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CLERK US DISTRICT COURT
DISTRICT OF ARIZONA

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

CR 18 - 2220 TUC RM-EJM

United States America,

Plaintiff,

INDICTMENT

vs.

Violations:

13 Robert J. Moss,
14 (Counts 1-10)
15 Jeffrey D. McHatton,
16 (Counts 1-10)
17 [REDACTED]

Title 15, United States Code, Sections 78j(b)
and 78ff, and Title 17, Code of Federal
Regulations, Section 240.10b-5 (Securities
Fraud)

Counts 1-10

Defendants.

SEALED

GRAND JURY CHARGES:

VICTIM CASE

At all times relevant to this Indictment:

Introductory Allegations

1. Defendants ROBERT J. MOSS ("MOSS"), JEFFREY D. MCHATTON
("MCHATTON"), and [REDACTED] were residents of Arizona.

2. The Fortitude Foundation ("the Foundation") was registered as an Arizona
501(c) non-profit corporation.

1 \$15,000,000.00 that Defendants MOSS, MCHATTON, and ██████ agreed the
2 Foundation would fund was allegedly for the Foundation's purchase of 250 Class A
3 Revenue Sharing Units for the hidden gold recovery investment (hereinafter "Philippine
4 Gold") and other business objectives of Wycliffe.
5

6 9. As part of the Joint Venture Funding Agreement, \$1,500,000.00 of the
7 \$15,000,000.00 that Defendants MOSS, MCHATTON, and ██████ agreed the
8 Foundation would fund was allegedly for the Foundation's purchase of a 20% share in the
9 "net revenue cash stream" for the low-alpha lead buying and selling activities.
10

11 10. By June 12, 2012, the Foundation had not provided any of the funding as
12 required by the Joint Venture Funding Agreement to purchase the Revenue Sharing Units
13 in the Philippine Gold investment and the 20% share in the net revenue cash stream for the
14 low-alpha lead buying and selling activities.
15

16 11. However, beginning on or about June 21, 2012, Defendants MOSS,
17 MCHATTON, and ██████ fraudulently promoted and sold securities in the Philippine
18 Gold investment and the low-alpha lead investment, stating in the securities that the
19 investment sold was based upon the Joint Venture agreement between the Foundation and
20 Wycliffe.
21

22 12. As stated in the promotional materials and the securities sold by Defendants
23 MOSS, MCHATTON, and ██████, the profits from the Philippine Gold recovery
24 investment and the low-alpha lead investment were supposed to be distributed based on
25 the amount invested by each investor.
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1 13. The victim/investors in the Philippine Gold and the low-alpha lead recovery
2 ventures invested money, but did not perform any duties.

3 The 2008 California Order to Desist and Refrain against Defendant MOSS

4 14. On August 26, 2008, the State of California, Department of Corporations
5 issued a Desist and Refrain Order against Defendant MOSS, ordering him to refrain from
6 offering or selling any securities in the State of California. In the Desist and Refrain Order,
7 the California Corporations Commissioner found that Moss had committed securities
8 fraud.
9

10 15. On or about September 12, 2008, DEFENDANT MOSS requested a hearing
11 challenging the Desist and Refrain Order; however, on October 27, 2008, DEFENDANT
12 MOSS waived his right to an administrative hearing and “let the earlier Desist & Refrain
13 Order stand....”
14

15 16. Before the victims invested, Defendant MOSS failed to disclose to the
16 victim\investors in either the Philippine Gold recovery investment or the low-alpha lead
17 investment that MOSS had received the 2008 California Desist and Refrain Order.
18

19 The Solicitation and Sale of Securities to Victim\Investors

20 21. Defendant MOSS, MCHATTON, and [REDACTED] met some of the
21 victim\investors at or through a Bible study meeting at a church in Phoenix, Arizona.
22

23 24. The Foundation was described to investors as seeking “to represent the
24 Father’s heart in the world by providing philanthropic resource facilitation in food, water,
25 shelter, and sustainable energy sectors...”
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1 19. In exchange for their investments, each victim\investor in the Philippine
2 Gold and low-alpha lead projects received a Promissory Note and a Memorandum of
3 Understanding (collectively, "Investment Contracts") from the Foundation and executed
4 by Defendants MOSS, MCHATTON, and [REDACTED]. These documents were made by
5 Defendants MOSS, MCHATTON, and [REDACTED] by fraudulently using the name of the
6 Foundation to create the appearance that the investments were legitimate.
7

8 20. In the Memorandums of Understanding Defendants MOSS, MCHATTON,
9 and [REDACTED] represented that the victim\investors would receive 500% of their original
10 investment amount from the profits of the joint venture agreement between Wycliffe and
11 the Foundation.
12

13 21. Defendant MOSS, MCHATTON, and [REDACTED] statements that
14 victim\investors would receive 500% returns was a material misstatement for which they
15 did not have a reasonable factual basis because: (1) the Foundation had not provided the
16 \$12.5 million to \$15 million of funding required by the Joint Venture Funding Agreement
17 for the Philippine Gold and low-alpha lead projects; and (2) the Foundation had no revenue,
18 no income and no assets from which to pay such returns.
19

20 22. In most cases, in the Memorandums of Understanding, Defendants MOSS,
21 MCHATTON, and [REDACTED] represented that the Foundation would repay the
22 victim\investors in just 90 days with an option for the Foundation to extend that repayment
23 period by an additional 90 days at its sole discretion, with interest in the amount of 9%,
24 payable after the first 90 days.
25
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1 28. On or about June 21, 2012, victim\investor T.B. wired \$250,000 to
2 Defendant MCHATTON's Quicksilver Realty JP Morgan Chase account ending in 4993
3 to invest in the Philippine Gold recovery.

4 29. On or about June 21, 2012, \$225,000.00 (consisting of \$224,580.00 of
5 victim\investor T.B.'s funds) was wired from Defendant MCHATTON's Quicksilver
6 Realty JP Morgan Chase account ending in 4993, to an account associated with Wycliffe.

7 30. On this same date, June 21, 2012, a \$7,500.00 check drawn from Defendant
8 MCHATTON's Quicksilver Realty JP Morgan Chase account ending in 4993, was
9 deposited into Defendant MOSS's account for his company TMC Consultants, JP Morgan
10 Chase account number ending in 7838. At least \$7,080.00 of the \$7,500.00 check consisted
11 of T.B.'s funds.
12

13 31. T.B. invested with Defendants MOSS, MCHATTON, and [REDACTED] because
14 he wanted to make money and help others. Victim\investor T.B. was attracted to the project
15 because of the sizeable return, the quick turn around, and because T.B. believed that the
16 groups involved, including the Foundation, were Christian groups trying to do good.
17

18 32. Defendant MOSS failed to disclose to T.B. that MOSS had received the 2008
19 California Desist and Refrain Order finding that MOSS had committed securities fraud
20 before T.B. and P.B. invested.
21

22 33. Although Defendant MOSS represented through the Financing Proposal
23 Summary that "The total amount of time necessary to complete [the first gold] recovery
24 and generate proceeds therefrom will be less than 120 days from the time that full funding
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1 is in place,” and T.B. provided the full \$250,000.00 of funding, T.B. has received only a
2 de minimis \$2,000 interest payment and no return of his \$250,000.00 principal.

3 The Low-Alpha Lead Investment

4 34. Between on or about October 31, 2012, and May 23, 2013, Defendants
5 MOSS, MCHATTON, and ██████████ solicited and sold investments in low-alpha lead to
6 victim\investors.
7

8 35. Defendant MOSS recruited some victim\investors by taking advantage of
9 their religious beliefs:
10

- 11 a. Defendant MOSS ran an investment meeting after a weekly Bible study at a
12 church in Phoenix.
13
14 b. On or about November 14, 2012, Defendant MOSS called victim\investor
15 L.O. to solicit L.O.’s investment in the low-alpha lead venture. Defendant
16 MOSS professed his faith to L.O. and L.O. believed him.
17
18 c. Investor J.B. believed MOSS because MOSS represented to J.B. that he was
19 a Christian.
20
21 d. Defendant MOSS solicited victim\investor T.S. to invest in low-alpha lead
22 located in a Catholic church in Central America. T.S. invested with
23 Defendant MOSS because MOSS represented that he was a devout Christian
24 and T.S. trusted him.

25 36. While he professed his purported religious faith to L.O., J.B. and T.S. as he
26 solicited investments from them, Defendant MOSS did not inform them of the 2008
27
28

1 California Desist and Refrain Order that found he committed securities fraud.

2 37. After victim\investor T.S. invested and after T.S. received only \$750 in
3 payment, T.S. followed up with MOSS about the status of his investment. In December
4 2014, Defendant MOSS emailed T.S. that “no one has ever lost a dime [with] us,” when
5 Defendant MOSS knew this statement to be false and misleading. Defendant MOSS did
6 not tell T.S. that the Foundation had defaulted on promissory notes due and payable to at
7 least eight (8) other investor\investors.
8

9
10 38. On or before November 20, 2012, Defendants MOSS, MCHATTON and
11 [REDACTED] solicited an investment in the low-alpha lead from victim\investor J.C.
12 Defendant MOSS told J.C. that he had located bricks of low-alpha lead in the basement of
13 a Catholic church in South America that they could purchase. Defendant MOSS claimed
14 to be working with a priest from the church. Defendant MOSS falsely promised J.C. that
15 there was absolutely no risk involved in the investment and that Defendant MOSS
16 guaranteed the returns. Defendants MCHATTON and [REDACTED] assured J.C. the
17 investment was real.
18
19

20 39. Prior to J.C. investing in the low-alpha lead, Defendant MOSS told
21 victim\investor J.C. that the Foundation had recovered sunken gold and gave all the money
22 to Charity, which was false.
23

24 40. On or about November 20, 2012, victim\investor J.C. wired \$50,000.00 to
25 Defendant MCHATTON’s Quicksilver Realty account ending in 4993.
26

27 41. On or before October 31, 2012, Defendants MOSS, MCHATTON, and
28

1 [REDACTED] met with victim\investor M.M. to solicit funds for the low-alpha lead investment.

2 42. During the meeting with M.M. Defendants MOSS, MCHATTON, and
3 [REDACTED] falsely stated to victim\investor M.M. that the lead investment was ready to go,
4 that the rights and licenses had been acquired, everything was secured and that M.M.'s
5 funds would be used to transport the low-alpha lead investment to the United States.
6

7 43. On or about October 31, 2012, M.M. wired \$75,000 to MCHATTON's
8 Quicksilver Realty account ending in 4993.
9

10 44. After the Foundation's promissory note became due, M.M. inquired about
11 his investment; MCHATTON told M.M. that they could not get permits for the low-alpha
12 lead.
13

14 45. On or about November 14, 2012, after Defendant MOSS solicited an
15 investment from victim\investor L.O., L.O. wired \$100,000.00 to MCHATTON's
16 Quicksilver Realty account ending in 4993 to invest in low-alpha lead.
17

18 46. Approximately one week later, L.O. learned negative information about the
19 Foundation's joint venture partner and confronted Defendant MOSS; MOSS falsely stated
20 to L.O. that the joint venture partner was no longer in a position to affect the investment.
21

22 47. However, Defendant MOSS had wired the joint venture partner
23 approximately \$80,000 of L.O.'s funds on or about November 16, 2012, and would wire
24 more victim\investors' funds to the joint venture partner throughout December 2012.
25

26 48. On or before January 9, 2013, Defendants MOSS and MCHATTON solicited
27 victim\investor P.B. to invest in the low-alpha project with Wycliffe. Defendant MOSS
28

1 falsely represented, "The technical and security teams visited the site the week of
2 11/12/2012 and brought back several 8-pound bars."

3 49. Defendant MOSS' false representation regarding samples of the low-alpha
4 lead was important information to P.B.'s decision to invest.

5 6 50. On January 9, 2013, P.B. wired \$50,000.00 to MCHATTON's Quicksilver
7 Realty account ending in 4993.

8 9 51. In exchange, P.B. received a Promissory Note and a Memorandum of
10 Understanding from the Foundation and signed by Defendants MOSS, MCHATTON and
11 [REDACTED] In the Promissory Note and a Memorandum of Understanding, Defendants
12 MOSS, MCHATTON and [REDACTED] represented that the Foundation would use at least
13 85% of P.B.'s \$50,000.00 investment to further the Joint Venture Agreement with
14 Wycliffe.
15

16 52. Defendants MOSS, MCHATTON and [REDACTED] did not use any of P.B.'s
17 \$50,000 investment for the low-alpha lead project or any other venture with Wycliffe.
18

19 53. Instead, between January 10, 2013, and February 22, 2013, Defendant
20 MCHATTON misused at least \$42,068 of P.B.'s \$50,000.00 investment by transferring
21 \$21,625.00 to MCHATTON'S other personal and business bank accounts, making ATM
22 and bank withdrawals of at least \$18,900.00 cash, and paying for MCHATTON's personal
23 expenses such dining, flowers and hotels in Phoenix.
24

25 54. Based on the Foundation's investment contracts for the low-alpha lead
26 project, it was supposed to have repaid M.M., L.O., J.C., J.B., T.S. and P.B. all their
27
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1 collective \$425,000.00 principal investment amounts by no later than April 19, 2013.

2 55. By April 19, 2013, however, the Foundation had defaulted on all those
3 investment contracts for the low-alpha lead project.

4 56. On or before April 25, 2013, Defendants MOSS, MCHATTON, and
5 [REDACTED] met with victim\investor M.F. in Tucson to solicit funds for the low-alpha lead
6 investment. MOSS told M.F. to expect a return of five times the amount of his investment
7 within 90 days.
8

9 57. Defendants MOSS, MCHATTON, and [REDACTED] did not disclose to M.F.
10 that the Foundation was in default on all its previous investment contracts for the low-alpha
11 lead project.
12

13 58. Between on or about April 25, 2013, and on or about May 23, 2013, M.F.
14 invested approximately \$44,000.00 in the low-alpha lead project. M.F. gave Defendant
15 MOSS \$5,000.00 cash and checks in the amount of \$39,000.00, including a \$26,000.00
16 check from the refinance of his home. The checks were deposited into Defendant
17 MCHATTON's Quicksilver Realty account ending in 4993.
18

19 59. MOSS, MCHATTON and [REDACTED] did not use any of M.F.'s \$44,000.00
20 investment for the low-alpha lead project.
21

22 60. Prior to making their investments, Defendant MOSS falsely represented to
23 some of the investors that "we/TFF [the Foundation] have already invested \$250 K into
24 our previous partnership and an additional \$125 K in this [low-alpha lead] project." This
25 representation was false because: (i) the Foundation had no revenue, no income and no
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1 assets; and (ii) the records for the bank accounts Defendants MCHATTON and MOSS
2 used for the Foundation and themselves do not reflect any evidence of such investments by
3 Defendants or the Foundation.

4
5 The Philippine Gold Recovery, Part II:
6 The Conversion of Low-Alpha Lead to Philippine Gold

7 61. Beginning on or about May 2013, Defendants MOSS, MCHATTON, and
8 [REDACTED] began executing a "Revenue Sharing Agreement" and an "Irrevocable
9 Assignment of Revenue Sharing Interest" with victim\investors. Defendants exchanged
10 the Promissory Notes with victim\investors for revenue sharing units in the Philippine Gold
11 recovery investment.

12
13 62. About 90 days after victim\investor L.O. wired \$100,000.00 to Defendant
14 MCHATTON's bank account for L.O.'s investment in low-alpha lead, Defendant MOSS
15 told L.O. that the town where the low-alpha lead was located would not give permission to
16 mine the low-alpha lead. Defendant MOSS offered to apply L.O.'s \$100,000.00 to the
17 Philippine Gold investment instead.

18
19 63. On or about April 26, 2013, Defendant MOSS emailed victim\investors T.B.
20 and P.B with an offer to convert their low-alpha lead investment into revenue shares in the
21 Philippine Gold investment. Under Defendant MOSS's offer, if T.B. and P.B. converted
22 their \$125,000.00 investment in the low-alpha lead to revenue shares in Philippine Gold,
23 the projected financial return was approximately \$5,853,125.00, plus a \$500,000.00 bonus
24 if they converted to the Philippine Gold investment by May 3, 2013.

25
26
27 64. In March or April 2013, an associate of Defendant's MOSS, [REDACTED] and
28

1 MCHATTON showed investor\|victims F.D. and C.D. a video about the Philippine Gold
2 recovery project and they were falsely led to believe their investment funds would be
3 invested in the Philippine Gold Recovery project.

4
5 65. On May 15, 2013, Defendant [REDACTED] emailed to F.D. and C.D. several
6 documents concerning the Foundation and the Philippine Gold project, including a
7 "Summary Financing Proposal – Supplementary Financial Information" ("Supplementary
8 Financial Information"). F.D. and C.D. read the documents. The Supplementary Financial
9 Information projected that a \$100,000.00 investment would yield a return of
10 \$5,315,000.00.

11
12 66. Defendants MOSS, MCHATTON and [REDACTED] did not disclose to F.D. and
13 C.D. that:

- 14
15 a. the Foundation had not paid any returns to T.B. and P.B. for their June 2012
16 \$250,000.00 investment in the Philippine Gold project; or
17
18 b. the Foundation had defaulted on all its investment contracts for the low-alpha
19 lead project, except the recent investment by M.F. which was not yet in
20 default.

21
22 67. On or about May 16, 2013, F.D. and C.D. wired \$100,000.00 to Defendant
23 MCHATTON's Quicksilver Realty account to invest in what they believed was the
24 Philippine Gold project.

25
26 68. In exchange, F.D. and C.D. received a Promissory Note and a Memorandum
27 of Understanding from the Foundation and signed by Defendants MOSS, MCHATTON
28

1 and [REDACTED] In the Memorandum of Understanding, Defendants MOSS, MCHATTON
2 and [REDACTED] represented that the Foundation would use F.D. and C.D.'s \$100,000.00
3 investment to further the Joint Venture Agreement with Wycliffe, and that F.D. and C.D.'s
4 profits would "come from the business ventures between [the Foundation] and Wycliffe."
5 Defendants' representations were consistent with F.D. and C.D.'s belief they were
6 investing in the Philippine Gold project.
7

8 69. However, F.D. and C.D.'s money was not transferred to Wycliffe accounts
9 for investment in the Philippine Gold recovery investment; instead, at least \$81,773.00 of
10 F.D. and C.D.'s \$100,000.00 investment was wired from Defendant MCHATTON's
11 Quicksilver Realty account to George H. LaBarre Galleries, which is unrelated to Wycliffe
12 and the Philippine Gold project.
13
14

15 70. The same day F.D. and C.D. wired their \$100,000.00 to Defendant
16 MCHATTON's Quicksilver Realty account, \$3,000.00 was transferred from that account
17 to Defendant MOSS' bank account for his company, TMC Consultants.
18

19 71. Defendant MOSS did not inform F.D. and C.D. that he got \$3,000.00 the
20 same day they provided their investment money.
21

22 72. F.D. and C.D. have not received any repayment of their \$100,000.00.
23

24 The "Fast Freddy"

25 73. On or after August 4, 2013, Defendant [REDACTED] met R.S. and M.S. at their
26 open house while they were selling their home. R.S. is a minister. Defendant [REDACTED]
27 told R.S. that he had a pastor in his family and they struck up a conversation.
28

1 [REDACTED] started talking about investing with the Foundation.

2 74. Defendant [REDACTED] told R.S. and M.S. that he could get them in on a last
3 minute "Fast Freddy" investment, which was set to pay out a guaranteed 100% return on
4 their money plus their original investment.
5

6 75. Defendant [REDACTED] gave R.S. and M.S. promotional documents that
7 represented the Foundation as a non-profit corporation that distributed 90% of its net
8 earned income to further philanthropic and humanitarian causes, and that "has
9 developed financial strategies via joint ventures to be able to ... advance His
10 Kingdom by creating exponential returns through various well-established and/or
11 exclusive Joint Venture projects and asset management opportunities."
12
13

14 76. Those representations were false. Since at least 2012, the Foundation
15 has never had any "net earned income," and it has never generated investment
16 returns, let alone "exponential" ones.
17

18 77. The promotional documents represented, "Moss is known for his work
19 in initiating and supporting programs and entities based upon 'values' and 'ethics'
20 through charities," but they did not disclose the 2008 California Desist and Refrain
21 Order finding that MOSS committed securities fraud.
22
23

24 78. On or about August 06, 2013, R.S. and M.S. invested \$25,000.00 in the "Fast
25 Freddy" investment with TFF. Their \$25,000.00 was deposited to Defendant
26 MCHATTON's Quicksilver Realty account.
27
28

1 invested \$100,000.00 that he believed would be used to invest in the African Diamond.

2 85. In return, N.B. received a "Profit Participation In Revenue Share Agreement"
3 signed by Defendants MOSS and MCHATTON as the Foundation's directors, which
4 promised to repay \$100,000.00 plus "profit participation."
5

6 86. N.B. also received a Lender's Memorandum, dated September 30, 2014. It
7 stated that the profits from what N.B. believed to be an investment in the African Diamond
8 were supposed to be distributed based on the amount invested.
9

10 87. N.B. invested money in the African Diamond investment, but N.B. did not
11 perform any duties.

12 88. When N.B. invested, Defendants MOSS, MCHATTON and [REDACTED] did
13 not disclose to him that the Foundation was in default on all its promissory notes and
14 investment contracts with its previous investors because it had failed to timely repay them
15 their principal let alone the promised 500% returns.
16

17 89. When N.B. invested, Defendant MOSS did not disclose the 2008
18 California Desist and Refrain Order finding that MOSS committed securities fraud.
19

20 90. N.B. has never received any return of his \$100,000.00.
21

22 91. When N.B. inquired about his investment, Defendant MOSS falsely stated to
23 N.B. that the funds were frozen internationally and that greedy governments and banks
24 were holding up the ability to pay investors.
25

26 92. Defendant MCHATTON used N.B.'s \$100,000.00 to make at least
27 \$45,000.00 in cash withdrawals.
28

1 240.10b-5; as set out below:

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COUNT	DATE	INVESTOR	AMOUNT	INVESTMENT
1	10/31/2012	M.M.	\$75,000	Low-Alpha Lead
2	11/14/2012	L.O.	\$100,000	Low-Alpha Lead
3	11/20/2012	J.C.	\$50,000	Low-Alpha Lead
4	12/4/2012	J.B.	\$100,000	Low-Alpha Lead
5	12/19/2012	T.S. & K.S.	\$50,000	Low-Alpha Lead
6	1/8/2013	P.B.	\$50,000	Low-Alpha Lead
7	4/25/13 to 5/23/13	M.F.	\$44,000	Low-Alpha Lead
8	5/16/2013	F.D. and C.D.	\$100,000	Philippine Gold Recovery
9	8/6/2013	R.S. and M.S.	\$25,000	"Fast Freddy"
10	9/24/14 to 10/7/14	N.B.	\$100,000	African Diamond

18

19 A TRUE BILL

20 s/ _____

21 Presiding Juror

22

23 ELIZABETH A. STRANGE

24 First Assistant United States Attorney
District of Arizona

25 Assistant U.S. Attorney

26 Date: **OCT 31 2018**

27

28

**REDACTED FOR
PUBLIC DISCLOSURE**