently restrained and enjoined from:

A. Misrepresenting in any manner, directly or by implication, any material fact, including but not limited to:

1. Any credit cost or term, including but not limited to the annual percentage rate or finance charge;
2. The effects of entering into a business or commercial credit transaction;
3. The effects of entering into a consumer credit transaction;
4. Any aspect of the TILA right to rescind, including but not limited to the requirement that the creditor return to the consumer all

monies and property paid in connection with the transaction in the event of rescission; and

5. Whether the credit offered or extended is open-end credit;

B. Engaging in any act or practice that deprives a consumer of the HOEPA waiting period (15 U.S.C. § 1639(b)(1) and 12 C.F.R. § 226.31(c)(1)) or the TILA right to rescind (15 U.S.C. § 1635 and 12 C.F.R. § 226.23);

C. Directing a consumer to falsely state the purpose of an extension of credit, including but not limited to stating that the extension of credit is primarily for a business or commercial purpose when, in fact, it is primarily for a personal, family or household purpose; and

D. Falsifying or altering material information in any document relating to a credit transaction, including but not limited to information concerning the purpose of the extension of credit.

IV.

Performance Bond Requirement

IT IS FURTHER ORDERED that defendants, whether directly or indirectly, in concert with others, or through any intermediary, business entity or device, are permanently restrained and enjoined from offering or extending any consumer credit, unless they first obtain a performance bond in the principal amount of $250,000.

A. Each bond shall be conditioned upon defendants' compliance with TILA, HOEPA, Regulation Z, Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the provisions of this Order. Each bond shall be deemed continuous and remain in full force and effect for a five (5) year period from the date a defendant first offers or extends consumer credit, after which this bonding requirement will terminate as to new loans, but shall remain in full force and effect for an additional three (3) years as to loans written within the five-year period. Each bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss due, in whole or in part, to any material violation of TILA, HOEPA, Regulation Z, Section 5(a) of the FTC Act, or any provision of this Order;

B. Each bond shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to conduct surety business in each of the states in which any defendant does business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Defendants shall be deemed to be doing business in each state in which any defendant, or any entity through which a defendant is offering or extending consumer credit, maintains an office or contacts any consumer. Such bond shall be in favor of both (1) the Commission for the benefit of consumers injured due, in whole or in part, to any material violation of TILA, HOEPA, Regulation Z, Section 5(a) of the FTC Act, or any provision of this Order, and (2) any consumer so injured. Each bond shall be executed in favor of the Commission or in favor of any injured consumer if the Commission or the consumer demonstrates to this Court, or a Magistrate thereof, by a preponderance of the evidence, that a defendant has violated any condition of the bond;

C. Defendants shall not disclose the existence of any performance bond required by Section IV of this Order to any consumer to whom consumer credit is offered or extended without also disclosing clearly and prominently, at the same time, in writing:

AS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT IN SETTLEMENT OF CHARGES OF FALSE AND MISLEADING REPRESENTATIONS AND FAILURE TO DISCLOSE MATERIAL INFORMATION IN THE OFFERING AND EXTENDING OF CONSUMER CREDIT;

D. Defendants shall provide a copy of each bond required by Section IV of this Order to Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, WA 98174, at least ten (10) days prior to the commencement of any activity or business for which the bond is required; and

E. The bond required by Section IV of this Order shall be in addition to, and not in lieu of, any other bond required by law.

V.

Payment of Consumer Redress

IT IS FURTHER ORDERED that defendants, their successors and assigns, jointly and severally, shall pay redress to consumers in the amount of $55,000. Defendants shall transfer the sum of $55,000 into an escrow account designated by plaintiff, on or before five (5) days after the date of entry of this Order. This sum shall be used to provide redress to consumers who obtained HOEPA mortgage loans between October 1, 1995, and the date of entry of this Order, and to pay any attendant expenses of administration. The FTC shall determine, in its sole discretion, which consumers are eligible for redress as well as the amounts to be paid.

A. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury. Defendants shall be notified as to how funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

B. Notwithstanding any other provision of this Order, defendants agree that if they fail to meet the payment obligations set forth in Section V of this Order, defendants shall pay the costs and attorneys fees incurred by the Commission and its agents in any attempts to collect amounts due pursuant to this Order. The facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to Section V of this Order, including but not limited to a nondischargeability complaint in any subsequent bankruptcy proceeding.

VI.

Reformation of Contracts

IT IS FURTHER ORDERED that, on or before fourteen (14) days after the date of entry of this Order, for each open HOEPA mortgage loan that is wholly or partially owned by any defendant on the date of entry of this Order, defendants, their successors and assigns, shall:

A. If the note or contract contains a "balloon payment" provision in violation of Section 129(e) of TILA, 15 U.S.C. § 1639(e), and Section 226.32(d)(1) of Regulation Z, 12 C.F.R. § 226.32(d)(1), reform the note or contract by nullifying that provision and, without

altering any other provision, extending the term of the loan such that the outstanding principal balance will be due not sooner than five years after the date of the note or contract;

B. If the note or contract provides for an increase in the interest rate in the event of default in violation of Section 129(d) of TILA, 15 U.S.C. § 1639(d), and Section 226.32(d)(4) of Regulation Z, 12 C.F.R. § 226.32(d)(4), reform the note or contract by nullifying that provision; and

C. Mail or deliver to each consumer obligated in a note or contract reformed pursuant to Section VI of this Order a clear and conspicuous written notice describing each change made in the note or contract and stating that each nullified provision will not be enforced by any party, and that does not contain any other information.

VII.

Truthfulness of Financial Statements

IT IS FURTHER ORDERED that, within three (3) business days after the date of entry of this Order, defendants David Knudson and Holly Knudson shall each submit to the Commission a sworn statement, in the form shown in Attachments A and B to this Order, that shall reaffirm and attest to the truthfulness, accuracy, and completeness of the Financial Statements that they previously executed on [illegible], 1999, and the related documents previously submitted to the Commission (together designated the "Financial Statement") on behalf of defendants Wasatch Credit Corp., Wasatch Equities Corp., Wasatch Loans, Inc., Wasatch Recovery Corp., and RHK Family Trust. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of defendants' financial condition as represented in the Financial Statements referenced above, which contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Order, including the amount of monetary redress and the terms of the consumer redress payments stated in this Order.

A. If, upon motion by the Commission, this Court finds that any defendant failed to file the sworn statement required by Section VII this Order, filed a Financial Statement that failed to disclose any material asset or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the Financial Statement, the judgment

herein shall be reopened for the purpose of determining an appropriate additional amount for defendants to pay as redress to consumers in accordance with Section V of this Order.

B. For purposes of determining the amount of redress: (1) if the Financial Statement failed to disclose a material asset or materially misrepresented the value of an asset, forfeiture of the asset, or the fair market value (or difference in fair market value) thereof, calculated as of the date of entry of this Order, shall constitute an appropriate amount of redress; and (2) if the Financial Statement failed to report the transfer of any asset to another person, the fair market value of the asset shall constitute an appropriate amount of redress. If defendants cannot pay the fair market value of the asset, and such transfer was not to a *bona fide* purchaser for value, this Court shall impose a constructive trust for the benefit of injured consumers over the asset, and the asset shall be conveyed by the transferee to the Commission; *provided, however*, that in all other respects, this Order shall remain in full force and effect unless otherwise ordered by this Court.

VIII.

Commission's Authority to Monitor Compliance

IT IS FURTHER ORDERED that the Commission is authorized to monitor defendants' compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and suppliers to any defendant, defendants' employees, or any other entity managed or controlled in whole or in part by any defendant, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate

whether any defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

IX.

Record Keeping Requirements

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendants, their successors and assigns, in connection with any business where:

(1) any individual defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where

(2) the business is engaged in offering or extending consumer credit

are hereby permanently restrained and enjoined from failing to retain for a period of five (5) years following the date of their creation, unless otherwise specified:

A. Each disclosure statement, notice or other document provided by or on behalf of a defendant to any consumer pursuant to any provision of TILA, HOEPA or Regulation Z, including but not limited to Sections 226.18, 226.23, and 226.32 of Regulation Z, 12 C.F.R. §§ 226.18, 226.23, and 226.32; each waiver received pursuant to Sections 226.23(e) or 226.31(c)(1)(iii) of Regulation Z, 12 C.F.R. §§ 226.23(e) or 226.31(c)(1)(iii); each worksheet or other calculation tool used to produce TILA or HOEPA disclosures, including but not limited to computer programs and software; and all other records necessary to demonstrate defendants' compliance with TILA, HOEPA, and Regulation Z; *provided, however*, that nothing in Section IX.A of this Order shall be construed to supersede or limit defendants' ongoing obligation to retain evidence of compliance with Regulation Z pursuant to Section 226.25(a) of Regulation Z, 12 C.F.R. § 226.25(a), and Section II.R of this Order;

B. Each disclosure statement, notice or other document provided by or on behalf of a defendant to any person pursuant to any provision of the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601-2617, as amended, or its implementing Regulation X, 24 C.F.R. 3500, as amended, including but not limited to all good faith estimates and settlement statements, regardless of whether they are the final versions thereof;

C. Each credit application, report from a consumer reporting agency, property appraisal, and other document obtained concerning any applicant or application;

D. Each note, contract, security agreement, mortgage, deed of trust, other document signed by the borrower or prepared in connection with the transaction (whether signed or not), and other document relating to the servicing of an account, the collection of a delinquent or slow account or foreclosure, as well as each rider, amendment or other document that modifies any of the foregoing;

E. Each loan register, ledger or other document that lists (chronologically, alphabetically or otherwise) loans made by any defendant, including such information as borrowers' names, loan numbers, loan types, dates of consummation, and/or loan amounts;

F. Each written statement concerning a defendant's policies, procedures or practices in connection with extending credit, including but not limited to compliance with TILA, HOEPA or Regulation Z;

G. Each printed advertisement and promotional item relating to credit, including but not limited to newspaper and magazine advertisements, pamphlets, brochures, flyers, mailers, and signs;

H. Each audio and video tape used to advertise or promote credit, and a printed transcript for each such audio and video tape;

I. In printed form, each advertisement and promotional item relating to credit posted in any Internet news group, on the World Wide Web, on any electronic bulletin board system, in any online interactive conversational space or chat room, in the classified advertising section of any online service, or in any other location accessible by modem communications, including an indication of the online location where the material was posted;

J. Each complaint or refund request received in connection with an extension of credit and the response thereto; and

K. Each signed statement secured by any defendant pursuant to Section X of this Order.

X.

Distribution of Order

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendants, their successors and assigns, shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where:

(1) any individual defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where

(2) the business is engaged in offering or extending consumer credit; and

B. Maintain for a period of five (5) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Section X.A of this Order.

XI.

Compliance Reporting by Defendants

IT IS FURTHER ORDERED that, to assist the Commission in monitoring defendants' compliance with this Order, defendants, their successors and assigns:

A. For a period of five (5) years from the date of entry of this Order, shall notify the Commission of the following:

1. Any changes in defendant's residence, mailing addresses, or telephone numbers, within ten (10) days of the date of such change;

2. Any changes in defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant is affiliated with or employed

by, a statement of the nature of the business, and a statement of defendant's duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the structure of any business entity owned or controlled by any individual defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; *provided, however*, that, with respect to any such proposed change about which such defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which such defendant has complied and is complying with this Order. This report shall include but not be limited to:

1. Defendant's then-current residence address, mailing addresses, and telephone numbers;

2. Defendant's then-current employment, business addresses and telephone numbers, a description of the business activities of each employer, and defendant's title and responsibilities for each employer;

3. A copy of each acknowledgment of receipt of this Order obtained by defendant pursuant to Section X of this Order; and

4. A statement describing the manner in which defendant has complied and is complying with the provisions of Sections I through X of this Order;

C. For a period of five (5) years from the date of entry of this Order, upon written request by a representative of the Commission, shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Order;

D. For the purposes of Section XI of this Order, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employer" includes any individual or entity for whom any defendant performs services as an employee, consultant, broker, or independent contractor; and

E. For purposes of the compliance reporting required by Section XI of this Order, the Commission is authorized to communicate directly with any defendant.

XII.

Access to Business Premises

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, defendants, their successors and assigns shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office or facility storing documents of any corporate defendant or any business where:

(1) any individual defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where

(2) the business is engaged in offering or extending consumer credit.

In providing such access, defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order, and shall permit removal by a third-party copying service of documents selected by Commission representatives, for a period not to exceed five (5) business days, so that the documents may be copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Section XII.A of this Order applies, concerning matters relating to compliance with this Order. The person interviewed may have counsel present. *Provided* that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to a defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XIII.

Mailing of Notices

IT IS FURTHER ORDERED that all notices and reports required by this Order shall be made in writing and sent by first class United States mail to Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, WA 98174.

XIV.

Continuing Jurisdiction of Court

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes, including construction, modification, and enforcement of this Order.

XV.

Acknowledgment of Receipt of Order by Defendants

IT IS FURTHER ORDERED that, within five (5) business days after receipt by each defendant of this Order as entered by the Court, each defendant shall submit to the Commission a truthful sworn statement, in the form shown in Attachments C and D to this Order, that shall acknowledge receipt of this Final Order.

JUDGMENT IS THEREFORE ENTERED under the terms and conditions recited above, each party to bear its own costs and attorney fees incurred in connection with this action.

SO ORDERED, this 23rd day of August, 1999.

UNITED STATES DISTRICT JUDGE

The parties hereby stipulate and agree to the terms and conditions set forth above and consent to entry of this Stipulated Final Judgment and Order.

DATE: July 14, 1999

FEDERAL TRADE COMMISSION:

George J. Zweibel

Kathryn C. Decker

Nadine S. Samter
Attorneys for Plaintiff
Federal Trade Commission

DEFENDANTS:

WASATCH CREDIT CORP.

By: [NAME, TITLE] Pres.
Wasatch Credit Corp.

WASATCH EQUITIES CORP.

By: _____
[NAME, TITLE]
Wasatch Equities Corp.

WASATCH LOANS, INC.

By: _____
[NAME, TITLE]
Wasatch Loans, Inc.

WASATCH RECOVERY CORP.

By: _____
[NAME, TITLE]
Wasatch Recovery Corp.

RHK FAMILY TRUST

By: _____
DAVID KNUDSON, Trustee for RHK Family Trust

By: _____
HOLLY KNUDSON, Trustee for RHK Family Trust

_____
DAVID KNUDSON, Individually

_____
HOLLY KNUDSON, Individually

Chris L. Schmutz
Attorney for Defendants
265 East 100 South, Suite 300
Salt Lake City, UT 84111
(801) 364-0256

Mark J. Griffin
Russell S. Walker
Woodbury & Kesler, PC
Attorneys for Defendants
265 East 100 South, Suite 300
Salt Lake City, UT 84111
(801) 364-1100

ATTACHMENT A

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WASATCH CREDIT CORP., a Utah Corporation, *et al.*,

Defendants.

Case No.

DECLARATION OF DAVID KNUDSON AS TO FINANCIAL STATEMENTS

Pursuant to 28 U.S.C. § 1746, David Knudson declares as follows:

1. My name is David Knudson. My current residence address is _____. I am over the age of eighteen. I have personal knowledge of the facts set forth in this Declaration.

2. I am a defendant in *FTC v. Wasatch Credit Corp., et al.*, Case No. _____ (U.S. District Court, District of Utah).

3. The information contained in the Financial Statements of Wasatch Credit Corp., Wasatch Equities Corp., Wasatch Loans, Inc., Wasatch Recovery Corp., and RHK Family Trust, executed by me on _____, 1999, and provided to the Federal Trade Commission, were true, accurate, and complete on the date they were executed.

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

Executed on _____, 199_.

_____
David Knudson

ATTACHMENT B

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WASATCH CREDIT CORP., a Utah Corporation, *et al.*,

Defendants.

Case No.

DECLARATION OF HOLLY KNUDSON AS TO FINANCIAL STATEMENTS

Pursuant to 28 U.S.C. § 1746, Holly Knudson declares as follows:

1. My name is Holly Knudson. My current residence address is _____. I am over the age of eighteen. I have personal knowledge of the facts set forth in this Declaration.

2. I am a defendant in *FTC v. Wasatch Credit Corp., et al.*, Case No. _____ (U.S. District Court, District of Utah).

3. The information contained in the Financial Statements of Wasatch Credit Corp., Wasatch Equities Corp., Wasatch Loans, Inc., Wasatch Recovery Corp., and RHK Family Trust, executed by me on _____, 1999, and provided to the Federal Trade Commission, were true, accurate, and complete on the date they were executed.

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

Executed on _____, 199_.

_____
Holly Knudson

ATTACHMENT C

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WASATCH CREDIT CORP., a Utah Corporation, *et al.*,

Defendants.

Case No.

DECLARATION OF DAVID KNUDSON AS TO RECEIPT OF ORDER

Pursuant to 28 U.S.C. § 1746, David Knudson declares as follows:

1. My name is David Knudson. My current residence address is _____. I am over the age of eighteen. I have personal knowledge of the facts set forth in this Declaration.

2. I am a defendant in *FTC v. Wasatch Credit Corp., et al.*, Case No. _____ (U.S. District Court, District of Utah).

3. On _____, 1999, I received a copy of the Stipulated Final Judgment and Order, which was signed by the Honorable [name of U.S. District Judge] and entered by the Court on _____, 1999, on behalf of Wasatch Credit Corp., Wasatch Equities Corp., Wasatch Loans, Inc., Wasatch Recovery Corp., and RHK Family Trust. A true and correct copy of the Order I received is appended to this Declaration.

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

Executed on _____, 1999.

_____
David Knudson

ATTACHMENT D

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WASATCH CREDIT CORP., a Utah Corporation, *et al.*,

Defendants.

Case No.

DECLARATION OF HOLLY KNUDSON AS TO RECEIPT OF ORDER

Pursuant to 28 U.S.C. § 1746, Holly Knudson declares as follows:

1. My name is Holly Knudson. My current residence address is _____. I am over the age of eighteen. I have personal knowledge of the facts set forth in this Declaration.

2. I am a defendant in *FTC v. Wasatch Credit Corp., et al.*, Case No. _____ (U.S. District Court, District of Utah).

3. On _____, 1999, I received a copy of the Stipulated Final Judgment and Order, which was signed by the Honorable [name of U.S. District Judge] and entered by the Court on _____, 1999, on behalf of Wasatch Credit Corp., Wasatch Equities Corp., Wasatch Loans, Inc., Wasatch Recovery Corp., and RHK Family Trust. A true and correct copy of the Order I received is appended to this Declaration.

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

Executed on _____, 1999.

_____
Holly Knudson

ce

United States District Court
for the
District of Utah
August 24, 1999

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:99-cv-00579

True and correct copies of the attached were mailed by the clerk to the following:

Ms. Carlie Christensen, Esq.
US ATTORNEY'S OFFICE

JFAX 9,5245985

Kathryn C. Decker, Esq.
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, WA 98174

Hayes ... Sentenced to 66 Months in Prison for Conspiracy, Money Laundering in Connection with Mortgage Fraud Case

U.S. Attorney's Office
June 14, 2011

District of Utah
(801) 524-5682

SALT LAKE CITY – Ronald William Hayes, Sr., 63, of Bountiful, convicted in December of money laundering and conspiracy to commit wire and mail fraud in connection with a mortgage fraud scheme, will spend 66 months in federal prison.

U.S. District Judge Clark Waddoups imposed the sentence Monday afternoon. Hayes must serve 60 months of supervised release when he finishes his prison sentence. He also was ordered to pay $2,384,974.76 in restitution along with other defendants involved in the fraud scheme.

"This is a significant sentence in a mortgage fraud case," U.S. Attorney Carlie Christensen said today. "Mr. Hayes and the other defendants in this case were involved in an extensive mortgage fraud operation—cycling approximately 75 houses through their straw-buyer scheme. When the Utah Mortgage Fraud Task Force was organized, this case was identified early as a priority for investigation and prosecution by task force members from many agencies."

"Mortgage fraud continues to be one of the most serious economic crimes facing this community," Christensen said. "While these crimes directly harm the victims of the fraud, the conduct damages our housing markets and displaces families in our communities. We will continue to use every tool available to aggressively investigate and prosecute those individuals who perpetrate these devastating financial crimes against our communities."

(The FBI's Mortgage Fraud Report for 2008, released last year, indicated that Utah was one of the top 20 states for mortgage fraud in the country. The FBI uses an analysis of available law enforcement and industry data to prepare the report.)

Hayes and two other individuals, Lyle Clay Smith, age 46, of Roy, and Jamie Melwood Johnson, age 59, of Salt Lake City, were charged in a 38-count indictment returned in March 2009. The indictment included 10 counts of mail fraud; 12 counts of wire fraud; one count of conspiracy; and 15 counts of money laundering.

Smith reached a plea agreement with federal prosecutors and is serving a 36-month federal prison sentence. He also must pay $2,384,974.76 in restitution jointly with other defendants convicted in the case. Johnson, who was convicted of 27 counts following a jury trial in March, is scheduled to be sentenced July 18, 2011, although it is likely that date will be continued.

In his guilty plea, Hayes admitted that in 2006 and 2007, he was an accountant and tax planner offering financial and tax services. He admitted his business, "Paramount Strategies," helped investors acquire "undervalued real estate." Hayes admitted that, in reality, these investors were straw buyers that had been paired with properties in Davis, Salt Lake and Utah counties that had previously been identified and placed under contract by Hayes's associates. Hayes introduced recruiters and others to a co-defendant as his legal counsel, and to others involved in various real estate disciplines in a loose confederation that promoted straw purchases of residential properties. Hayes admitted that the group caused misrepresentations to be made on loan applications to deceptively inflate the value of the properties, and to create the false appearance that straw borrowers were qualified to repay loans in order to induce lenders to grant loans for amounts in excess of their fair market value.

Straw buyers were told that they would not have to move into the properties, would not need to make a down payment, earnest money payments or monthly payments. Straw buyer did not see the homes being purchased before closing and did not plan on moving into the homes they were signing for. Straw buyers were promised that when the property had risen in value and was sold in a year or two, they would split the profits with Paramount. The straw buyer loans were closed in a rushed process and the loan distribution and closing statements were sometimes created in a manner that concealed that the down payments were being extended to short-term lenders, that the purchasers were straw buyers, and that side agreements and joint venture agreements channeled excess loan proceeds to Paramount.

Agencies participating in the investigation of the case include the Davis County Attorney's Office, the Utah Insurance Fraud Division, HUD-Office of Inspector General, the FBI, the IRS, and members of the Utah Mortgage Fraud Task Force.

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	
Plaintiff,	**VERDICT**
v.	
JAMES MELWOOD JOHNSON,	2:09-CR-00133 CW
Defendant.	

We, the jury duly impaneled in the above-entitled case, find the defendant JAMES MELWOOD JOHNSON:

☒ GUILTY ☐ NOT GUILTY as to Count 1 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 2 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 4 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 5 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 6 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 7 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 9 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 11 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 12 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 13 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 14 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 15 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 16 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 18 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 19 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 21 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 23 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 27 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 28 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 29 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 30 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 31 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 32 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 33 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 35 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 37 of the Indictment.

☒ GUILTY ☐ NOT GUILTY as to Count 38 of the Indictment.

DATED this 15 day of March, 2011.

FOREPERSON

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA
v.
JAMES MELWOOD JOHNSON

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX2:09CR000133

USM Number: 15981-081

Marcus R. Mumford
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) 1-2, 4-7, 9, 11-16, 18, 19, 21, 23, 27-33, 35, 37, 39 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
[illegible]	[illegible]	[illegible]	[illegible]
18 U.S.C. § 1343	Wire Fraud	4/14/2009	11-16,
[illegible]	[illegible]	[illegible]	[illegible]

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) 3,8,10,17,20,22,24-26,34,36 ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/28/2014
Date of Imposition of Judgment

Signature of Judge

Hon. Clark Waddoups District Court Judge
Name and Title of Judge

9/4/2014
Date

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 1A

DEFENDANT: JAMIS MELWOOD JOHNSON
CASE NUMBER: DUTX2:09CR000133

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§1956 (a)(1)	Conspiracy to Commit Money Laundering	4/14/2009	1
18 U.S.C. §§1956 (a)(1)	Money Laundering	4/14/2009	27-33, 35
18 U.S.C. §§ 1956(a)(1)	Money Laundering	4/14/2009	37, 38
18 U.S.C. §§ 1957(a)	Money Laundering	4/14/2009	39-42

AO 245B (Rev. 09/11) Judgment in Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 3 of 7

DEFENDANT: JAMIS MELWOOD JOHNSON
CASE NUMBER: DUTX209CR000133

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

5 months to run concurrent with sentence in Case No. 051700056 before the Fourth Judicial District Court for Millard County, State of Utah.

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ______ ☐ a.m. ☐ p.m. on ______ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on ______

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on Release USMS Hold - Hold Served

a on 9/18/2014 , with a certified copy of this judgment.

JAMES A. THOMPSON
UNITED STATES MARSHAL

By [signature]
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAMIS MELWOOD JOHNSON
CASE NUMBER: DUTX2:09CR000133

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☑ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
14) The defendant shall submit his or her person, residence, office or vehicle to search, conducted by the probation office at a reasonable time and in a reasonable manner based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: JAMIS MELWOOD JOHNSON
CASE NUMBER: DUTX2:09CR000133

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is to inform any employer or prospective employer of current conviction and supervision status.

2. The defendant shall provide the U.S. Probation Office complete access to all business and personal financial information.

3. The defendant shall maintain not more than one personal and/or business checking/savings account and shall not open, maintain, be a signatory on, or otherwise use any other financial institution account without the prior approval of the U.S. Probation Office.

4. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless in compliance with any established payment schedule and obtains the approval of the probation office.

5. The defendant shall not be employed by, affiliated with, own or control, or otherwise participate, directly or indirectly, in the business of money, including accounting and real estate without the approval of the U.S. Probation Office.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: JAMIS MELWOOD JOHNSON
CASE NUMBER: 0UTX2:09CR000133

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 2,700.00	$ 0.00	$ 15,282.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☑ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Bank of America		$15,282.00	
TOTALS	$ 0.00	$ 15,282.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☐ fine ☑ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: JAMIS MELWOOD JOHNSON
CASE NUMBER: DUTX2:09CR000133

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 2,700.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

Defendant shall pay $10.00 per month towards restitution while incarcerated. Upon release, defendant shall pay $400.00 per month or such other amount as determined by probation based upon defendant's financial circumstances.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. JAMIS MELWOOD JOHNSON, Defendant.	Case No. 2:09-CR-00133 RESPONSE TO DEFENDANT'S MOTION TO TERMINATE RESTITUTION REPORTING OBLIGATION TO THE U.S. ATTORNEY, AND FOR OTHER MISCELLANEOUS RELIEF (DOCKET NO. 543) Honorable Clark Waddoups

The United States, through the undersigned counsel, hereby responds to Defendant Jamis Melwood Johnson's motion of August 7, 2020, requesting that the Court terminate his obligation to provide financial information to the United States Attorney's Office to facilitate the collection and enforcement of his restitution debt, as well as other miscellaneous relief.[1] For the following reasons, the Court should deny Mr. Johnson's motion in its entirety, except that the United States agrees that his monthly payments for the months of June, July, and August, 2020 may be reduced from $50 to $10.

[1] Docket No. 543, Defendant's Motion.

I. STATEMENT OF FACTS

1. In March 2011, a jury found Mr. Johnson guilty of seven counts of Mail Fraud (18 U.S.C. § 1341), nine counts of Wire Fraud (18 U.S.C. § 1343), one count of Conspiracy to Commit Mail Fraud (18 U.S.C. § 1349), and ten counts of Money Laundering (18 U.S.C. §§ 1956(a)(1)(A)(i) and (a)(2)).[2] Following his conviction, the Court sentenced him to five months' imprisonment to run concurrent with the sentence in Case No. 051700056 before the Fourth Judicial District Court for Millard County, and thirty-six months' supervised release. The Court also ordered Mr. Johnson to pay restitution of $15,282.00 to Bank of America and a special assessment of $2,700.00.[3]

2. For the Schedule of Payments, the Court ordered Mr. Johnson to pay the special assessment in a lump sum payment of $2,700.00, due immediately, and restitution as follows:

> Defendant shall pay $10.00 per month towards restitution while incarcerated. Upon release, defendant shall pay $400.00 per month or such other amount as determined by probation based upon defendant's financial circumstances.[4]

3. On June 28, 2018, while under the supervision of the United States Probation Office, Mr. Johnson entered into a Stipulation for Installment Payments (Stipulation) wherein he agreed to certain terms paraphrased as follows:

- To pay $50.00 per month towards his criminal monetary penalties;

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[2] Docket No. 232, Verdict, March 18, 2011; Docket No. 488, Judgment in a Criminal Case (JCC), September 4, 2014.

[3] Docket No. 488, pp. 3-4.

[4] Docket No. 488, p. 7.

- To periodically submit financial statements at the end of two years and yearly thereafter so that the United States can evaluate and modify (or move the Court to modify) his payment schedule as appropriate;

- To immediately notify the U.S. Attorney's Office and the Court of any change in address, change in employment, or significant change in economic circumstance;

- That upon notice of a change in economic circumstances his payment schedule could be adjusted;

- That *in addition to* his monthly payment obligation, the United States could place him on the Treasury Offset Program (TOP) and the State Finder Program, which offset any federal and state payments that are owed to him and apply the funds to his debt.

- That if he fails to strictly comply with the terms of the agreement, the United States may move the Court *ex parte* for appropriate relief to satisfy the judgment.[5]

4. The Court then entered the Installment Payment Order on July 9, 2018,[6] thereby modifying the restitution payment schedule set forth in Mr. Johnson's JCC.

5. The United States added Mr. Johnson to TOP and State Finder on August 17, 2018. There is some indication in United States Attorney's Office Financial Litigation Unit's (FLU) records that the decision to place Mr. Johnson on TOP and State Finder was based in part on his failure to make a payment in August 2018. However, even if Mr. Johnson had timely made all payments, FLU would still have had authority to place him on TOP and State Finder pursuant to the Stipulation and the Installment Payment Order.

6. Once Mr. Johnson was added to TOP, Treasury took the following offsets and

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[5] Docket No. 533, Stipulation for Installment Payments, June 28, 2018; Docket No. 543, p. 10 ("Mr. Johnson did not have to execute the 2018 Stipulation. He did so because he could not pay the $400 monthly payment ordered by the Court in the Judgment and asked Probation that it be reduced to $50 / month.").

[6] Docket No. 534, Installment Payment Order, July 9, 2018.

applied them to Mr. Johnson's monetary penalties:

- October 3, 2018 – $181.80 offset with $168.68 applied to debt and $13.12 applied to administrative fee.
- November 2, 2018 – $181.80 offset with $168.68 applied to debt and $13.12 applied to administrative fee.
- December 3, 2018 – $181.80 offset with $168.68 applied to debt and $13.12 applied to administrative fee.
- January 3, 2018 – $187.20 offset with $174.08 applied to debt and $13.12 applied to administrative fee.

7. In late December, 2018, Mr. Johnson complained to FLU that the offsets were causing him financial hardship. Due to this hardship, the United States voluntarily removed Mr. Johnson from TOP and State Finder on December 28, 2018. However, it takes several weeks to process the removal of a debtor from TOP, and his removal from TOP was not processed in time to avoid the January 2019 offset.

8. After FLU removed Mr. Johnson from TOP, Mr. Johnson repeatedly requested that FLU return to him the above offsets. On February 27, 2020, FLU notified Mr. Johnson that it would make a one-time exception and would return the offsets to him, but warned that if he defaulted on his monthly payment obligation, FLU will place him back on TOP. On May 10, 2019, the FLU submitted a request to the Department of Justice Debt Accounting Operations Group to return $680.12 (the sum of all four offsets less the administrative fees) to Mr. Johnson, and the offsets were returned to him on or about June 7, 2019. To date, FLU has not placed Mr. Johnson back on TOP or State Finder, and no subsequent offsets have been taken.

9. According to FLU's records, Mr. Johnson has made the following payments since July 2018, when the Installment Payment Order was entered:

7/25/2018	$50.00[6]	8/14/2019	$50.00
9/18/2018	$50.00	9/17/2019	$50.00
10/30/2018	$50.00	10/3/2019	$50.00
11/14/2018	$50.00	11/1/2019	$50.00
12/18/2018	$50.00[6]	12/10/201	$50.00
2/28/2019	$50.00	1/27/2020	$50.00
3/1/2019	$50.00	3/2/2020	$100.00
4/15/2019	$50.00[6]	4/30/2020	$50.00
6/21/2019	$50.00		
7/25/2019	$50.00		

10. On July 28, 2020, FLU agreed to suspend Mr. Johnson's restitution payment obligation for the months of June, July, and August 2020, with payments to resume in September 2020. Per its agreement with Mr. Johnson, FLU has not and will not re-enroll him on TOP or State Finder for non-payment for these months.

11. The United States has thoroughly advised Mr. Johnson of his rights and responsibilities regarding his restitution debt.[7] In particular, the United States has explained to Mr. Johnson on two occasions that his duty to report his financial information to FLU after his term of supervision is based in statute.[8] Yet Mr. Johnson persists in arguing that, but for the Stipulation that he entered in 2018, he would have no such obligation.

12. Mr. Johnson's term of supervision recently expired on August 7, 2020.[9]

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[7] Ex. A – Email to Mr. Johnson of 6/30/2020; Ex. B – Email to Mr. Johnson of 7/1/2020; Ex. C – Email to Mr. Johnson of 7/20/2020.

[8] Ex. A – Email to Mr. Johnson of 6/30/2020 (quoting 18 U.S.C. § 3664(k) regarding defendant's duty to notify the court and the Attorney General of any material change in the defendant's economic circumstances); Ex. C – Email to Mr. Johnson of 7/20/2020 ("Your duty to disclose your financial information after supervision is based in statute. *See* 18 U.S.C. § 3664(k)").

[9] Docket No. 542, Order and Report on Offender Under Supervision, July 28, 2020.

II. AUTHORITY AND ARGUMENT

A. Congress has granted broad authority to the United States to enforce restitution judgments and to conduct financial discovery to facilitate collections.

Mr. Johnson objects to the United States' ability to seek financial discovery from him after supervision, and argues strenuously that such authority would normally end with the termination of supervised release but for the Stipulation he signed in 2018 in which he agreed to provide financial disclosures after two years, and annually thereafter. Mr. Johnson is mistaken in his belief that the United States' authority to seek financial discovery arises solely from the Stipulation. Had he never signed the Stipulation, the United States would still have broad statutory authority to enforce the restitution order, and to seek financial discovery to facilitate such enforcement, for the entire life of the judgment.

A jury convicted Mr. Johnson of twenty-seven counts of various financial crimes, all of which were crimes against property under Title 18.[10] His charges are therefore covered by the Mandatory Victim Restitution Act (MVRA), and restitution for Mr. Johnson's victim was mandated in the full amount of his victim's loss without regard to Mr. Johnson's ability to pay.[11] A restitution judgment ordered pursuant to the MVRA "terminate[s] on the date that is the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the

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[10] 18 U.S.C. § 3663A(c)(1)(A)(ii) ("This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense— (A) that is— (ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit").

[11] 18 U.S.C. § 3663A(d) ("An order of restitution under this section shall be issued and enforced in accordance with section 3664."); 18 U.S.C. § 3664(f)(1)(a) ("In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.").

person ordered to pay restitution." 18 U.S.C. § 3613(b).

The United States is charged with the responsibility to collect restitution debts.[12] Mr. Johnson requests that the Court order the United States to "relinquish all financial information disclosed to FLU by Mr. Johnson including without limitation his social security information and number, his bank account, telephone number and address."[13] However, the Court is actually *required* to provide much of this information to the Attorney General for any order of restitution over $100.[14] The United States' authority to seek financial discovery is found is several places in the United States Code and the Federal Rules of Civil Procedure. 18 U.S.C. § 3613(a) provides, "The United States may enforce a judgment imposing a fine[15] in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law." Similarly, 18 U.S.C. § 3664(m)(1)(A) provides, "(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or (ii) by all other available and reasonable means."

The United States enforces restitution debts primarily under the Federal Debt Collection Procedures Act (FDCPA),[16] which "provides the exclusive civil procedures for the United

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[12] 18 U.S.C. § 3612(c) ("The Attorney General shall be responsible for collection of an unpaid fine or restitution concerning which a certification has been issued as provided in subsection (b).")

[13] Docket No. 543, p. 11.

[14] 18 U.S.C. § 3612(b).

[15] "**(f) Applicability to order of restitution.**—In accordance with section 3664(m)(1)(A) of this title, all provisions of this section are available to the United States for the enforcement of an order of restitution." 18 U.S.C. § 3613(f).

[16] 28 U.S.C. § 3001, et seq.

States— (1) to recover a judgment on a debt." 28 U.S.C. § 3001(a). 28 U.S.C. § 3003(f) provides, "Except as provided otherwise in this chapter, the Federal Rules of Civil Procedure shall apply with respect to actions and proceedings under this chapter." Under Fed. R. Civ. P. 69(a)(2), "In aid of the judgment or execution, the judgment creditor . . . may obtain discovery from any person[17]—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located." In addition, under 18 U.S.C. § 3664(k), "A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution." After notice of the change to the defendant's victims, the Court may, "on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require."

Congress has granted broad authority to the United States to use all reasonable means to enforce restitution judgments. This authority includes the broad discovery powers provided under the Federal Rules of Civil Procure, as well as a mandate on the defendant to report material changes in his or her economic circumstances to the court and the Attorney General. Mr. Johnson's argument that the United States' authority to seek financial discovery arises solely from his Stipulation is incorrect. Furthermore, he has not cited any authority under which the Court could enjoin the United States from seeking financial discovery. For these reasons, the

[17] Under this rule, the United States is entitled to information regarding a defendant's spouse's financial information. Utah is not a community property state, and the United States does not use this information to enforce the restitution judgment against the defendant's spouse's property if the defendant resides in Utah. Rather, the United States uses this information to determine the *defendant's* ability to pay restitution, as any financial support he or she receives from his or her spouse is a "financial resource . . . of the defendant" that must be factored into the analysis of the defendant's ability to pay restitution under 18 U.S.C. § 3664(f)(2)(A).

Court should deny Mr. Johnson's request to terminate his obligation to report his financial information to the United States Attorney's Office.

B. The United States has only used TOP and State Finder as Mr. Johnson agreed, and voluntarily removed Mr. Johnson from these programs and returned all offsets to him upon his request.

TOP is authorized under 31 U.S.C. § 3716 and § 3720A. Before any debtor is placed on TOP, a TOP Notice is sent to the debtor, which provides the notice required by 31 U.S.C. § 3716(a) and § 3720A(b). The Nationwide Central Intake Facility (NCIF) issues TOP Notices as a matter of course when new debts are opened in the Consolidated Debt Collection System (CDCS), the United States' debt management program. FLU's records indicate that a TOP Notice was sent to Mr. Johnson on October 7, 2014. The Stipulation that Mr. Johnson entered into on June 28, 2018, provides in relevant part:

> In addition to the regular monthly payment set forth in paragraph 2 above, Johnson agrees that the United States may submit his debt in the above-captioned case to the State of Utah and the U.S. Department of Treasury for inclusion in the State Finder Program and the Treasury Offset Program. Johnson understands that under these programs, any state or federal payment that he would normally receive may be offset and applied toward the debt in the above-captioned case.[18]

Based upon the Stipulation, the Court entered an Installment Payment Order on July 7, 2018, that contains substantially the same language.[19] After the order was entered, the United States enrolled Mr. Johnson in TOP and State Finder and began offsetting his Social Security benefits. Offsets were taken from Mr. Johnson's Social Security benefits in October, November, and

[18] Docket No. 533, p. 2, ¶ 5.

[19] Docket No. 534, p. 2, ¶ 5.

December, 2018, and January, 2019. In late December, 2018, Mr. Johnson complained to FLU that the offsets were causing him financial hardship, and FLU voluntarily removed Mr. Johnson from TOP and State Finder.[20] FLU also later returned the four offsets that were taken. Mr. Johnson has not been placed on TOP or State Finder again since he was removed in December, 2018.

If Mr. Johnson was unaware that his Social Security benefits would be offset, his ignorance was due solely to his own lack of due diligence. The Stipulation clearly states on its face that offsets will be taken in addition to the regular monthly installment payments. Had he read the Stipulation, or had it read to him, he would have understood that his Social Security benefits would be offset through TOP.

> The courts appear to be unanimous in holding that a person who, having the capacity and an opportunity to read a contract, is not misled as to its contents and who sustains no confidential relationship to the other party cannot avoid the contract on the ground of mistake if he signs it without reading it, at least in the absence of special circumstances excusing his failure to read it.

Garff Realty Co. v. Better Buildings, 120 Utah 344, 349 (1951). Mr. Johnson argues that he is legally blind, and that he was unrepresented at the time that he signed the Stipulation, and therefore he could not read the Stipulation and is not responsible for knowing its contents. However, Mr. Johnson is himself a trained attorney,[21] and he certainly understood the risks of entering into an agreement without reading it. Furthermore, he does not claim that he was denied

[20] Removals take several weeks to process, and Mr. Johnson's removal from TOP was not processed in time to avoid the January 2019 offset.

[21] Docket No. 543, p. 4, ¶ 4 ("After release, Mr. Johnson's only source of income was a $1,380 Social Security check. He could not work because he was visually impaired and his criminal charges inhibited employers, and he had lost his law license.").

an opportunity to have the Stipulation read to him before signing it, or that he lacked the capacity to understand its terms. Therefore, if Mr. Johnson was truly unaware of the terms of the Stipulation, he has only himself to blame. In any event, blame cannot fairly be placed on the United States Attorney's Office where no representative of the Office was present when Mr. Johnson signed the Stipulation.

If Mr. Johnson defaults on his payment schedule of $50 per month, the United States has a statutory right to place him back on TOP and State Finder. "Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3613A." 18 U.S.C. § 3572. "[A]n order of restitution made pursuant to sections . . . 3663A, or 3664 of this title, is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986." 18 U.S.C. § 3613. Therefore, the United States has acted completely within its rights in advising Mr. Johnson that if he defaults on his monthly payment schedule the United States may place him back on TOP.

FLU does have a practice of requiring defendants who owe restitution to produce a financial statement, and to enter into an installment payment plan, as a condition of the United States' consent to *early termination* of supervision. FLU also strongly encourages defendants to enter into stipulated installment payment agreements before their term of supervision expires. This practice serves several purposes: (1) it ensure that any existing payment schedule is adjusted appropriately pursuant to 18 U.S.C. § 3664(k), and in light of the § 3664(f)(2) factors; (2) it facilitates a seamless transition of enforcement responsibilities from the Probation Office to

FLU; and (3) it reminds defendants of their ongoing obligation to pay restitution post-supervision. In most cases, defendants readily accept the payment plans FLU offers. On the rare occasion that a defendant objects to the proposed plan, FLU advises the defendant that, in the alternative, the United States can move to amend the defendant's payment schedule pursuant 18 U.S.C. § 3664(k), and the defendant can argue to the Court for the payment terms he or she believes are reasonable. Although the United States requires having an up-to-date payment schedule in place as a condition of its consent to *early termination* from supervision, the undersigned counsel is not aware of any instance where the United States sought to extend supervision beyond the term that was ordered at sentencing to obtain a stipulated payment agreement.[22] Such actions are not part of FLU's practices.

C. The petition to revoke Mr. Goff's supervised release was brought by the Probation Office, not the United States Attorneys' Office.

In his motion, Mr. Johnson discusses at length the case of United States v. Brian Goff, and alleges that the United States Attorney's Office initiated revocation proceedings against Mr. Goff to induce him to sign a stipulated installment payment agreement.[23] The case of Mr. Goff is not presently before this Court. Furthermore, the petition to revoke Mr. Goff's supervised release was brought by the Probation Office, not the United States Attorney's Office, and the allegations giving rise to the petition are set forth therein.[24] Other than the petition, which Mr. Johnson

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[22] *See* Section C responding to Mr. Johnson's allegations regarding Brian Goff.

[23] Docket No. 543, p. 9, ¶ 36 ("To compel Mr. Goff to execute such documents, and to stay expiration of probation until he complied, the USAUT filed a baseless Probation violation threatening to violate his probation and reincarcerate him.")

[24] 2:11-CR-00436 HCN, Docket No. 240.

incorrectly attributes to the United States Attorney's Office, Mr. Johnson's allegations all pertain to actions taken by Mr. Goff's Probation Officer.[25] These allegations therefore do not support a finding that the United States Attorney's Office has engaged in abusive practices to enforce and collect restitution debts.

D. Mr. Johnson's restitution order is a final judgment, and the Court should deny his request for a hearing to relitigate the amount of the order and Bank of America's status as a victim.

Mr. Johnson asks "[t]he Court . . . to set a hearing to consider the accuracy of the restitution under newly discovered evidence and to consider the victim status of Bank of America and to consider whether the Judgment for Restitution has been satisfied."[26] Mr. Johnson also asks the Court to "Lift the seal and consider Mr. Johnson's Motion Re: Misconduct of the Victim, Bank of America and the U.S. Attorney and newly discovered evidence."[27] There are several sealed documents on the docket, and it is unclear to which seal he is referring, but to the extent that the seal he seeks to lift protects the victim's rights and privacy, Mr. Johnson's request should be denied pursuant to 18 U.S.C. § 3771(a)(1) and (8).[28]

Mr. Johnson fails to explain why he believes the restitution order was entered in error, or to produce any evidence to support his claim. Although he refers to several exhibits in his Motion, no exhibits were filed with his Motion or served on the United States. He also fails to

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[25] Docket No. 543, pp. 8-9

[26] Docket No. 543, p. 3.

[27] Docket No. 543, p. 2.

[28] "A crime victim has the following rights: (1) The right to be reasonably protected from the accused. . . . (8) The right to be treated with fairness and with respect for the victim's dignity and privacy." 18 U.S.C. § 3771(a).

cite any authority under which the Court could now amend the restitution order. Under 18 U.S.C. § 3664(o), an order of restitution is a final judgment, and the amount of the judgment cannot later be amended except under extremely limited circumstances, none of which apply here. The Court should therefore deny Mr. Johnson's request for a hearing to relitigate the restitution order.

E. United States agrees that the Court can reduce Mr. Johnson's payments from $50 to $10 for the months of June, July, and August, 2020.

Mr. Johnson asks the Court to reduce his monthly payments from $50 to $10 for the months of June, July, and August, 2020. The United States does not object to this request, and in fact already agreed to suspend Mr. Johnson's payment obligation for these months. Under 18 U.S.C. § 3664(k), the Court may amend a defendant's restitution payment schedule upon notice of a material change in the defendant's economic circumstances as the interests of justice require. Mr. Johnson's financial statement does not reveal a change in his economic circumstances, nor does he argue that his circumstances have changed. However, Mr. Johnson's financial statement does reveal that he has very limited income and that he is striving to live within his means. He has also fairly consistently paid $50 per month as ordered, and for these reasons FLU decided in its discretion to grant Mr. Johnson's request for a temporary suspension of his payment obligation. For these reasons, the United States hereby stipulates that Mr. Johnson's payment obligations should be reduced to $10 per month, or suspended entirely, for the months of June, July, and August 2020, as the Court sees fit.

III. CONCLUSION

For all the foregoing reasons, the United States respectfully requests that the Court deny all of the relief that Mr. Johnson requests in his motion, except that the United States agrees the Court may suspend or reduce Mr. Johnson's monthly payment obligation from $50 to $10 for the months of June, July, and August 2020.

DATED this 12th day of August, 2020.

JOHN W. HUBER
United States Attorney

/s/ Allison J.P. Moon
ALLISON J.P. MOON
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I am an Assistant United States Attorney for the District of Utah and that copies of the United States' RESPONSE TO DEFENDANT'S MOTION TO TERMINATE RESTITUTION REPORTING OBLIGATION TO THE U.S. ATTORNEY, AND FOR OTHER MISCELLANEOUS RELIEF (DOCKET NO. 543), and the exhibits thereto were served upon the parties by placing a copy of same in the United States mail, postage prepaid, this 12th day of August, 2020, addressed as follows:

Jamis M. Johnson
357 S. 200 E. #303
Salt Lake City, UT 84111

/s/ Allison J.P. Moon
Allison J.P. Moon, AUSA

UNITED STATES PROBATION OFFICE
FOR THE DISTRICT OF UTAH

Report on Offender Under Supervision

Name of Offender: **Jamis Melwood Johnson** Docket Number: **2:09CR000133-001**

Name of Sentencing Judicial Officer: **Honorable Clark Waddoups**
Senior U.S. District Judge

Date of Original Sentence: **August 26, 2014**

Original Offense: **Mail Fraud**
Wire Fraud (2 Counts)
Conspiracy to Commit Mail Fraud
Money Laundering (2 Counts)

Original Sentence: **5 Months Bureau of Prisons Custody/ 36 Months Supervised Release**

Type of Supervision: **Supervised Release** Current Supervision Began: **August 8, 2017**

SUPERVISION SUMMARY

The defendant's term of supervised release is scheduled to expire August 7, 2020. At the time of sentencing, he was ordered to pay a $2,700.00 special assessment fee and $15,282.00 in restitution. The special assessment fee has a balance of $1,380.00 and he owes $15,282.00 in restitution. The defendant has entered into a stipulated payment agreement with the U.S. Attorney's Office, Financial Litigation Unit, agreeing to pay $50.00 per month toward his fine and restitution. Except for the outstanding balances, all other supervision issues have been satisfied and the defendant is viewed as a low risk to engage in future criminal activity.

It is respectfully recommended that no adverse action be taken regarding the defendant not satisfying the restitution during his term of supervision. It is further recommended that his term of supervised release be allowed to expire on August 7, 2020, with restitution owing.

If the Court desires more information or another course of action, please contact me at 801-535-2729.

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

Casey Hardy Franson

by Casey Hardy Franson
U.S. Probation Administrative Assistant
July 28, 2020

THE COURT:

☒ Approves the request noted above
☐ Denies the request noted above
☐ Other

Honorable Clark Waddoups
Senior United States District Judge

Date: July 28, 2020

Revised 12/17