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U.S. DISTRICT COURT
DISTRICT OF COLORADO
2003 MAY 23 AM 10: 5
JAMES R. MANSPEAKER
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-RB-0749 (CBS)

UNITED STATES OF AMERICA,

Plaintiff,

v.

ASSETS AND EQUIPMENT OF SMITTY'S MOTORSPORTS, LLC,

Defendants.

AMENDED VERIFIED COMPLAINT FOR FORFEITURE IN REM

This Amended Verified Complaint amends the original Verified Complaint only in Paragraph Three, and only by correcting some minor clerical errors as to some of the vehicle identification numbers and one general description.

The United States of America, by and through United States Attorney John W. Suthers and Assistant United States Attorney James S. Russell, pursuant to Supplemental Rules for Admiralty and Maritime Claims C(2), states:

JURISDICTION AND VENUE

1. The United States of America (the "United States") has commenced this action pursuant to the civil forfeiture provisions of 18 U.S.C. §981, seeking forfeiture of the Defendant properties as involved in, as facilitating, and as the proceeds of violations of 18 U.S.C. §1341 (mail fraud), §1343 (wire fraud), §1956 and §1957 (money laundering), and 15 U.S.C. § 77q(a), 77x, 78j(b) and 78ff (securities fraud). This Court has jurisdiction under 28 U.S.C. §§1345 and

1355.

2. Venue is proper under 18 U.S.C. § 981(h), 19 U.S.C. §1605, and 28 U.S.C. §1395, as many of the Defendant properties are located, and many of the acts described herein occurred, in the District of Colorado.

DEFENDANT PROPERTIES

3. Defendant Assets and Equipment of Smitty's Motorsports LLC are more fully described as follows to include all assets and equipment of Smitty's Motorsports LLC, seized pursuant to Seizure Warrant, including but not limited to the following:

a. Chevrolet Show Truck #CS141Z630840;

b. Freightliner Truck #1FVAAGAS23LK44972;

c. Classic Truck Trailer VIN #10WRT44363W037421;

d. Kenworth Truck VIN # 1XKWDB9XXVR745954;

e. Featherlight Truck Trailer # 4FGL053281C040991;

f. Shops Tools and Racing Equipment seized from Smitty's Motorsports:

g. Chevrolet Winston Truck Series, Body # 25534324;

h. NASCAR vehicle #4-1L-4L;

i. NASCAR vehicle # FSWS 0171;

j. NASCAR vehicle #4-14;

k. NASCAR vehicle #RHE 7011061;

l. NASCAR vehicle # RHE 1098551;

m. NASCAR vehicle # RHE 298462;

n. NASCAR vehicle # LRP 10990674; and

o. NASCAR vehicle # E369RHE 598491;

collectively referred to as Defendant "Smitty's Motorsports Assets."

FACTUAL BASIS FOR FORFEITURE

Except as otherwise noted, all of the following facts and information have been discovered through my own investigation and observations, and the observations and investigations of fellow law enforcement officers as reported to me.

4. Beginning no later than 1997, Norman Schmidt, Leon Harte, and Charles Lewis aided and assisted by numerous others, including but not limited to Michael Bergman, Janet Bach, Elia Figueroa, Clifford Pitt, Peter Moss, Mary Ann Gough, Rebecca Taylor, and Alan Weed, d/b/a Weed Agency, by utilizing the United States Postal Service and private and commercial interstate mail carriers, and by transmitting writings by wire in interstate and foreign commerce, engaged in a "High Yield Investment Program" to defraud individuals and institutions within the District of Colorado and elsewhere of approximately $20 million, by fraudulently offering and selling securities. The proceeds of the fraud scheme were laundered through a variety of financial accounts in different names. The Bank Accounts contain and consist of the proceeds of, and in some instances were involved in, the fraud scheme. Initially, those operating the fraud schemes used various entities affiliated with their "Reserve Foundation Trust", or "RFT"operation. They subsequently moved some of the illegal proceeds to, and operated as, "Smitty's Investments", and still later moved the proceeds to the subject Accounts while operating "Capital Holdings, LLC", and "Monarch Capital Holdings, LLC".

HIGH YIELD NOTE FRAUD SCHEMES GENERALLY

5. In a High Yield Note Fraud Scheme, those operating the fraud induce potential

victims to invest or deposit with the operators large sums of money, by promising extremely high rates of return, such as 25 percent to a 100 percent or higher per year, quarter, or even month. Typically, the operators of the fraud scheme will indicate that they are operating outside of the normal banking channels, wherein they may obtain alleged "High Yield Financial Instruments", "Prime Bank Notes", or otherwise named financial instruments not normally available in the usual investment circles. The operators of the fraud allege that the High Yield Financial Instruments, Prime Bank Notes, or otherwise named investments are only available in high dollar amounts, are purchased at a highly discounted rate because they are outside of the customary banking channels, and are not subject to customary banking or investment procedures and requirements. The operators of the scheme will also often indicate that the victim investors' monies are "fully insured" by major international insurance companies or otherwise " fully protected" by governmental, banking, or by financial institution policies or programs. Often the fraud scheme operators will allege that the High Yield Financial Instruments are traded on the international market, thereby further rendering the instruments beyond the scope of U.S. regulations and restrictions. Further, the fraud scheme operators will allege that, in addition to the exorbitantly high rates of return to be paid out at periodic intervals, after a specified period of time the individual victim investors will have their initial principal investment returned to them in full. The operators of the fraud scheme will thus induce the victim investors to enter into an investment contract, whereby the individual victim investors will transfer to the fraud scheme operators, often by mail or interstate wire communications, large sums of money allegedly for the purchase of the promised High Yield Financial Instruments.

6. In fact, there are no such High Yield Financial Instruments, there is no such

trading of such instruments on the domestic or international market, there is no payment of the exorbitant rates of interest promised, and the principal is not returned. Occasionally, individual victim investors may receive some initial return, to lull them into continuing to cooperate and invest further, to induce other victim investors to participate in the scheme, or to reduce the victim investors' demands for their promised high interest payment or return of principal investment. These payments come not from investments, as those usually are not made, but rather from investment monies diverted from other victims. When the promised periodic payments or ultimate return of the initial investment does not occur, and the victim investors begin making demands, the operators of the fraud scheme will typically offer a variety of different excuses, such as unwarranted interference by a domestic or foreign regulatory agency, an unexpected domestic or foreign calamity, or simply that the payments will be forthcoming "shortly". Meanwhile, the operators of the fraud scheme utilize the fraudulently obtained funds both to carry on the scheme and for their own personal benefit, expending the monies for their own uses.

7. It is illegal to engage in fraud in the offer or sale of a security. Under most circumstances, it is also illegal to sell securities which have not been registered with the U.S. Securities and Exchange Commission. A security includes the following items - "note," "stock," "bond," and "debenture," as well as more general terms - "investment contract" and "any interest or instrument commonly known as a 'security'." The definition of a security includes an investment contract, which is "a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or third part . . ."

THE COLORADO FRAUD SCHEME

8. From on or about June 1, 1999 to the present there has been an on-going ponzi scheme based in Colorado and marketing non-existent investment vehicles described variously as "prime bank notes", "prime bank debentures" and "medium term bank notes", hereinafter identified as the "investment program." In this particular scheme, victim/investors were brought into the "investment program" by the operators of the scheme headquartered in Colorado as well as by persons soliciting victim/investors for them located throughout the United States. Victim/Investors were attracted with false promises of interest rates as high as 400% per month and non-existent insurance protection of their principal investment. Although operating under different names, including The Reserve Foundation Trust, Smitty's Investments, and Capital Holdings, there is little variation in the basics of the scheme, which include the siphoning of the victim/investor's monies to the operators, the payment of large commissions to the solicitors or branch offices, the use of some of those monies to pay "earnings" back previous victim/investors, and the use of invested funds to acquire personal assets controlled by the operators which were undisclosed to the investors. Typically, victim/investors received a contract called a Cooperative Private Placement Agreement ("CPPA") and wiring instruction to transmit funds to bank accounts controlled by the fraud operators. Disbursements or "lulling" payments were either made to the victim/investors directly from the operators or disbursed in blocks to the branch offices for distribution to their clients. The ongoing investigation has identified victims who have invested in the "investment programs" offered and sold by the Reserve Foundation Trust, Smitty's Investments, and Capital Holdings.

9. In the first phase of the scheme, under the auspices of the Reserve Foundation

Trust ("RFT"), from on or about June 1, 1999 through November 13, 2000 the principals were identified as Leon Harte ("Harte"), Norman Schmidt ("Schmidt"), and Peter Moss ("Moss"), whose headquarters was first located at Leon Harte's home at 1322 33rd Avenue, Greeley, Colorado and subsequently moved to 58 Redstone Blvd., Redstone, Colorado. Victim/Investor funds were initially deposited into a Reserve Foundation Trust bank account at New Frontier Bank in Greeley Colorado, account number 101319 and then into a Reserve Foundation Trust bank account at Bank One in Greeley, Colorado, account number 192362547. Many of the RFT victim/investors received little or no repayment of their principal RFT investments when Harte and Schmidt stopped conducting business under the name RFT.

10. Phase two of the scheme, under the auspices of Smitty's Investments, LLC, headquartered in Colorado at 250 East 54th Avenue, Suite C, Denver Colorado, was organized by Norman Schmidt, and from this new organization he began soliciting further victim/investors. Victim/investors' funds were deposited into a Smitty's Investments bank account at Wells Fargo Bank West in Denver, Colorado, account number 057-8140956. The business address identified by Smitty's Investments to Wells Fargo Bank West was 550 E. 12th Ave., Apt 1805, Denver, Colorado, which is Schmidt's residence.

11. Phase three of the scheme, under the auspices of Capital Holdings, LLC, headquartered in Colorado at 1400 16th Street, Suite 4015, Denver, Colorado and operated primarily by Norman Schmidt and Charles Lewis, has expanded its operation to include several satellite offices around the country. Those others who operated branch offices or who solicited victim/investors are identified as Trig Domson, Mike Smith and John Schlabach (Spokane, Washington); Valdemar Bough (Sacramento, California); George Beros (Independence, Ohio);

Joseph Pavela (Stoddard, Wisconsin); Michael Vallone and Brian Wasson (Chicago, Illinois); and others soliciting victim/investors on behalf of branch office operators. In addition, George Alan Weed of the Weed Insurance Agency (Benton, Illinois), was the person providing "evidence" of insurance policies that purportedly insured the investors principal investment into the various "investment programs." Victim/Investor funds acquired by the numerous sales offices throughout the United States were first deposited into bank accounts controlled by the sales offices. Victim/Investor funds from the sales offices located in Spokane, Washington and Sacramento, California were wire transferred into a Capital Holdings bank account that was located at Wells Fargo Bank West in Denver, Colorado, account number 101-1330204. The business address identified by Capital Holdings to Wells Fargo Bank West was 250 E. 54th Ave., Suite C, Denver, Colorado. Commission pay-outs to those who ran the sales offices in Spokane, Washington and Sacramento, California as well as "ponzi" payments to victim/investors brought into the "investment program" by these sales offices were wire transferred from the Capital Holdings Wells Fargo bank account in Denver, Colorado to banks located in Spokane, Washington and Sacramento, California.

12. On February 10, 2003, a search was conducted of the Colorado State Securities Registration data base and the Federal Securities Registration data base maintained by the SEC commonly known as "Edgar", to determine whether or not RFT, Smitty's, and Capital Holdings had registered either federally or with the State of Colorado any securities offerings they had publically sold during the period beginning January 1, 1998 - February 10, 2003. The search of these data bases disclosed that RFT, Smitty's, and Capital Holdings had not federally or with the State of Colorado registered any securities offering during that period.

RESERVE FOUNDATION TRUST ("RFT")

13. As part of the scheme, on or about January 27, 2000, Norman Schmidt and Leon Harte organized the Reserve Foundation LLC in Colorado, with an address of 550 E. 12th Avenue, Suite 1805 Denver, Colorado. The Reserve Foundation LLC opened bank account number 1192362547 at Bank One, in Greeley, Colorado (the "RFT Bank One Account"). Harte, during a deposition taken on January 29, 2002 explained under oath that the Reserve Foundation LLC formed in Colorado was an investment arm of a trust out of the nation of St. Vincent and the Grenadines called Reserve Foundation Trust, which was a foreign corporation formed in St. Vincent and the Grenadines sometime during June 1999. Harte further stated during this deposition that he and Schmidt helped set up the Reserve Foundation Trust in St. Vincent and the Grenadines. During this phase of the fraud, the business names Reserve Foundation LLC and the Reserve Foundation Trust were used interchangeably. The names of the two businesses will be referred to as "RFT" throughout this complaint.

14. In the RFT fraud scheme, individual victim/investors would execute a CPPA with RFT, which would outline specific details of the investment, including a paragraph stating the principal was insured. The agreement included a schedule showing that the larger the investment amount the higher the rates of return would be, up to a return of as much as 400 per cent per month. All of the promises and inducements by those operating the fraud were false Harte signed many of the RFT CPPAs, while other RFT CPPAs were signed by Schmidt or other representatives of RFT. Other representatives soliciting investors for the program included Michael Bergman of Colorado, Kelly Schnorenberg (hereinafter "Schnorenberg") of Wyoming,

and Dirk Smith, Charles Frazier (hereinafter "Frazier"), and Kurt Hawks (hereinafter "Hawks"), all of Utah. The victim/investors would transfer their investment funds to RFT via either wire transfers or checks, which were deposited into the RFT Bank One Account. Victim/investors in the RFT "investment program" resided in numerous states throughout the United States and in at least ten foreign countries. Investors who resided outside Colorado had to wire transfer funds via interstate wire transfers to the RFT Bank One Account in Colorado or mail their investment checks to RFT, which investment checks would subsequently be deposited by RFT employees into RFT'S Bank One account in Colorado.

15. The operators of the RFT fraud scheme varied their false allegations and promises depending upon the circumstances. In one version investors were told by Moss, Harte, Schmidt, Bergman, Weed, Taylor, Pitt, Gough, D. Smith, Dunn, Alder, Schnorenberg, and others that RFT would invest the victims' money in some type of "notes" that were issued by foreign banks at a very great discount, such as 60 cents on the dollar; those operating the RFT fraud scheme told the victims that RFT would purchase these foreign notes at this great discount, and make significant profits by collecting interest on the notes and then selling the notes at a much higher price. Many victim/investors were also falsely assured that their investments were insured by St. Paul Fire & Marine Insurance company of Lloyds of London, through Alan Weed and the Weed Agency of Benton, Illinois.

16. Alan Weed (hereinafter "Weed"), d.b.a., Weed Agency (hereinafter "Weed Agency"), 504 Public Square, Benton, Illinois 62812, purported to insure investor's funds in the "investment programs" of RFT, and its successor Smitty's Investments, LLC and Capital Holdings, LLC. In fact, the only insurance coverage provided by St Paul Insurance Company

was a Sole Obligor Depository Bond that insured the amount of money RFT deposited into a bank named CIBC Caribbean Limited ("CIBC") located in St. Vincent and the Grenadines in the event that the money deposited with CIBC by RFT was not returned to RFT by CIBC, and a Commercial Crime Policy that provided insurance coverage solely to RFT in the event RFT sustained losses as a result of acts of RFT employee dishonesty. According to Jerry Landsman, Jr., an internal investigator employed by St Paul Fire and Marine Insurance Company, St. Paul did not guarantee or insure any deposit or investment in the RFT, nor did it provide coverage to individuals investors in the RFT.

a.. On January 6, 2000, The St. Paul Company sent letters to RFT investors notifying them that St. Paul did not guarantee any individual deposits made by any investor in the trust, contrary to representations made by Weed, Harte and Schmidt. Harte (Manager of RFT) had contacted Weed after the St. Paul Company letters went out on January 6, 2000, concerned about the letters and wanting to reassure the victim/investors. Harte dictated a letter to Weed which Weed mailed to all of the victim/investors on Saturday, January 9, 2000. According to Jerry Landsman, the St Paul Insurance Company investigator who obtained a copy of the letter, the tone of the letter was misleading and implied that everything was fine with the insurance coverage that was in place for each RFT investor.

b. On January 14, 2000, the investigator for The St. Paul Company received a call from Schmidt and Harte, who indicated they were the managers for the RFT. The misrepresentations that had been made by Weed were discussed and they stated that they understood.

c. On February 15, 2000, Weed admitted that the certificates that were

issued to the policy holders were designed and mailed by him. Harte provided him with the names and addresses of investors.

d. Weed received a commission from Harte and Schmidt as the principals of RFT for selling the insurance policy and had received a total of $2,000 regarding that policy. As the policy grew, Weed was to receive further commissions from RFT.

17. Bank records from the RFT Bank One Account in the name of Reserve Foundation, LLC (RFT), 1322 33rd Avenue, Greeley, Colorado 80634 reveal that during the period beginning January 31, 2000 through November 13, 2000, the total funds deposited into this account were $20,914,544.00 and $20,914,544.00 was withdrawn from the account. This account was generally the account into which victim/investors were directed by RFT principals to wire transfer their investment funds, although some RFT victim/investors were directed by RFT principals to wire transfer their funds to offshore investment accounts controlled by the RFT principals. No source of funds deposited into this account had been identified as other than funds from investors in the RFT High Yield Private Placement "investment program." Many of the RFT investors received little or no repayment of their principal RFT investment when Harte and Schmidt stopped conducting business under the name RFT.

18. An analyst reviewing the RFT bank records could not identify disbursements of any of the funds deposited into these accounts into investment related activity as described in the offering documents or during verbal explanations of the RFT "investment program" provided to victim/investors prior to their decision to make their RFT investments.

19. Larry Dunn was an admitted big part of the RFT operation. During October 1999, Dunn met Harte in New York, New York. During mid to late October 1999, Dunn again traveled

to New York, New York. During that trip, individuals named Robert Tringham (hereinafter "Tringham") and Richard Perry (hereinafter "Perry") introduced Dunn to Peter Wilberforce Moss (hereinafter "Moss"). During this trip, Harte showed Dunn pictures of the Redstone Castle, indicting that he intended to purchase the Redstone Castle and turn it into a Health and Wellness center.

20. Harte and Moss were jointly working together to get individuals to make investments in RFT. Sometime during June or July 2000, Dunn received from Moss new investment contracts. Moss instructed Dunn to distribute these contracts to all the investors, to have the investors sign the new contracts and to get the new signed investment contracts back to Moss. Moss told Dunn that he (Moss) and Harte were putting RFT investors money into a new investment program that paid a smaller return to the investors than what the investors had been told they would earn when the investors made their original RFT investments. Moss also told Dunn not to disclose this change to existing RFT investors.

21. In May 2000, Harte purchased the Redstone Castle properties in Redstone, Colorado for $6.3 million. In August, 2000, Harte purchased a house at 410 Redstone Boulevard, Redstone, CO for approximately $450,000. Investigation to date has revealed that the money to purchase the Redstone Castle originated from victim/investor funds deposited into the RFT Bank One Colorado bank account. None of the money used to purchase the "Redstone Castle" appears to have been invested by RFT into any trading program.

22. Instead of the investments promised by Harte and Schmidt to RFT victim/investors prior to their RFT investments by Harte and Schmidt, loans were made to a restaurant chain in New York, and three corporations controlled by Harte and Schmidt

(Tranquility Options, LLC, Serenity Options, LLC, Peaceful Options, LLC), a private loan made in London to an individual, a $6 million investment made in Sunstate FX in Florida and a loan to Entertech Corporation. Harte has documentation for only three loans, Tranquil, Serenity and Peaceful. Investigative activity revealed that 3.5 million dollars of RFT funds was wire transferred at the direction of Harte from Sunstate FX to Aspen Title as part of the purchase price of the Redstone Castle, which was not an investment opportunity described to RFT investors prior to their decision to invest in a RFT "investment program."

23. Moss, Harte, Schmidt, Bergman, Weed, Pitt, Taylor, Gough, D. Smith, Dunn, Alder, Schnorenberg and others soliciting victim/investors did not disclose to investors the actual coverage of insurance policies issued by St. Paul Fire and Marine Insurance Company did not provide the coverage represented to the investors prior to their investment, nor the fact that commissions were promised to Moss, Harte, Schmidt, Bergman, Weed, Pitt, Taylor, Gough, D. Smith, Dunn, Alder, Schnorenberg and others soliciting victim/investors for their efforts to sell the RFT Prime Bank/HYPP "investment program" to victim/investors and that these commissions would be paid from investor funds.

24. Between May 30, 2000 and August 16, 2000, twelve intra bank transfers to Smitty's Bank One, Greeley, CO totaling approximately $207,775.00 was transferred from the RFT account, number 192362547 at Bank One, Greeley, CO.

25. William C. Kerr (hereinafter "Kerr"), National Bank Examiner, Comptroller of the Currency, Special Supervision and Fraud Division, 250 E Street, MS 6-10, Washington, DC 20219 provided a letter dated July 31, 2001, indicating that based on, among other items, his review of the RFT investment documents, the "investment opportunity" RFT, Schmidt, and

Harte offered was an investment opportunity in a fictitious investment program, commonly described as a Bank Debenture Trading Program, to perpetrate a fraud. Kerr further opined the program as described in the CPPA purports to represent some type of high yield investment program that does not exist in the legitimate financial world, public or private..

SMITTY'S INVESTMENTS, LLC ("SMITTY'S)

26. RFT principals Harte and SCHMIDT discontinued the investment scheme under the name RFT by the end of November 2000. Schmidt formed Smitty's Investment LLC on or about April 3, 2000 and began selling "investment programs" through Smitty's that were similar in nature to the fraudulent "investment programs" that were sold by RFT. Smitty's bank account number 057-8140956 was opened at Wells Fargo Bank West in Greeley, Colorado on or about April 23, 2001and bank account activity continued this account until at least October 2002.

27. On, about or during January 2002, Warren Peterson (hereinafter "Peterson") of Plainview, Nebraska was told of an" investment program" by a neighbor of his named Jan Mclain ("Mclain"), who has since moved to Colorado and married Schmidt. Mclain informed Peterson how great the program was and guaranteed Peterson his investment amount if the program went bad. At the time Peterson was offered the "investment program" opportunity, Charles Lewis ("Lewis") was also present. Lewis also told Peterson the investment program was a great "investment program." On January 8, 2002, Peterson invested $5,000 in an "investment program" operated by Smitty's. The "investment program" allegedly paid a return of 10% per month rate of interest. Pursuant to the investment, documents were purportedly signed by Schmidt on January 2, 2002 and signed by Peterson on January 8, 2002:

a. The "High Yield Private Placement" form initialed by Peterson on January

8, 2002, identified, among other items, the term of the investment was one year and 21 days, and profit payments would be distributed monthly after the initial 45 day period.

b. To enter the Smitty's "investment program," Peterson also signed a CPPA on January 8, 2002, which provided that [Smitty's]..."has arranged for the CPPA to participate in a certain financial program that is comprised of the contractual purchase and contractual sale or discounting of certain financial instruments of major banks and/or governments, which contracts to provide a profit." The CPPA also provides that [Peterson] "is desirous and capable of providing working capital in the amount of $5,000 to generate funds for their respective projects with the assistance and cooperation of the LLC. These funds will be used to buy, sell, lease or trade, on a loss free pre-sale agreed basis, in medium term notes and other banking and governmental financial instruments to the mutual benefit of [Peterson] and the [LLC]."

c. A review by an FBI Financial Analyst of bank records from account # 057-8140956 in the name of Smitty's at Wells Fargo Bank West, NA, PO Box 5247, Denver, Colorado 80274 disclosed a deposit of $5,000 via a wire transfer from account no. 020111031180. Investigative activity disclosed that this wire transfer was Peterson's $5,000 investment in Smitty's. At the time this wire transfer was received in Smitty's Wells Fargo account, the account had a negative balance of $45.27. Between January 11, 2002 and January 14, 2002 six disbursements totaling approximately $4700.00 of Peterson's $5,000 investment were made from the Smitty's bank account for such items as automobile gas and check card retail purchases. It appears that none of Peterson's $5,000 was used to make an investment of the type described in his Smitty's investment documents.

28. Jerry D. Jarman (hereinafter "Jarman") of Lakewood, Colorado learned of an

investment opportunity from Bergman and Lewis through an individual named Ann Anderson (hereinafter "Anderson"). During August 2001, Anderson told Jarman of an investment opportunity in Smitty's. Anderson explained that Smitty's invested in world banks by piggy backing onto large corporate investment like General Motors and that these investments paid a 15% monthly return to investors. Sometime after August 2001, Anderson and Jarman went to a meeting at Teddy's inside the Holiday Inn located at Interstate 25 and 54th Avenue in Denver, Colorado, where Bergman, Lewis, and Schmidt. Bergman pitched Smitty's "investment program" to Jarman, and Schmidt provided Jarman with the wire transfer instructions if Jarman decided to make the investment.

a. During the meeting at Teddy's, Bergman did not disclose the following: whether there was any risk of Jarman losing any of his principal investment in the Smitty's "investment program;" any explanation of what was actually being traded or how the "investment program" worked; any information of the past success or failure of the program or any information of how previous investor's investment funds had been invested or spent; that Bergman had been previously charged, with two counts of Securities Fraud in violation of the anti-fraud provisions of the Colorado Securities Act and one count of theft over $15,000 by the 18th Judicial District, District Attorney's office; that, subsequent to a criminal trial, Bergman was found guilty of both securities fraud charges and the theft over $15,000 charge on January 29, 2001; that as a result of his conviction, Bergman was sentenced on April 6, 2001 to ten years probation, 90 days in the county jail and ordered to pay $22,403.49 in restitution based on his sale of a similar "investment program;" that he was still on probation as a result of this conviction; and that Lewis plead guilty to State of Colorado criminal theft charges based on his

business dealings with Bergman in the sale of the "investment program" that resulted in Bergman's convictions of State of Colorado securities fraud and theft charges.

b. Jarman decided not to invest in Smitty's "investment program" at the conclusion of the November 2001 meeting at Teddy's. Subsequent to the November 2001 meeting, Jarman did some research and determined that Smitty's "investment program" sounded like fraudulent "investment programs" he found on the Internet. Jarman telephonically communicated to Bergman his belief that Smitty's "investment program" was a "security" and the individuals who sold the "investment program" needed a securities license to make such sales. Bergman ended their telephone conversation. Shortly after this telephone conversation Jarman received a telephone call from Jan Mclain who informed him that he would not be accepted into Smitty's "investment program" because the "group" thought Jarman would cause trouble. Upon information and belief Jan Mclain recently became Schmidt's wife.

29. Gerald Schreiber (hereinafter "Schreiber") was solicited by Lorenzen representing Smitty's, 250 East 54th Avenue, #17, Denver, CO. Lorenzen told Schreiber for a minimum of $10,000 he could get in on the program and take advantage of it. Lorenzen gave Schreiber a Medium Term Note Placement Program (MTNPP), a copy of the CPPA, and an Introduction to Bank Debenture Trading Program brochure.

30. In a letter dated April 5, 2002 from the State of Nebraska to Schmidt, Manager at Smitty's, 250 East 54th Avenue, Suite C, Denver, CO 80216, a Cease and Desist Order was issued against Smitty's. This order is a final order and permanently prohibits the further offer or sale of securities by Smitty's in Nebraska. A violation of the order is a Class IV felony under Nebraska state law.

31. Wells Fargo Bank West records for Smitty's, for account # 057-8140956 revealed that during the period beginning April 23, 2001 through October 21, 2002, the total amount deposited into Smitty's account number 057-8140956 account was $ 6,193,243.95 and the total amount of withdrawals from this account was $ 5,701,753.38.

32. Schmidt had opened a business account in the name of Smitty's, 550 East 12th Avenue, Apt. 1805, Denver, CO, during April 2001 and a business account in the name of Capital Holdings, 250 East 54th Avenue, Suite C, Denver, CO in July 2002. These two accounts consistently received large dollar deposits from individuals in a range of $25,000 to $100,000 and the accounts showed large periodic disbursements out of the account via wire transfer. Jan Mclain was identified as the registered agent for a company named Monarch Capital Holdings (hereinafter "Monarch") with a business address 250 East 54th Avenue, Suite C, Denver, CO, the same as Capital Holdings business address. Mclain also had a business account at Wells Fargo titled Fast Track, 250 East 54th Avenue, Denver, CO. Schmidt had a Wells Fargo Account and lists his address as 250 East 54th Avenue, Suite C, Denver, CO. The Wells Fargo investigation into the Schmidt's banking transactions at Wells Fargo also disclosed that the Schmidt had referred Lewis and M.Lewis, d.b.a Players Trust (hereinafter "Players") and Mark and Vicky Perreault (hereinafter "Perreault" and "V. Perreault"), d.b.a. Miloka Holdings (hereinafter "Miloka") had been referred by the Schmidt's to Wells Fargo Bank for the purpose of opening business accounts. Lewis was designated as the trustee for Players Trust and Perreault was designated as the trustee for Miloka. An individual named George Beros (hereinafter "Beros"), a financial consultant for Richard Haas (an individual attempting to secure a loan from Wells Fargo). Beros also represented that he was a consultant to Monarch . As a result of the internal

investigation by Wells Fargo Bank that was the substance behind this SAR, Wells Fargo Bank has requested that all of the business accounts of the Schmidt's and business accounts of other individuals who had been referred by the Schmidt's to Wells Fargo Bank were being closed no later than January 31, 2003, as a result of the banks suspicions that these accounts were all part of some type of investment scheme. The accounts at Wells Fargo were in fact closed on January 31, 2003 and funds were disbursed via cashiers checks to account holders or to wire transfers to accounts at other banks. One wire transfer in particular went to an account at US Bank owned by Smith in Spokane, Washington.

Capital Holdings, LLC ("Capital Holdings")

33. Capital Holdings, LLC, Capital Holdings International, Inc., Capital Holdings, Capital Holdings, Inc., and Monarch Capital Holdings, LLC were either formed by or are associated with Schmidt appear to be the same business conducted un the various names. These numerous Capital Holdings variations are all referred to as Capital Holdings herein. The business mailing address for Monarch Capital Holdings, LLC was identified as Schmidt, 250 E. 54th Avenue, Suite C., Denver, Colorado 80216.

34. As the Smitty's fraud organization was wound down, Schmidt, Charles Lewis, and others carried on the fraud scheme under the various entities known as Capital Holdings. In the classic ponzi scheme, each month those operating the Capital Holdings fraud would take some monies from new victim/investors and pay it to the existing victim/investors as "distributions", "earning", and "disbursements". Once again there is no evidence that Capital Holdings ever made any of the promised real investments. The investigation has revealed that the proceeds of the Capital Holdings phase of the fraud scheme were deposited into Defendant Bank Accounts,

which Defendant Bank Accounts were also used to operate the fraud. Some of the fraudulent activities as they relate to some of Defendant Bank Accounts are set forth below.

35. Capital Holdings is located at 1400 Sixteenth Street, Suite 4015, Denver, Colorado, telephone number (720) 932-8052. Capital Holdings is operated by Lewis. Lewis receives a monthly disbursement out of the Capital Holdings "investment program" bank account, the same account into which all victim/investors monies are deposited. Schmidt appears to be the General Manager or Controller of the Capital Holdings "investment program." Schmidt is the only person at Capital Holdings authorized to send wire transfers of money to and from the Capital Holdings operating bank account and Schmidt also has the final say regarding whether or not checks cut at the Denver office are mailed to Capital Holdings investors. Monthly statements for Capital Holdings investor/clients are mailed from the Denver, Colorado Capital Holdings office, 1400 16th Street, Suite 4015, Denver, Colorado. The lease at 1400 16th Street, Suite 4015, Denver, CO, was signed by Schlabach and is under the name Northwest.

36. Lewis' former partner in Summit Ventures was Perreault. Perreault previously worked in the insurance business with Smith in Spokane, WA. Perreault's current employees all have licenses to sell insurance. Perreault has a trust fund named Players and Lewis has a trust fund named Miloka.

37. The "investment program" fraud being run by Lewis and Schmidt operates under the name Capital Holdings. Monies coming into Capital Holdings are deposited into an operating account. Schmidt has another account he described as a "non-callable account". Schmidt said the money in this account was used for investments in foreign countries and also to purchase federal government issued Medium Term Notes. The September 11, 2001 terrorism act was given as an example of how the investment program worked. When New York needed money for the cleanup, investors like Schmidt and Lewis provided that money and received some

sort of profit margin for providing such money. Schmidt and Lewis further explained that they were buying something at a discount, like Bank Debentures or Medium Term Notes, and receiving a profit on those investments. The profit brought into the non-callable account in Denver from all other offices selling the investment program is supposedly deposited into an escrow account and was to be used for collateral only.

38. A portion of monies received at the Denver, Colorado Capital Holdings office from investors was paid to numerous individuals who were involved with the sale of the investment to the investor or who were part of the management/control of Capital Holdings or businesses associated with Capital Holdings in the sale of the Capital Holdings "investment program."

39. Lewis and Schmidt told investors their money is insured and there are insurance brokers and attorneys in the "investment program." Documents list Weed as the Insurance Certificate holder for Capital Holdings. Weed is Capital Holdings insurance agent and is located in Benton, IL.

40. Lewis' bank account at US Bank is under the name Miloka account number 153553955870. Review of the US Bank bank account records of Miloka disclosed that total funds deposited into the Miloka account for the period beginning July 2002 through December 2002 were actually approximately $177,000 and the total funds disbursed from this Miloka bank account for the same period of time was approximately $176,000.

41. Capital Holdings began to experience banking difficulties after January 31, 2003 when Wells Fargo bank closed all of the accounts. Subsequent to the account closing at Wells

Fargo, Schmidt opened an account at US Bank. Soon after the US Bank account was opened, US Bank red flagged Schmidt's accounts. All deposits into his US Bank accounts were held for 7-10 days.

42. On or after February 8, 2003, all clients were asked to provide cashiers checks made out to Capital Holdings. The contract was also changed to reflect a 45 day waiting period instead of the current 10 waiting period.

43. Mike Young operates an office which solicits clients for Capital Holdings's investment program. Lorenzen is a solicitor for the Capital Holdings investment program and operates T E & L Estates.

44. Schmidt operates his investment business from an office located at Smitty's Motor Sport's Shop, 5850 East 58th Avenue, Commerce City, Colorado. Schmidt maintains records at Smitty's Motorsports and his girlfriend/wife Jan Mclain keeps the books.

46. Schmidt had a second business office located in his plastics plant, at 250 East 54th Avenue, Denver, CO 80216.

47. Additional offices selling the Capital Holdings "investment program" are located in Sacramento, CA, Spokane, WA, Palos Hills, IL, Stoddard, WI and Independence, OH.

48. The office located in Sacramento is run by an individual named Valdemar Bough and named VGB , Inc, f/k/a Income Innovators, Inc., 2020 Hurley Way, Suite 390, Sacramento, CA. Another office operated by Bough is located at 2987 Fulton Avenue, Sacramento, CA, telephone number (916) 971-2490. Bough receives a commission from Schmidt and Lewis, the principals of Capital Holdings, on all money he brings into the Capital Holdings "investment program."

49. The office in Spokane is operated by Mike Smith. He operates his investment program under the names National Marketing and Northwest. Smith receives a commission on all money he brings into the Capital Holdings "investment program" from the Denver Capital Holdings office. This office is operated from Smith's personal residence, located on Gem Street, Colbert, WA.

a. Smith has accounts under the names MJR Holdings and Asset Holdings. Schlabach forms trusts for individuals who invest in the Capital Holdings "investment program" so the individuals can make investments through the name of their trust. Smith's business address was identified as 9986 North Newport Highway, #191, Spokane, WA.

b. Investors with Capital Holdings "investment program" must sign a confidentiality agreement prior to being provided any information regarding the Capital Holdings "investment program."

c. Smith also has agents working for him to solicit new victim/clients for the investment program.

d. Sterling Lipscomb, a US Bank employee, personally manages all of Smith's bank accounts at US Bank for the "investment program" located in Spokane, Washington. Investigation revealed that when the US Bank account in Denver, Colorado was closed, the Spokane office was able to keep its US Bank accounts open because of the relationship between Lipscomb and Smith. US Bank in Denver, Colorado issued Schmidt a 2.5 million dollar cashiers check upon closing his US Bank account. Schmidt sent via Federal Express this check to Smith in Spokane, Washington who was able to negotiate this cashier's

check through his US Bank account in Spokane, Washington after a few days hold because of the relationship between Lipscomb and Smith.

50. The Palos Hills office is run by Vallone who operates under the names Cambridge and Regency Ventures, 11022 Southwest Highway, Palos Hills, IL. Schmidt is CEO of Capital Holdings.

51. An individual named Joseph Pavela operates a sales office in Wisconsin. Pavela is operating under the business name Prosperity Unlimited, 300 Evergreen Court, Stoddard, WI.

a. George Beros was operating an office at 5005 Rockside, Suite 900, Independence, Ohio which is run similar to the Denver Capital Holdings office. Investigation by the FBI in Cleveland, Ohio revealed that has a marquee outside Suite 900 listing Capitol Holdings Int'l, LLC and Monarch Capitol Holding, LLC.

52. Edward A. and Lois Creager invested $10,000.00 with Capital Holdings. A letter from Capital Holdings signed by Schmidt, was sent confirming receipt of their investment. The Creagers were faxed a certificate of insurance from Marsh USA Inc, 333 South 7th Street, Suite 1600, Minneapolis, MN. Companies affording coverage were allegedly Superior Guaranty Insurance Company of Vermont and Reinsured by Lloyds of London. The certificate holder was listed as Weed d.b.a. Capital Holdings, 550 East 12th Avenue, Suite 1805, Denver, CO. The Creagers executed a Private Contract Agreement number 121902B which referred to Party A as Capital Holdings located at 1400 Sixteenth Street, Suite 400, Denver, CO, Telephone number (720) 932-8035. Party A projected a yield of 10% per month on the Creager's investment.

53. Capital Holdings Wells Fargo Bank West bank account #101-1330204 records reveal that the account was opened on July 22, 2002 with the deposit of a check in the amount of

$239,000. Additional deposited were made on July 25, 2002, in the amount of $274,232.50, on July 31, 2002, in the amount of $241,590.83, and on August 5, 2002, in the amount of $167,700.

54. On August 6, 2002, $500,000 was transferred from this account into the Capital Holdings trust account at Wells Fargo, account number 020806 70601400. At the time of this transfer, all monies on deposit in this account had been obtained from victim/investors who had invested in the Capital Holdings "investment program."

55. The following is a synopsis of monthly deposits and withdrawals for the Capital Holdings Wells Fargo Account:

7/22 - 9/13/02	Beginning Balance	$	0.00
	Deposits	$	1,279.523.33
	Withdrawals	$	500,000.00
	Ending Balance	$	779,521.33
8/13 - 09/13/02	Beginning Balance	$	779,521.33
	Deposits	$	2,760,675.77
	Withdrawals	$	2,061.173.28
	Ending Balance	$	1,479,023.82
9/13 - 10/11/02	Beginning Balance	$	1,479,023.82
	Deposits	$	4,105,804.99
	Withdrawals	$	3,395,629.96
	Ending Balance	$	2,189,198.85
10/11 - 11/14/02	Beginning Balance	$	2,189,198.85
	Deposits	$	5,683,666.76

Withdrawals	$ 1,429.953.07
Ending Balance	$ 6,442,912.54

56. During the period beginning July 22, 2002 through November 13, 2002, the total amount deposited into this account was $13,829.670.85 and the total amount withdrawn from this account was $7,386,758.31

57. None of the investment contract documents signed by investor/victims interviewed who invested in the "investment programs" of RFT, Smitty's, and/or Capital Holdings disclosed to the investor/victims prior to their investment decision that the individuals who made the sales presentation to them, would be paid a commission that would be funded by the money the investor/victims thought they were investing in the RFT, Smitty's, and/or Capital Holdings "Prime Bank "investment programs."

58. Research revealed that the only corporation registered with the Colorado Secretary of State as Capital Holdings, LLC is a Wyoming corporation which has no known affiliation or relationship with the Capital Holdings entity being operated by Schmidt and Lewis. As such, Capital Holdings is not a legally formed entity and is in fact only the alter ego of Schmidt and Lewis.

59. Several victims have stated none of the monies invested were invested in the manner described in the agreement. Schmidt, Lewis, Smith, Schlabach, Vallone, Wasson, Bough, Pavela, Beros and their agents did not make disclosures of material facts during the sale of the investment. The crimes were facilitated by the use of mails and commercial carriers, wire transfers of monies and the usage of telephone and fax lines.

60. State of Colorado Division of Securities Investigator Charles Reinhardt provided

the partial results of his review of a book titled *The Myth of Prime Bank Investment Scams*, authored by Professor James E. Byrne, J.D., a faculty member at George Mason University School of Law and the Director of the Institute of International Banking Law & Practice, Inc. In this publication, Professor Byrne identified some common characteristics that make Prime Bank Investment Programs readily identifiable as unlawful schemes and which distinguish them from legitimate programs and opportunities for investments. These common characteristics include, but are not limited to the following:

a. There is no economic basis for the transaction or creditable explanation of how the investment can generate the promised returns;

b. The promised returns on the investments are disproportionate to the risk;

c. The commercial basis for the transaction is frequently obscure and it is often unclear whether it involves finance, trading in instruments, or commercial activity;

d. The schemes often rely upon trading activity conducted by mysterious individuals on mysterious and secretive markets for profits;

e. Technical terms used in the scheme are misused and the definitions of these terms are distorted from their meaning in customary financial/commercial transactions;

f. The schemes are surrounded by an aura of secrecy and an almost conspiratorial sense by the frequent use of non-circumvention and non-disclosure agreements that unwary investors must sign to participate in the investment opportunity;

g. The schemes are typically clouded in unnecessary complexity, layered transactions, and, confusion;

h. The schemes use well-known banks and state that investor funds are

placed in escrow, non-depleting accounts and similarly named accounts to confuse investors into thinking their money is safely deposited and it cannot be removed unless certain conditions are met;

i. Any fees and commissions to be paid to the promoters of the schemes are usually not identified as the promoters convince investors the promoters are simply sharing part of their profit from the scheme with the investors; and

j. A typical feature of these schemes is that the funds are used for purposes that have no relationship to the transaction. Rather, the funds are spent by the promoters, sales people and other individuals involved with the furtherance of the scheme on personal expenses for travel, the purchase of homes and automobiles, vacations , and general living expenses without this type of use of investor's funds being disclosed to investors prior to their investment in the scheme.

In the instant matter, investigative activity to date has disclosed that the various "investment programs" being offered and sold by the principals and sales agents of RFT, Smitty's, and Capital Holdings have elements of all of the above general characteristics of Prime Bank Investment Scams and fraudulent Prime Bank investment schemes as described by Professor Byrne.

61. On March 4, 2003, National Bank Examiner William Kerr, of the Controller of the Currency was again contacted and asked to review CPPAs and other offering documents from RFT, Smitty's, and Capital Holdings. KERR reviewed such documents and offered the following opinion: The CPPAs and other offering documents as provided to investors by the principals, sales office managers, and sales agents of RFT, Smitty's and Capital Holdings had numerous

similarities, such as the use of non-circumvention/non-disclosure requirements, the promise of high rates of return as high as 50% monthly, and the attempt to describe what appears to be highly sophisticated investment transactions that are usually found in High Yield Investment Scams. The purported insurance coverage, while possibly protecting investment money that had been deposited into whatever bank account that was purportedly protected, does nothing to protect the investment transaction that is allegedly going to provide the investor with the high rates of return. The documents reviewed typify classic High Yield Investment Scams that are created solely for the purposes to perpetuate an investment fraud through an aura of a sophisticated or a series of sophisticated transactions.

62. During the operation of the fraud schemes, Norm Schmidt, aided and assisted by others involved in the fraud, set up and operated Smitty's Motorsports LLC at 5850, East 58th Avenue, Commerce City, Colorado; Smitty's Motorsports LLC operated a NASCAR auto racing team headed by Schmidt's son Scott Schmidt. Norm Schmidt also carried on some of the fraud activities and operations in and from the Smitty's Motorsports LLC facilities on East 58th Avenue. In conjunction therewith, Norm Schmidt had opened account # 057-8140956 at Wells Fargo Bank West, NA, Brighton, Colorado, in the name of Smitty's, with himself and Scott Schmidt as signatories, and from April 2001 through October 2002 deposited into the account $6,193,243.95 of victim investor monies that were proceeds of the fraud. Other than victim investor monies, no other sources have been identified as ever having been deposited into the account. Victim investor funds so deposited into the account were then used to operate the racing activities the auto racing team, and to purchase assets and equipment used by Smitty's Motorsports, including Defendant Smitty's Motorsports Assets. Other than the victim investor

monies no source of start up funds, operating funds, or income has been identified for Smitty's Motorsports, Smitty's Motorsports generated little or no profit, Scott Schmidt has no reported income, and Defendant Smitty's Motorsports Assets are thus proceeds of the fraud.

SUMMARY

63. RFT, Smitty's, and Capital Holdings, through their principals, Harte, Schmidt, and Lewis, and Trig Domson as a solicitor of Capital Holdings, as well as the branch sales offices of Capital Holdings in Spokane, Washington, Sacramento, California, Palos Hills, Illinois, Cleveland, Ohio, and Stoddard, Wisconsin operated by Smith, Bough, Vallone, George Beros, and Pavela have operated a ponzi investment scheme that has survived at least three business name changes and a host of business name derivatives and within this affidavit. This ongoing investment scheme operated by offering individuals an opportunity to invest in fictitious investment vehicles variously described as "Prime Bank Notes," "Prime Bank Debentures," "Medium Term Bank Notes," and "High Yield Investment Programs," referred to in this affidavit as the "investment program." Prior to making their investment decisions, victim/investors were told by the principals and sales agents of RFT, Smitty's, Capital Holdings, and the branch sales offices of Capital Holdings, among other information, that their investment funds would earn profits from 25% to as high as 400% a month, that there was no risk to such an investment because their investment funds were insured against loss by insurance companies such as St Paul Fire and Marine and Lloyds of London, that they were investing in an "investment program" the government and large financial institutions did not want them to discover so the government and large financial institutions could keep this enormous profit to themselves, that they had to keep their principal investment funds in the "investment program" for at least one year and twenty-one

days, that their funds would be deposited into non-depleting investment accounts, and that they could begin to receive monthly distribution of the profits earned from their investment into the various "investment programs"within forty-five (45) days from the date of their investment or the investor could roll all of their earned profit back into the "investment program" each month and receive one lump sum payment at the end of the year and twenty-one day time period of their investment.

64. Investigative activity disclosed that Weed was the individual responsible for providing RFT, Smitty's, and Capital Holdings investors certificates and other evidences of the purported insurance coverage of an investors original investment. In the opinion of Kerr as an expert in the analysis of the type of ongoing fraudulent investment scheme described herein, the offering documents of the RFT, Smitty's, and Capital Holdings "investment programs" were similar in nature and typified classic High Yield Investment Scams that are created solely for the purpose to perpetuate an investment fraud through an aura of a sophisticated or a series of sophisticated transactions.

65. Investigative activity of records available and reviewed to date of the bank accounts into which investors' funds were deposited reveals that the bank accounts virtually did not have a source of income other than from victim/investor funds and that disbursements were made for the benefit of the principals of RFT, Smitty's, and Capital Holdings and others identified in this complaint by the purchase of a $6.3 million historical castle in Redstone, Colorado, the purchase of NASCAR race cars and all the equipment necessary to support a NASCAR race team, the daily life style expenses of the principals of RFT, Smitty's and Capital Holdings, the business expenses of RFT, Smitty's and Capital Holdings and other business

entities to include office leases, office furniture, office supplies, and staff salaries. The bank records of RFT, Smitty's, and Capital Holdings also consistently show there was no investment into any legitimate investment vehicle in legitimate financial markets in the United States and/or abroad. These bank records also consistently show the payments to investors of purportedly earned profits and the occasional payments of original investment principal to an investor. The source of the funds to make the purported earned profit payments and the occasional payments of original investment principal to investors was from funds received by RFT, Smitty's, and Capital Holdings from subsequent investors.

66. Proceeds obtained via the operation of the ongoing fraudulent investment scheme were ultimately laundered through various companies bank accounts and into other assets as previously described in this to include but not be limited to the purchase of luxury vehicles for personal use, the payment of foreign travel expenses and the life style expenses of the principals herein identified. Proceeds were also laundered to promote the ongoing fraudulent investment scheme as evidenced by the payment of business expenses and the "ponzi" payments made to RFT, Smitty's and/or Capital Holdings victim/investors.

67. None of the disbursements from the RFT, Smitty's and/or Capital Holdings bank accounts were disclosed to investors by principals of RFT, Smitty's, and Capital Holdings prior to these investors making their decisions to invest in a RFT, Smitty's and/or Capital Holdings "investment program." None of the RFT, Smitty's and/or Capital Holdings bank accounts were established as or operated as non-depleting bank accounts. The fact that none of the bank accounts utilized during the ongoing fraudulent investment scheme described in this affidavit were non-depleting bank accounts was also not disclosed to RFT, Smitty's, and/or Capital

Holdings victim/investors interviewed to date prior to their decision to invest in a RFT, Smitty's, and/or Capital Holdings "investment program."

68. The proceeds of the fraud schemes were obtained to fund and operate Smitty's Motorsports LLC, and to purchase Defendant Smitty's Motorsports Assets.

69. In so operating these High Yield Financial Instrument fraud schemes with the false promises of the purchase of discounted notes, high investment returns, and security through insurance, Lewis, Harte, Schmidt, Trig Domson, George Beros and others committed securities fraud. In so utilizing the United States Postal Service, private and commercial mail carriers, and the wire services during the fraud to transmit information, materials, and funds, those individuals committed mail and wire fraud. In so conducting financial transactions, including deposits into and withdrawals from financial institutions, with the proceeds of the fraud scheme, to carry on and promote the scheme, and to conceal the nature, location, source, ownership, and control of the proceeds of the scheme; in transferring funds into and out of the United States to promote and carry on the scheme and to conceal the nature, location, source, ownership, and control of the proceeds; and in depositing the proceeds of the fraud, into and through the various accounts and transferring the money between accounts, the individuals committed money laundering. Defendant Smitty's Motorsports Assets constitute the proceeds of, and were involved in, these crimes and are subject to forfeiture pursuant to 18 U.S.C. § 981.

VERIFICATION OF SCOTT D. DONER, SPECIAL AGENT FEDERAL BUREAU OF INVESTIGATION

I, Special Agent Scott D. Doner, hereby state and aver that I have read the foregoing Factual Basis for Forfeiture and that the facts and information contained therein are true to the best of my knowledge and belief.

Special Agent Scott D. Donner

STATE OF COLORADO)
) SS.
CITY AND COUNTY OF DENVER)

The foregoing was subscribed and sworn to me this 23rd day of May, 2003, by Scott D. Doner, Federal Bureau of Investigation Special Agent.

Notary Public

My Commission Expires: 06/12/2006

FIRST CLAIM FOR RELIEF

70. The Plaintiff repeats and incorporates by reference the paragraphs above.

71. By the foregoing and other acts, Defendant Smitty's Motorsports Assets are the proceeds of mail fraud violations of 18 U.S.C. § 1341 and are therefore forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 1956(c)(7) (A), and 18 U.S.C. § 1961(1).

SECOND CLAIM FOR RELIEF

72. The Plaintiff repeats and incorporates by references the paragraphs above.

73. By the foregoing and other acts, Defendant Smitty's Motorsports Assets are the proceeds of wire fraud violations of 18 U.S.C. § 1343 and are therefore forfeited to the United States pursuant to 18 U.S.C. § 981 (a)(1)(C), 18 U.S.C. § 1956 (c)(7)(A), and 18 U.S.C. § 1961(1).

THIRD CLAIM FOR RELIEF

74. The Plaintiff repeats and incorporates by references the paragraphs above.

75. By the foregoing and other acts, Defendant Smitty's Motorsports Assets were involved in money laundering violations of 18 U.S.C. §§ 1956 and 1957, and are therefore forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(A).

FOURTH CLAIM FOR RELIEF

76. The Plaintiff repeats and incorporates by references the paragraphs above.

77. By the foregoing and other acts, Defendant Smitty's Motorsports Assets are the proceeds of securities fraud violations of 15 U.S.C. § 77q(a), § 77x, §78j(b), and § 78ff, and are therefore forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 1956(c)(7)(A), and 18 U.S.C. § 1961(1).

WHEREFORE, the United States prays for entry of a final order of forfeiture for the Defendant Properties in favor of the United States, that the United States be authorized to dispose of the Defendant Properties in accordance with law, and that the Court enter a finding of probable cause for the seizure of the Defendant properties and issue a Certificate of Reasonable Cause pursuant to 28 U.S. C. § 2465.

Dated this 23rd day of May, 2003.

Respectfully submitted,

JOHN W. SUTHERS
United States Attorney

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