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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON



CR 02-00242 #00000007

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN McCARTHY,

Defendant.

NO. **CR02-242Z**

INFORMATION

(Felony)

FILED UNDER SEAL

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT 1
(Conspiracy)

From in or about 1995, and continuing thereafter until on or about January 23, 2002, at Bellevue, Seattle and Bainbridge Island, within the Western District of Washington, and elsewhere, the defendant, KEVIN McCARTHY, together with other persons known and unknown to the United States Attorney, did unlawfully, willfully, and knowingly combine, conspire, confederate and agree among themselves and each other to commit certain offenses against the United States, as follows:

A. INTRODUCTION

1. Health Maintenance Centers, Inc. ("HMC") was incorporated in Washington State on May 12, 1995, and was administratively dissolved and reinstated at various times throughout the period from on or about December 6, 1995, through on or about October 30, 2000. From on or about September 28, 2000, defendant KEVIN

7

1 | McCARTHY was employed by HMC as the head of HMC's "investor relations"
2 | department. The Articles of Incorporation for HMC provided that the corporate purposes
3 | of HMC were "[t]o operate health and exercise clubs, and related facilities" and "[t]o
4 | engage in any business, trade or activity which may be conducted lawfully by a
5 | corporation organized under the Washington State Business Corporation Act." The
6 | Articles of Incorporation for HMC also provided that "[t]his corporation is authorized to
7 | issue 10,000 shares of common stock and each share shall have a par value of \$1.00." On
8 | February 5, 1997, HMC filed Articles of Amendment that provided, among other things,
9 | that "[t]his corporation is authorized to issue 15,000,000 shares of common stock and
10 | each share shall have a par value of \$1.00." On or about December 26, 2001, HMC
11 | ceased to exist as a Washington State corporation and merged with a Delaware
12 | corporation known as HMC Acquisition Corp., a wholly-owned subsidiary of Znetix, Inc.
13 | Also on or about December 26, 2001, HMC Acquisition Corp. changed its name to
14 | Health Maintenance Centers, Inc.

15 | 2. Project X, Inc., was incorporated in the State of Washington on
16 | November 3, 1999. On October 3, 2000, Project X filed Articles of Amendment with the
17 | Washington State Secretary of State changing its name to Znetix, Inc. On or about
18 | September 25, 2001, Znetix, Inc., ceased to exist as a Washington State corporation and
19 | merged with a Delaware corporation known as Znetix, Inc.

20 | 3. From in or about 1995 through in or about January, 2002, HMC, Project X,
21 | and Znetix, and affiliated entities, through various sales agents and at the direction of
22 | persons known and unknown to the United States Attorney, including defendant KEVIN
23 | McCARTHY, solicited and received in excess of \$50 million from investors. At no time
24 | were the offers and sales of securities issued by HMC, Project X, Znetix, and affiliated
25 | entities registered with the United States Securities and Exchange Commission, the State
26 | of Washington Department of Financial Institutions, Securities Division, or with the
27 | securities regulatory authority in any other state.
28 |

1 4. On or about April 9, 2001, the State of Washington Department of Financial
2 Institutions, Securities Division, issued a Summary Order to Cease and Desist against
3 HMC and an individual known to the United States Attorney. The Cease and Desist
4 Order, among other things, barred HMC (and its employees, officers and directors,
5 including defendant KEVIN McCARTHY) from selling securities through fraudulent
6 representations and material omissions, and in violation of the State of Washington's
7 securities registration statute.

8 5. Cascade Pointe LLC was a limited liability company formed in Washington
9 State on or about May 2, 2001. Cascade Pointe of Arizona LLC was a limited liability
10 company formed in Arizona in or about July, 2001. Cascade Pointe of Nevis LLC was a
11 limited liability company established in the Carribean nation of Nevis on or about July 26,
12 2001.¹ From on or about May 2, 2001, through in or about January 2002, defendant
13 KEVIN McCARTHY, along with others known and unknown to the United States
14 Attorney, secretly controlled and directed the activities of Cascade Pointe.

15 6. From in or about May 2, 2001 through in or about January 2002, Cascade
16 Pointe, through various sales agents and at the direction of defendant KEVIN
17 McCARTHY and others known and unknown to the United States Attorney, solicited and
18 received in excess of \$12 million from investors. At no time were the offers and sales of
19 securities issued by Cascade Pointe and affiliated entities registered with the United
20 States Securities and Exchange Commission, the State of Washington Department of
21 Financial Institutions, Securities Division, or with the securities regulatory authority in
22 any other state.

23 B. OBJECTS OF THE CONSPIRACY

24 The objects of the conspiracy were as follows:

25 1. To unlawfully, knowingly, and willfully, directly and indirectly, by the use
26 of means and instrumentalities of interstate commerce, and of the mails, use and employ,

27
28 ¹ Cascade Pointe LLC, Cascade Pointe of Arizona LLC, and Cascade Pointe of Nevis
LLC are collectively referenced in this Information as "Cascade Pointe."

1 in connection with the purchases and sales of securities, manipulative and deceptive
2 devices and contrivances, by (i) employing devices, schemes, and artifices to defraud;
3 (ii) making untrue statements of material facts and omitting to state material facts
4 necessary to make the statements made, in light of the circumstances in which they were
5 made, not misleading; and (iii) engaging in acts, practices, and courses of business which
6 operated and would operate as a fraud and deceit upon other persons, in violation of
7 Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal
8 Regulations, Section 240.10b-5;

9 2. To knowingly and willfully transmit and cause to be transmitted by wire
10 communication in interstate and foreign commerce writings, signs, signals, pictures, and
11 sounds in furtherance of a scheme and artifice to defraud and for obtaining money and
12 property by means of false and fraudulent pretenses, representations, and promises, in
13 violation of Title 18, United States Code, Section 1343;

14 3. To knowingly and willfully use and cause the United States mail and
15 interstate couriers to be used in furtherance and execution of a scheme and artifice to
16 defraud investors in HMC, Project X, Znetix, Cascade Pointe, and affiliated entities, and
17 a scheme and artifice for obtaining money and property of said investors by means of
18 false and fraudulent pretenses, representations and promises, in violation of Title 18,
19 United States Code, Section 1341;

20 4. To conduct and attempt to conduct financial transactions affecting interstate
21 commerce involving the proceeds of specified unlawful activity (mail fraud, wire fraud,
22 and securities fraud), knowing that the property involved in the financial transactions
23 represented the proceeds of some form of unlawful activity, and knowing that the
24 transactions were designed in whole and in part to conceal or disguise the nature, the
25 location, the source, the ownership, and the control of the proceeds of specified unlawful
26 activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i);

27 5. To transport, transmit, and transfer, and attempt to transport, transmit, and
28 transfer, monetary instruments and funds from places in the United States to and through

1 places outside the United States, and to places in the United States from and through
2 places outside the United States, knowing that the monetary instruments and funds
3 involved in the transportations, transmissions, and transfers represented the proceeds of
4 some form of unlawful activity, and knowing that such transportations, transmissions, and
5 transfers were designed in whole or in part to conceal or disguise the nature, the location,
6 the source, the ownership, and the control of the proceeds of specified unlawful activity,
7 in violation of Title 18, United States Code, Section 1956(a)(2)(B)(i); and

8 6. To knowingly and willfully engage and attempt to engage monetary
9 transactions by, through, or to financial institutions, which monetary transactions affected
10 interstate and foreign commerce, in criminally derived property of a value greater than
11 \$10,000, such property having been derived from specified unlawful activities, that is
12 mail fraud, wire fraud, and securities fraud, in violation of Title 18, United States Code,
13 Section 1957

14 C. MANNER AND MEANS OF THE CONSPIRACY

15 1. It was a part of the conspiracy and scheme to defraud that defendant
16 KEVIN McCARTHY and others known and unknown to the United States Attorney
17 offered and sold, and caused to be offered and sold, and aided and abetted the offer and
18 sale of, securities issued by HMC, Project X, Znetix, and Cascade Pointe to thousands of
19 investors located in Washington State and many other states by means of false and
20 fraudulent statements, representations, promises, and pretenses, including, but not limited
21 to, the false and fraudulent statements that:

22 a. investors who purchased the securities of HMC for one dollar per
23 share would receive four shares of Znetix for each share of HMC at the point when
24 Znetix purchased or merged with HMC;

25 b. Znetix would imminently engage in an Initial Public Offering
26 ("IPO"), after which Znetix securities could be freely traded on exchanges such as
27 NASDAQ;

1 c. Znetix shares would be valued at substantially more than one dollar
2 per share after the IPO;

3 d. Znetix had retained prominent investment banking and underwriting
4 firms who were working on the IPO;

5 e. Znetix had filed or would very shortly file a registration statement
6 with the United States Securities and Exchange Commission;

7 f. Znetix was in a "quiet period" just prior to the IPO;

8 g. HMC and Znetix had developed proprietary medical and fitness
9 software and equipment which would generate substantial revenues;

10 h. Znetix had sold or would shortly sell licenses for approximately
11 \$1 million apiece to operate health and fitness clubs throughout the United States;

12 i. leading sports and entertainment figures had agreed to franchise
13 health and fitness clubs from Znetix;

14 j. a health and fitness club owned by a company affiliated with HMC
15 and located on Bainbridge Island, Washington, was profitable;

16 k. Znetix would receive \$500 million from an investor group from
17 China;

18 l. Cascade Pointe was a private investment firm under management by
19 individuals who were not affiliated with HMC and Znetix;

20 m. Cascade Pointe was one of the nation's leading private investment
21 firms, and believed in "diversification" and investments based on "rock-solid financials;"

22 n. Cascade Pointe would and had the ability to fund, by means of cash
23 or lines of credit, a "rescission offer" to be made by HMC to its investors, which
24 rescission offer was a final step before the Znetix IPO and would afford HMC investors
25 the opportunity to choose between a refund of their investments or keeping their
26 investment with HMC in place;

27 o. the rescission offer, and therefore the Znetix IPO, was imminent;

28

1 p. Cascade Pointe would operate health and fitness clubs in Arizona
2 and in international locations such as Japan, and would receive tens of millions of dollars
3 of revenue;

4 q. funds received from investors in Znetix would be placed in an
5 escrow account;

6 r. investors who received "units" in Cascade Pointe would receive
7 more than one share of HMC stock for each unit, and would later receive four shares of
8 Znetix for each HMC share;

9 s. Znetix had or was about to obtain a contract with the U.S.
10 Department of Defense worth billions of dollars;

11 t. Various shell corporations established in the Caribbean nation of
12 Nevis would provide tens of millions of dollars in the form of lines of credit to Cascade
13 Pointe;

14 u. Cascade Pointe investors would receive million of shares in HMC
15 after the rescission offer to be made by HMC.

16 2. It was a part of the conspiracy and scheme to defraud that in the offer and
17 sale of the securities issued by HMC, Project X, Znetix, and Cascade Pointe, defendant
18 KEVIN McCARTHY and others known and unknown to the United States Attorney
19 failed to truthfully and accurately disclose in a registration statement, prospectus, private
20 placement memorandum or in any other form material facts, including but not limited to:

21 a. the uses to which investors' money would be put;

22 b. the financial condition of HMC, Project X, Znetix, and Cascade
23 Pointe;

24 c. the lack of financial controls at HMC, Project X, Znetix, and
25 Cascade Pointe;

26 d. the compensation to be received by defendants and others associated
27 with HMC, Project X, Znetix, and Cascade Pointe;

28

1 e. that HMC, Project X, Znetix, and Cascade Pointe were under
2 common management and control;

3 f. that the \$500 million "debenture contract" with an investment group
4 from China would require Znetix to first make \$500 million available to a company called
5 Global Project and Development, Ltd.

6 g. that HMC had sold more than its authorized amount of 15 million
7 shares.

8 3. It was a part of the conspiracy and scheme to defraud that defendant
9 KEVIN McCARTHY and others known and unknown to the United States Attorney used
10 millions of dollars of funds received from investors for personal use, and for other
11 purposes not disclosed to investors.

12 4. It was a part of the conspiracy and scheme to defraud that defendant
13 KEVIN McCARTHY and others known and unknown to the United States Attorney
14 established and used a series of shell companies in the United States, in the Carribean
15 nation of Nevis, and elsewhere, to promote the scheme and to conceal the ownership and
16 control of funds;

17 5. It was a part of the conspiracy and scheme to defraud that the
18 coconspirators used millions of dollars of investor funds to promote the scheme by
19 sponsoring hydroplane and offshore racing boats, the Seattle Mariners major league
20 baseball team, and other prominent organizations and events, by hosting lavish parties in
21 Los Angeles and elsewhere, and by paying professional sports stars to wear items
22 imprinted with the Znetix logo.

23 6. It was a part of the conspiracy and scheme to defraud that defendant
24 KEVIN McCARTHY and others known and unknown to the United States Attorney paid
25 employees and consultants of Znetix, HMC, Cascade Pointe, and related entities
26 outrageously high salaries to work, wittingly or unwittingly, in furtherance of the
27 conspiracy and scheme to defraud.
28

1 7. It was a part of the conspiracy and scheme to defraud that defendant
2 KEVIN McCARTHY and others known and unknown to the United States Attorney
3 misled and attempted to mislead the State of Washington, the U S. Securities and
4 Exchange Commission, and others with regard to the activities of HMC, Znetix, Cascade
5 Pointe, and those affiliated with them;

6 8. It was a part of the conspiracy and scheme to defraud that defendant
7 KEVIN McCARTHY and others known and unknown to the United States Attorney
8 employed multi-level marketing techniques and various sales agents to sell the securities
9 of HMC, Znetix, and Cascade Pointe to over five thousand investors throughout the
10 United States.

11 9. It was a part of the conspiracy and scheme to defraud that defendant
12 KEVIN McCARTHY and others known and unknown to the United States Attorney
13 lulled and attempted to lull investors, through oral and written communications
14 containing false and misleading statements, into believing that their investments with
15 HMC, Znetix, Cascade Pointe, and related entities, would result in the creation of
16 significant wealth.

17 D. OVERT ACTS

18 In furtherance of the conspiracy, and to promote the objects thereof, defendant
19 KEVIN McCARTHY and others known and unknown to the United States Attorney
20 committed and caused to be committed, among others, the overt act described in Count 2
21 of this Information, and the following:

22 1. On or about May 2, 2001, defendant KEVIN McCARTHY and others
23 known and unknown to the United States Attorney caused the formation of Cascade
24 Pointe, LLC, as a Washington State limited liability company.

25 2. On or about June 26, 2001, Cascade Pointe and HMC executed a "letter of
26 intent" purporting to commit Cascade Pointe to provide \$35 million to fund a rescission
27 offer to be made by HMC to investors.

1 3. On or about July 2, 2001, defendant KEVIN McCARTHY caused a letter to
2 be sent from Julie S. Mills to the manager of Cascade Pointe stating that Palledium
3 Capital Partners, Ltd. of Nevis would provide Cascade Pointe with a \$5 million line of
4 credit for an up front fee of \$175,000.

5 4. On or about July 11, 2001, defendant KEVIN McCARTHY caused a letter
6 to be sent from Julie S. Mills to the manager of Cascade Pointe stating that Rutherford,
7 York & Baxter, Ltd. of Nevis would provide Cascade Pointe with a \$10 million line of
8 credit for an up front fee of \$200,000.

9 5. On or about July 12, 2001, defendant KEVIN McCARTHY caused a letter
10 to be sent from Julie S. Mills to the manager of Cascade Pointe stating that Winfield &
11 Brundidge Investments, Inc. of Nevis would provide Cascade Pointe with a \$10 million
12 line of credit for an up front fee of \$150,000.

13 6. On or about July 12, 2001, the manager of Cascade Pointe sent a letter to
14 investors stating, among other things, that:

15 a. the contract between HMC and Cascade Pointe "discloses in excess
16 of \$60 million in promissory notes due to HMC, Inc. by other companies;"

17 b. Cascade Pointe "has been awarded the state of Arizona by Znetix.
18 The anticipated annual revenues will be between \$50 million and \$100 million within the
19 first five years of operation;"

20 c. Cascade Pointe "will also be participating in some portion of the
21 international markets of the Znetix rollout;" and

22 d. Cascade Pointe "has secured a \$50 million line of credit from several
23 private money groups."

24 7. On or about July 16, 2001, the manager of Cascade Pointe sent a letter to
25 investors stating, among other things, that:

26 a. "On Friday night last, July 13, I signed the final agreement to acquire
27 HMC, Inc. rescission stock, some assets and some liabilities. This agreement now gives
28

1 HMC the ability to start its rescission process by providing the funding necessary for
2 HMC to purchase back shares as requested;" and

3 b. "With the retaining of a couple of new Fund Managers as
4 consultants, we should be able to finish our \$50 million round by the end of the week."

5 8. On or about July 16, 2001, defendant KEVIN McCARTHY caused a letter
6 to be sent from Kim Singh to the manager of Cascade Pointe stating that Hawkins &
7 Holland, Inc. of Nevis would provide Cascade Pointe with a \$10 million line of credit for
8 an up front fee of \$250,000.

9 9. On or about July 16, 2001, defendant KEVIN McCARTHY caused a letter
10 to be sent from Julie S. Mills to the manager of Cascade Pointe stating that Nurrell
11 Marcos Capital, Ltd. of Nevis would provide Cascade Pointe with a \$10 million line of
12 credit for an up front fee of \$150,000.

13 10. On or about July 21, 2001, the manager of Cascade Pointe sent an e-mail
14 message to investors stating, among other things, that:

15 a. "We are now negotiating to participate in a new foreign opportunity.
16 We are entering discussions for the very real possibility of Cascade Pointe participating in
17 the licensing of over 150 health club/fitness centers in Tokyo, Japan. This just continues
18 to increase your future income stream as a founding member;" and

19 b. "This past week someone gave me a great metaphor about this
20 journey we have been on. He suggested it was like an Olympic marathon and we have
21 just entered the Olympic stadium - Wow?"

22 11. On or about July 24, 2001, the manager of Cascade Pointe sent a letter to
23 investors, stating, among other things, that Cascade Pointe would be moving its "legal
24 venue" to the Carribean nation of Nevis, and that on or around August 15, 2001, Cascade
25 Pointe would be "retaining the services of an investment banker like Bear Stearns or
26 Stiffel, Nicolaus to assist us in raising money to build the facilities."

1 12. On or about August 9, 2001, Cascade Pointe and HMC executed an
2 "*Amended and Restated Stock Purchase Agreement*" purporting to commit Cascade
3 Pointe to provide \$55 million to fund a rescission offer to be made by HMC to investors.

4 13. On or about August 28, 2001, defendant KEVIN McCARTHY sent an e-
5 mail message to two individuals affiliated with Cascade Pointe stating, among other
6 things, that an "action item" was to "[t]ry to get \$2 to \$3 million in this week and another
7 \$1 mill minimum next week."

8 14. On or about September 7, 2001, defendant KEVIN McCARTHY caused a
9 letter to be sent from J. Michelle Williams to the manager of Cascade Pointe stating that
10 Lloyd's & Lloyd's Financial, Ltd. of Nevis would provide Cascade Pointe with a \$10
11 million line of credit for an up front fee of \$150,000.

12 15. On November 2, 2001, a wire transfer in the amount of \$40,500.00,
13 representing funds obtained from investors, was received by Cascade Pointe from an
14 account controlled by John Brust at Royal American Bank.

15 16. On November 2, 2001, funds in the amount of \$125,000.00 were withdrawn
16 from a bank account controlled by Cascade Pointe for the purchase of cashier's check
17 number 0604963566 payable to HMC.

18 17. On November 7, 2001, funds in the amount of \$50,000.00 were withdrawn
19 from a bank account controlled by Cascade Pointe for the purchase of cashier's check
20 number 8590333743 payable to HMC.

21 18. On November 9, 2001, funds in the amount of \$100,000.00 were withdrawn
22 from a bank account controlled by Cascade Pointe for the purchase of cashier's check
23 number 8590333968 payable to HMC.

24 19. On November 20, 2001, funds in the amount of \$140,000.00 were
25 withdrawn from a bank account controlled by Cascade Pointe for the purchase of
26 cashier's check number 8590335507 payable to HMC.

1 20. On November 26, 2001, funds in the amount of \$125,000.00 were
2 withdrawn from a bank account controlled by Cascade Pointe for the purchase of
3 cashier's check number 8590336083 payable to HMC.

4 21. On November 26, 2001, funds in the amount of \$100,000.00 were
5 withdrawn from a bank account controlled by Cascade Pointe for the purchase of
6 cashier's check number 8590335912 payable to HMC.

7 22. On December 7, 2001, a wire transfer of funds in the amount of
8 \$50,000.00, was sent from a Bank of America account in the name of Cascade Pointe
9 LLC to ABN Amro Bank, for the benefit of Lemur Capital Ltd., an entity established in
10 the Carribean nation of Nevis.

11 23. On December 19, 2001, Nightwind Enterprises, a Nevada corporation
12 established and controlled by defendant KEVIN McCARTHY, received a wire transfer in
13 the amount of \$50,000.00 from a Bank of America account in the name of Cascade
14 Pointe.

15 24. On January 16, 2002, funds in the amount of \$50,000.00 were withdrawn
16 from a bank account controlled by Cascade Pointe for the purchase of a cashier's check
17 payable to HMC.

18 25. On January 18, 2002, funds in the amount of \$85,000.00 were withdrawn
19 from a bank account controlled by Cascade Pointe for the purchase of a cashier's check
20 payable to HMC.

21 All in violation of Title 18, United States Code, Section 371.

22
23 **CRIMINAL FORFEITURE ALLEGATIONS**

24 Upon conviction of the offense charged in Count 1 of this Information, defendant
25 KEVIN McCARTHY shall forfeit to the United States, pursuant to Title 18, United States
26 Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any
27 property constituting or derived from proceeds obtained directly or indirectly as a result
28 of such offense, including but not limited to the following:


1 2 On or about May 25, 2001, at Bellevue, within the Western District of
2 Washington, defendant KEVIN McCARTHY, together with others known and unknown
3 to the United States Attorney, having devised the above-described scheme and artifice to
4 defraud, did, for the purpose of executing such scheme and artifice to defraud and for
5 obtaining money and property by means of false and fraudulent pretenses,
6 representations, and promises, and for attempting to do so, knowingly and willfully send
7 and deliver and cause to be sent and delivered by the United States Postal Service
8 according to the directions thereon a Promissory Note dated May 25, 2001, in the amount
9 of \$50,000, payable from HMC, Inc., to an investor with the initials R.N.; said
10 Promissory Note was sent through the United States mail from an HMC office located in
11 Bellevue, Washington, to R.N. in Twin Falls, Idaho.

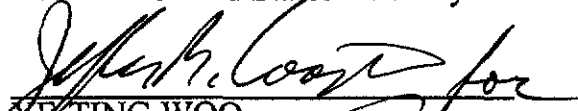
12 All in violation of Title 18, United States Code, Sections 1341 and 2.

13 DATED this 18th day of July, 2002.

14
15
16
17 
18 MARK BARTLETT
19 Acting United States Attorney

20 
21 FLOYD SHORT
22 Assistant United States Attorney

23 
24 JEFFREY B. COOPERSMITH
25 Assistant United States Attorney

26 
27 YE-TING WOO
28 Assistant United States Attorney


 RICHARD E. COHEN
 Assistant United States Attorney

DOCUMENT AND EXHIBIT LOCATOR

CASE NAME: US v. Mc Carthy

CASE NUMBER: 02-167M

DATE FILED: 5/17/02

TYPE OF DOCUMENT:

REPORTER'S TRANSCRIPT _____

DEPOSITION _____

DOCUMENT _____

SEALED DOCUMENT ORDER, FINANCIAL, LETTER, LETTER

TRIAL EXHIBIT _____

OTHER _____

LOCATION:

EXPANDO FOLDER _____

VAULT MAG AREA

EXHIBIT ROOM _____

OTHER _____

DOCUMENT # 3,4,5,6