

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

United States of America

v.

Gary Todd Smith, a/k/a Todd Smith

and

Gary Truman Smith, a/k/a Gary Smith

Case No.

8:14 MJ 1309 AEP

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of at least 2007 through 2013 in the county of Sarasota and elsewhere in the Middle District of Florida, the defendant(s) violated:

Code Section

Offense Description

18:1343

Wire Fraud Affecting a Financial Institution

This criminal complaint is based on these facts:

Please see the attached affidavit.

☒ Continued on the attached sheet.

M. Anthony Magos & Thomas Baugher, Sp. Agents

Complainant's signature

M. Anthony Magos & Thomas Baugher, Sp. Agents

Printed name and title

Sworn to before me and signed in my presence.

Date:

5/5/14

City and state:

Tampa, Florida

I certify the foregoing to be a true and correct copy of the original.

SHERYL L. LOESCH, Clerk
United States District Court
Middle District of Florida

By:

Deputy Clerk

Anthony E. Porcelli

Judge's signature

Anthony E. Porcelli, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT

I. CO-AFFIANTS' BACKGROUND

I, M. ANTHONY MAGOS and THOMAS BAUGHER, being sworn to tell the truth, state the following information:

A. With respect to Special Agent Magos

I am a Special Agent with the United States Secret Service ("Secret Service"), and have been so employed since May 2003. As a Special Agent, I am a federal law enforcement officer and am engaged in enforcing the criminal laws of the United States of America. I am currently assigned to the Tampa Field Office of the Secret Service and serve on a Financial Crimes Task Force comprised of both Secret Service agents and state law enforcement officers.

As a Special Agent, I have investigated individuals for a wide variety of federal and state felony offenses. My experience as a Secret Service Special Agent has included the investigation of cases involving bank fraud, wire fraud, mail fraud, mortgage fraud, and the use of computers and the Internet to commit fraud.

I am also certified in the Secret Service Electronic Crimes Special Agent Program. In this program, I received specialized training in computer crimes and computer forensics. Prior to becoming a federal agent, I was an engineer with Raytheon.

B. With respect to Special Agent Baugher

I am a Special Agent with the Federal Bureau of Investigation ("FBI"), and have been so employed since June 1997. As a Special Agent, I am a federal law

enforcement officer and am engaged in enforcing the criminal laws of the United States of America. I am currently assigned to the Sarasota Resident Agency of the FBI and investigate, among other violations, investment fraud matters.

I have a Juris Doctor degree and am a Certified Fraud Examiner. Additionally, I am currently enrolled in an MBA program and will graduate in the Spring of 2015, in this regard I have taken courses on corporate finance, commercial paper, and accounting. Prior to becoming a federal agent, I was an attorney and an officer in the U.S. Army.

As a Special Agent, I have investigated individuals for a wide variety of federal and state felony offenses. My experience as an FBI Agent has included the investigation of cases involving bank fraud, wire fraud, mail fraud, mortgage fraud, and the use of computers and the Internet to commit fraud.

II. PURPOSE

This Affidavit is submitted in support of a criminal complaint against **Gary Todd Smith**, who will be called Todd Smith throughout the rest of this affidavit, and **Gary Truman Smith**, who will be called Gary Smith throughout the rest of this affidavit. It is our understanding that this is how both were commonly known to others.

Because this affidavit is being submitted for the limited purposes of establishing probable cause, we have not included every detail of every aspect of the investigation. Rather, we have set forth those facts that we believe necessary to establish probable cause to believe that Todd Smith and Gary Smith have, among other crimes and aiding and abetting each other and aided and abetted by others known and unknown, committed the federal crime of wire fraud affecting a financial institution, in violation of

Title 18, United States Code, Sections 1343 and 2.

For a wire fraud complaint, the Court must find probable cause to believe that:

- (1) the defendant knowingly and willfully devised or participated in a scheme to defraud, or to obtain money or property by using false pretenses, representations, or promises;
- (2) the false pretenses, representations, or promises were about a material fact;
- (3) the defendant acted with the intent to defraud; and
- (4) the defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme.

See 18 U.S.C. § 1343. The crime may be committed directly or by willfully aiding or being aided by another in the commission of the crime. See 18 U.S.C. § 2.

The facts set forth in this affidavit are based (1) on our personal knowledge; (2) information obtained from other individuals; (3) our review of documents and records related to this investigation, including those taken during the execution of search warrants; (4) communications with others who have personal knowledge of the events and circumstances described herein; and (5) information gained through my training and experience. The information contained in this affidavit is true and correct, to the best of my knowledge and belief. Unless specifically indicated, all conversations and statements described in this affidavit are related in substance and in part.

III. Statement of Probable Cause

A. Entities and People

Some of the relevant entities and people included the following:

i. Smith Advertising and Associates, Inc.

During the events described in this affidavit, Smith Advertising and Associates, Inc., (hereinafter "Smith Advertising") was a North Carolina corporation and was registered as a foreign for-profit corporation in the State of Florida.

According to records from North Carolina's Department of State, at times relevant to this affidavit, the registered agent for Smith Advertising in North Carolina was Todd Smith. His office was listed as 321 Arch Street, Fayetteville, North Carolina 28301.

In addition to Todd Smith, Gary Smith was listed as the President and Vice President of the corporation. Gary Smith is Todd Smith's father.

At times material to this affidavit, records from the State of Florida's Department of State show that, for the Florida-registered Smith Advertising corporation, the Chief Executive Officer (CEO) of the corporation was Gary Smith and the Chief Operating Officer (COO) was Todd Smith. Smith Advertising's Sarasota address was 1626 Ringling Boulevard, Suite 510, Sarasota, FL 34236.

ii. CapitalPlus Equity, LLC

CapitalPlus Equity, LLC, (hereinafter CapitalPlus) is a Knoxville, Tennessee based company that provides factoring services to its clients. Through its website, www.CapitalPlus.com, the company defined invoice factoring as the "sale of a company's invoices to a financing company at a small discount, in exchange for

immediate capital to help run your business.” The Chief Operating Officer of CapitalPlus during the times material to this affidavit was S.A.

iii. Receivable Management Funding, LLC

Receivable Management Funding, LLC, (hereinafter RMF) was a Florida limited liability corporation. RMF was incorporated in October 2009, and lists its management as RMF Partners, LLC. RMF’s principal mailing address is 1626 Ringling Boulevard, Suite 510, Sarasota, FL 34236, i.e., co-located with Smith Advertising’s Florida address.

iv. R1A Palms, MK Investing, BNK Smith

R1A Palms, MK Investing, and BNK Smith are all Florida limited liability corporations, belonging to Marvin Kaplan. R1A Palms’ principal mailing address was 1626 Ringling Boulevard, Suite 510, Sarasota, FL 34236, i.e., Smith Advertising’s and RMF Partners’ address.

v. Regions Financial Corporation

Regions Financial Corporation, more commonly known as Regions Bank, was a publicly traded Delaware corporation, headquartered in Birmingham, Alabama. Regions Bank operates over 1,600 branches in sixteen states. The accounts of Regions Bank (Certificate number 12368) are insured by the FDIC. At times material to this affidavit, it was a financial institution as defined in Title 18, United States Code, Section 20.

B. The Scheme and Artifice

From at least as early as in and around 2007, and continuing through at least in and around 2013, in the Middle District of Florida, and elsewhere, **GARY SMITH**, and

TODD SMITH, the defendants herein, aided and abetted by each other and others known and unknown and willfully aiding and abetting each other, knowingly and willfully devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises relating to material facts.

C. Trigger for the Federal Investigation

On or about January 30, 2012, Regions Bank, an FDIC-insured financial institution, filed a civil lawsuit in Sarasota, Florida, against Marvin Kaplan and others.¹ Documents filed as part of the lawsuit describe how Kaplan deposited, on an almost daily basis, at least two hundred and sixty checks totaling approximately \$15 million drawn on Smith Advertising's account maintained at Bridgeview Bank Group (Bridgeview Bank) in Bridgeview, Illinois. According to Regions Bank, at the same time these deposits were being made into Kaplan's account, multiple wire transfers totaling millions of dollars were being made from this same account back to the Smith Advertising account at Bridgeview Bank.

The outgoing wire transfers were triggered by telephone calls from Kaplan in Sarasota, Florida, and processed through Region's wire facility in Birmingham, Alabama, with the wire transfer of funds ultimately terminating at Bridgeview Bank in Illinois. These wires started in Sarasota, Florida, and terminated in Illinois.

¹ It is the policy of the Department of Justice not to identify victims by name in certain court documents. However, in this case, Mr. Kaplan, a victim of this offense, has been named publicly by others, including as described in this affidavit. In this instance, Mr. Kaplan has consented to the use of his name.

On January 25, 2012, Bridgeview Bank began returning the Smith Advertising checks as "dishonored" and marked "refer to maker." Regions Bank reported that, by January 26, 2012, Bridgeview Bank had "dishonored" over \$14,800,000 of the Smith Advertising checks that Kaplan had deposited into his Regions Bank account. In the interim, Kaplan had wired large sums of money back to Smith Advertising's account at Bridgeview Bank. After these checks were charged back to Kaplan's account, the account became overdrawn by \$9,766,152.97, which triggered a lawsuit.

With respect to the deposits, Kaplan had indicated to Regions Bank that a certain number of the checks he deposited were actually flown to him on a private flight, from North Carolina to Sarasota, Florida, by Smith Advertising. We were able to confirm that the flight occurred on January 25, 2012, from Fayetteville Regional to the Sarasota airport (airport code SRQ). The tail number of the aircraft was N744SR.

On January 26, 2012, a deposit in the amount of \$7 million had been made by Kaplan at the downtown Sarasota branch of Regions Bank. All of the checks were from Smith Advertising, drawn on a Wachovia (now Wells Fargo) account ending with 3952. The checks were as follows:

Check Number	Dated	Amount
1406	January 25, 2012	\$600,000
1407	January 25, 2012	\$600,000
1408	January 25, 2012	\$600,000

1409	January 25, 2012	\$700,000
1410	January 25, 2012	\$700,000
1411	January 25, 2012	\$700,000
1418	January 25, 2012	\$600,000
1413	January 25, 2012	\$250,000
1412	January 25, 2012	\$350,000
1403	January 25, 2012	\$400,000
1404	January 25, 2012	\$400,000
1402	January 25, 2012	\$500,000
1405	January 25, 2012	\$600,000

In addition to the civil action related to the overdrawn account, law enforcement was contacted to investigate. Within the Secret Service, the case agent assigned to investigate the offense was your affiant, M. Anthony Magos of the Tampa Field Office. The Secret Service was subsequently joined in the investigation by the Federal Bureau of Investigation, which assigned the case to Thomas Baugher of the Tampa Field Office, Sarasota Resident Agency.

D.

Cooperating Source Contacts Law Enforcement

On February 27, 2012, early in the investigation, a Cooperating Source ("CS") contacted the United States Secret Service through his/her counsel. At the time, the CS was an employee of Smith Advertising. The CS wanted to provide information regarding fraud originating at Smith Advertising.

No promises or inducements were made to the CS nor any threats made to obtain his/her cooperation. Instead, the CS came forward voluntarily.

The case agent has reviewed NCIC records and has found no prior criminal history attributable to the CS.

The CS had been employed by Smith Advertising since 2000. CS described his/her position as relating to finance.

The CS admitted to being among a group of individuals at Smith Advertising who created false and fraudulent documents in support of at least one aspect of the scheme.

Prior to the CS's contact with the government and not at the government's behest, the CS had obtained certain documents and items to which the CS had access as a part of the CS's routine duties as an employee of Smith Advertising. The documents and items the CS brought to the CS's attorney included a spreadsheet of investors, four boxes of bank statements and/or financials from October 2010 through September 2011, and a "zip drive" containing data from the business's computer server. As part of his/her interview, the CS offered to provide the records to the government. Two of the documents offered in support of his/her information were a pair of

spreadsheets that were initially scanned and emailed to the case agent.

From the CS's description of Smith Advertising, it appears that the vast majority of the financial activity for Smith Advertising was fraudulent. Strictly to convey a sense of the breadth of the scheme, if you were to have divided the business into two components, it might be divided into the creative aspect of the business (e.g., creation of advertisements) and everything else, that is, the fraud.

A Certified Fraud Examiner reviewed the second spreadsheet provided by the CS, tallying the column entitled "Loan Amount" and, without backing out from the total approximately \$10 million in rejected amounts and those amounts listed as "proposed," the total for the column was \$171,708,500. The terms of the loans, that is, the listed commencement dates and the maturation dates are also listed on the spreadsheet. The commencement dates were generally in February 2012 and the maturation dates were generally in March 2012.

In sum, on February 27, 2012, unsolicited and with no promises, an insider to Smith Advertising and the scheme came in and offered to cooperate.

The CS provided substantive information on the operations of the scheme. For the bridge loans, the loan period was relatively short with some investments lasting as little as one day and others lasting thirty days.² The CS said that investors were encouraged to renew their loans numerous times, allowing Smith Advertising to avoid

² The CS tended to use the terms "loan" and "investment" and "lender" and "investor" interchangeably. In explaining the information we have received, we are attempting to be consistent with our understanding of what happened. From an analysis of the actual transaction, the more accurate terms appear to be "loan" and "lender." These transactions involved individuals giving money to Smith Advertising with the expectation of future repayment plus some profit in the form of interest and fees. This was not an investment, e.g., the purchase of shares in Smith Advertising. Therefore, for clarity here, we are attempting to consistently use the terms "loan" and "lender," although, in some ways, the distinction may be without meaning since every transaction we have investigated was a sham.

repayment of the principal and thus only pay out the "return."

There was a "boiler room"-type aspect to the solicitation of lenders. For example, Todd Smith might contact a prospective lender and offer that person (or entity) an opportunity to "invest" \$50,000 for seven days and that they could earn 7% or a flat rate for making the loan. The fee might then be paid up front to the investor. Frequently, Todd Smith would also offer the investor a "renewal" of the loan.

The CS estimated that the pool of potential lenders was approximately three hundred people.

The CS advised that lenders were located throughout the United States, including a number of them in Florida. The first of the two spreadsheets the CS provided as part of his/her interview revealed that there were approximately one hundred and forty active lenders at that moment and twenty inactive lenders. An active lender is one who was currently owed money. With each loan, an email was automatically generated to the lender and sent to the email address listed on the spreadsheet. Lenders were not just individuals but are also entities. The spreadsheet further identified parent entities, a person who served as the point of contact, and the email address used by the proprietary software to send to the lenders copies of the promissory notes and other documents.

The CS explained that the deposits of Smith Advertising checks by Kaplan into his Regions Bank account and the simultaneous wiring of funds back to Smith Advertising's Bridgeview Bank account were Kaplan's participation as a lender to Smith Advertising.

The CS also provided information regarding certain checks being recently flown

on private/small commercial aircraft from Fayetteville, North Carolina, to Sarasota, Florida, as part of the situation involving Kaplan.

The second spreadsheet provided by the CS detailed the individual loans made by the various lenders. The spreadsheet appeared to contain data from 2012, with commencement dates as recent as February 22, 2012, and maturation dates extending into March 2012. This was in line with the CS's description of the short term nature of the loans. The second spreadsheet tracked with the information Regions Bank detailed to the case agent regarding the transfers of funds by Kaplan, including the \$9.7 million in "dishonored" checks. This was the same spreadsheet that contained the column loan amount that was tallied by the Certified Fraud Examiner, who, without backing out the approximately \$10 million in rejected loans and the proposed loans, determined that the total of the column was \$171,708,500.

Although investigators have determined that Smith Advertising had financial troubles prior to the scheme and artifice to defraud detailed in this Affidavit, the CS stated that when the economy took a substantial downturn in 2008, Smith Advertising problems grew substantially. They had purchased a substantial sum of advertising using investor's funds but were unable to sell it or at least sell it for an amount in which they might break even. To that end, Smith Advertising, specifically Gary Smith and Todd Smith, made the decision to obtain additional investments to cover the existing liabilities owed to prior investors. However, the new investments were solicited as they always had been, i.e., for the bulk purchase of advertising, rather than being told the true purpose, that is, to cover Smith Advertising's losses.

According to the CS, the bulk purchase of advertising did not occur as the

investors were promised but, instead, Smith Advertising began to repay earlier debt with the loans from new lenders, i.e., behavior akin to that of a Ponzi scheme. This scheme simply grew over time.

The CS described the lending process as follows. Lenders were recruited by telephone by Gary Smith and Todd Smith from a pool of business and community contacts they have made over the years from their being in the advertising business.

When a loan was made to Smith Advertising, depending on the amount of documentation required by the lender, promissory notes were generated by Smith Advertising and normally emailed to the lenders. Approximately one year before the interview, Smith Advertising switched to proprietary software that, when a new lender joined or a current investor renewed, a promissory note was electronically generated and emailed to the investor. In some cases, for clients who were not email users, the documents were mailed via private commercial carriers such as FedEx or sent through the U.S. Postal Service. According to the CS, receipts for mailing via commercial carrier were stored in the investor's file.

According to the CS, Smith Advertising maintained the records electronically on the computer servers and had various hard copy records in each lender's file, although the amount of the documentation varies with the amount of supporting documents required by the lender. The supporting documents, including false invoices, were maintained in electronic form (e.g., server and/or local computer) and physical form (e.g., investor files, including in boxes stored in the attic) at Smith Advertising. In addition, the emails between the employees of Smith Advertising and the lenders would document investments, promissory notes, and representations made to the lenders or

by the lenders and these emails were maintained on the server.

Documentation provided to the lenders included what the CS said was called “backup” and frequently consisted of fraudulent vendor invoices. These invoices falsely showed what advertising space has been purchased and which advertising client's advertisements were being run in that advertising space. In other words, the CS said that these fraudulent invoices reflected bulk advertising purchases that did not actually occur or vastly exaggerated any legitimate purchases to cover up the fraud. These false invoices and other supporting “backup” documentation were stored on the computer server as well as a filing cabinet located on the first floor of Smith Advertising.

The CS also admitted that the company maintained two sets of books, that is, a record of the true financial picture of the company and a false one, containing the inflated, false financials reflecting the fraudulent invoices.

According to the CS, Smith Advertising had, since at least as early as 2008, been operating what is, in effect, a dual-aspect scheme involving fraudulent loans, that is, bridge loans and invoice factoring.

E. The Aspects of the Fraud

The mechanism through which the fraud was committed was, essentially, through Smith Advertising borrowing money. The loans can be divided up into two groups: Bridge Loans and Invoice Factoring.

i. Bridge Loans

As we understand the bridge loans from the CS's explanation, in the past, advertising agencies such as Smith Advertising would purchase bulk advertising from newspapers and other media at discounted rates. The advertisers would then sell their

creative services to their clients and also sell the pre-purchased ad space to them. As a result, the advertisers might make a profit on both the creative work and the price difference between the amount for which the ad space was sold to advertising agency and the amount for which the advertising agency's client would purchase it from the agency. However, these bulk purchases required substantial upfront capital, for example, to buy a year's worth of ad space in a newspaper in advance of any sales of the space. That would require an advertising agency like Smith Advertising to borrow money in order to pay for the advance purchases. Smith Advertising did this by soliciting individuals to provide "bridge loans" to allow Smith Advertising to make the advance purchases of advertisement space.³ Smith Advertising would then share the discount with the bridge lender.

Besides the fraudulent back up, the bridge loans themselves were all premised on a fundamental lie for Smith Advertising was not purchasing the bulk advertising space.

The loan periods were relatively short with some investments lasting as little as one day and others lasting 30 days. The CS said that lenders were encouraged to renew their loans numerous times, allowing Smith Advertising to avoid repayment of the principal and thus only pay out the fee on the loan.

³ The concept here is a fairly simple, relatively short term loans used by the advertising agencies to buy the ad space they would eventually sell to their clients. The loans provided the upfront capital to buy the ad space. They allow the advertising company to "bridge" the point in time between when they purchased the discounted ad space and when they sold it. Each loan is discrete, that is, independent of the next.

The CS advised that bridge lenders were located throughout the United States, including a number of them in Sarasota, Florida. Funds primarily moved between Smith Advertising and the bridge lenders through the mail or wire transfers.

The CS explained that the deposits of Smith Advertising checks by Kaplan into his Regions Bank account and the almost simultaneous wiring of funds back to Smith Advertising's Bridgeview Bank account were Kaplan's participation as a "bridge" lender with Smith Advertising. Apparently, unlike most investors who "rolled over" their investments, Kaplan actually wanted to be paid back before he would lend again (i.e., rolling over his investment). In sum, Kaplan and Regions Bank were victims of the scheme through Kaplan's participation as a bridge lender.

ii.

Invoice Factoring

The fraudulent scheme also involved invoice factoring. Factoring is really a kind of loan, advancing money with the promise of future payment. More specifically, factoring is a financial arrangement that typically involves a business selling its accounts receivable (e.g., invoices) to a third party (called a "factor") at a discount. By way of example, if a business had an invoice that indicated it was going to receive \$100 from a customer once the invoice was paid on a future date (e.g., 90 days), the business might immediately sell the invoice (really, the right to receive the \$100) to a factor and, in factoring the invoice, immediately receive a lesser amount of money (e.g., \$70). The customer's payment of the accounts receivable (in this explanation, an invoice) would ultimately be paid to the business, less the factor's fee (e.g., \$6). The core of this factoring arrangement then, is the reliability of the security, that is, the truthfulness of

the accounts receivable. This truthfulness is material to any factor's agreement to "purchase" them, that is, effectively accept the invoice as collateral and give the business money. Factoring is somewhat akin to a "payday" loan.

According to the CS, at times material to this affidavit, Smith Advertising factored invoices first with CapitalPlus and later with Receivable Management Funding.

The CS stated that regardless of whether the situation involved bridge loans or factoring, the invoices involved reflected greater sums than were actually due or were otherwise false, e.g., simply fabricated. The CS said these false invoices were referred to as "backup" by the Smith Advertising employees involved in the fraud scheme.

E. Search of Smith Advertising (North Carolina)

On March 8, 2012, a federal search warrant was executed on the offices of Smith Advertising in Fayetteville, North Carolina. Upon entry the office was found to be empty of people and we learned that on the evening of March 5, 2012, Todd Smith had informed the employees that Smith Advertising was closing immediately and that they did not have to return to work. The search resulted in the seizure of approximately 47 boxes of paper records and several computers, one of which was a Dell Power Edge T410 Small Business Server. Another Smith Advertising computer was voluntarily surrendered by an employee, who had the computer at his/her residence. A review of the items seized and recovered has confirmed information provided by the CS.

F. Review of Some of the Seized Evidence

i. Victim Bridge Lender Example

Significant evidence was recovered regarding the bridge loans. For example, several boxes were found containing files labeled with a naming convention which

identified the victim bridge lender and the date of a bridge loan. Inside the files were many documents, including Promissory Notes between Smith Advertising and the lender. Each file also contained what appears to be at least one invoice. The invoice(s) in the file were the ones sent to the bridge loan victims. If there were two invoices in the file, it would often be one from Smith Advertising and one directed to Smith Advertising. In the invoice from Smith Advertising, it would reflect Smith Advertising billing its customers for the job, which included the advance purchase of the ad space. In the invoice to Smith Advertising, it would reflect the purchase of ad space in advance and at a discount. The invoice to Smith Advertising was the one that appeared most often in the files

Among the files recovered were files named CS4611A, CS4611B, CS4611C, and CS4611D, attached hereto as Exhibits A-D, respectively. The CS series of files were located in the Smith Advertising office. (For these files, "CS" does not stand for Confidential Source but is, instead, the actual initials of the victim-lender.) Inside these folders were Promissory Notes between C.S. and Smith Advertising & Associates. The four notes indicated that C.S. lent Smith Advertising a total of \$200,000 on April 7, 2011, with fees totaling \$24,000 to be paid to CS. The loans were to be paid in full by May 6, 2011. The notes were all signed by Todd Smith and Gary Smith. Accompanying the Promissory Notes were invoices to Smith Advertising:

File Identifier	Invoice Amount	Pre-pay Discount Shown on Invoice	Vendor
CS4611A	\$83,525	\$9,600	PBM Graphics Inc. Atlanta, GA
CS4611B	\$136,890.55	\$14,400	Johnson Group, Rockford, IL

CS4611C	\$65,600	\$7,200	NextMedia Outdoor Denver, CO
CS4611D	\$148,050	\$16,800	TakeOne Productions Morrisville, NC

We performed subsequent investigation on the invoices.

On May 7, 2012, we spoke with Margarita Rodriguez in the accounting department of PBM Graphics. Rodriguez said that the last invoice from PBM to Smith Advertising was in November 2005. At that time, PBM was having a hard time collecting on invoices from Smith Advertising in an amount of approximately \$20,000. Rodriguez said she had to work on collecting this past due amount for almost a year (until June 30, 2006) when Smith finally paid its balance. PBM Graphics did not do any business with Smith Advertising after that incident. We sent Rodriguez a copy of the \$83,525.00 invoice found in file CS4611A and she confirmed that it was not a genuine invoice from PBM Graphics. We found no evidence that Smith Advertising had been given permission to use PBM Graphics' identity or the identity of any of its employees to create a false invoice.

On May 7, 2012, we spoke with Sharon Widell in the accounts receivable and collections department of the Johnson Group. We emailed Widell several invoices that appear to have come from the Johnson Group, including the \$136,890.55 invoice contained in CS4611B. Widell said that these invoices are similar to their genuine invoices in style, but are not exactly like their real invoices. She confirmed that these invoices were fraudulent and she said that, from 2007 to the present, the Johnson Group had invoiced only \$22,000 to Smith Advertising. She further advised that Smith Advertising ended up in collections around September of 2009. The Johnson Group

ultimately wrote off \$11,000 in debt that Smith Advertising owed them. We found no evidence that Smith Advertising had been given permission to use the Johnson Group's identity or the identity of any of its employees to create a false invoice.⁴

On May 7, 2012, Jim Cando stated that he was the owner of Take One Productions and had been doing business with Smith Advertising for 30 years. Cando was told of an invoice from April 2011 in the amount of \$148,050. This invoice was from file CS4611D. Cando said that there was no way the invoice was legitimate, because the dollar amount was too high. Cando was sent a copy of the invoice via email and he confirmed that it was not a real invoice from his company. Cando pointed out that the address used on the invoice was an old address Take One Productions had not used for two years. He said that real invoices from his company provide much greater detail regarding the job. Cando provided a report listing all invoices sent to Smith Advertising since July 2010 showing that his company had submitted invoices from Smith Advertising thirteen times for a total of \$39,508.99. There is no evidence that Smith Advertising had been given permission to use Take One Productions' identity or the identity of any of its employees to create a false invoice.

Evidence of mailings to victim-lenders, including victim-lender C.S., were found among the paper records seized from Smith Advertising. Several FedEx and UPS shipment receipts show mailings from the Smith Advertising office in Fayetteville, NC, to victim-lender C.S.' residence in Sarasota, FL.⁵ Several of the receipts contain bridge loan numbers such as CS91010A, and CS91010B. Others do not contain specific

⁴ In creating the false invoices, the identities of real companies and frequently real people were fraudulently used.

⁵ Here, C.S. is the victim-lender's actual initials. This is not the Cooperating Source.

references to bridge loan file numbers, but they do contain dates that coincide with dates found on the promissory notes, including the four bridge loans detailed above CS4611A through D. FedEx shipment receipt with tracking number 796958991645 documents the mailing of a FedEx envelope using standard overnight service on April 6, 2011. The mailing was from Smith Advertising's office in Fayetteville, NC, to victim-lender C.S.' residence in Sarasota, FL.

On April 9, 2012, victim-lender C.S. confirmed to investigators that he had been a bridge lender to Smith Advertising for approximately a year and a half. C.S. stated that he had spoken with Todd Smith and Gary Smith on the telephone and in person about the opportunity to be a bridge lender. C.S. said that he would receive the promissory notes, interest or fee checks, and often invoices supporting the loan opportunity through the mail, FedEx, or UPS. C.S. provided a spreadsheet he had been maintaining that documented his bridge lending to Smith Advertising. The spreadsheet contained, among others, the four bridge loans described above and showed vendors associated with each loan such as PBM Graphics and Take One Productions.

Victim-lender C.S. advised that he sent his funds for these four bridge loans via a wire transfer from his UBS account to Smith Advertising's account at Bridgeview Bank. Investigators were able to confirm this wire transfer through Smith Advertising's bank account records for Bridgeview Bank account ending -8201. The records show that on April 7, 2011, a wire of \$200,000 was sent from the UBS AG account of C.S. in Sarasota, Florida, to Smith Advertising's account at Bridgeview Bank in Illinois.

In total, C.S. reported that he provided Smith Advertising with \$1,368,000 in bridge loans between September 2010 and March 2012. C.S. received back

\$1,164,355 in outstanding principle plus loan fees (allegedly his share of the pre-paid discounts Smith Advertising was claiming to be receiving from Vendors). There are a number of ways to calculate the losses to C.S. that resulted from the scheme and artifice. For simplicity's sake and through simple netting, we would estimate, at this time, that this would leave C.S. with a net loss of \$203,645 when Smith Advertising unexpectedly closed its doors in early March 2012.⁶

ii. **Analysis of the Dell Server**

The Dell PowerEdge T410 server seized as evidence during the search of Smith Advertising's office has been found to contain a large amount of evidence related to the fraud scheme. Among other things, the server provided storage for the promissory notes as well as the fabricated invoices which were provided to the victim lenders. The server also provided email services and contained thousands of emails to and from Smith Advertising's employees including Todd Smith, Gary Smith, M.C., T.M., D.J., and A.M.

A directory named "Promissory Notes" was found on the system which was set up in such a way as to be accessible to users of Smith Advertising's office network. This directory was found to contain sub-directories in the names of the various victim-lenders. Within the victim-lender's sub-directories were the promissory notes specific to

⁶ Netting may not be the most appropriate way to calculate losses. If each loan is a discrete event, then understanding the associated losses may be better done individually. For example, if, over a period of time, a lender made a series of ten loans to one individual based upon lies told in the origination (lies to get the loans from the bank), it would generally be improper to simply net all of the loans and payments against each other. In other words, losses would be calculated by the outstanding principal less any payments against that principal and not all the other principals. Thus, if on nine of the loans the lender made a substantial profit (interest and fees) but a total loss of principal on the final loan, the loss would normally be the full principal on the final loan, not the amount netted out amongst all the loans. Understanding losses here may be one of the most complex aspects to any understanding of the impact of what happened.

that victim-lender as well as invoices similar to the ones described above. In particular, the four invoices provided to victim-lender C.S. as part of the mailings he received on or about April 7, 2012, were found on the server as Microsoft Word files. The properties for the four files have the following values:

Invoice	Author	Last Saved Time
Johnson Group #161172	T.M.	4/6/2011 8:14:00 PM +00:00
PBM Graphics #76494	M.C.	4/6/2011 8:17:00 PM +00:00
NextMedia Outdoor #0475472-120	T.M.	4/6/2011 8:25:00 PM +00:00
Take One Productions # J-115235	T.M.	4/6/2011 8:23:00 PM +00:00

A file named "Instructional Manual – Drksd.doc" was found on the server that appears to give directions on how to create the promissory notes as well as how to fabricate a vendor invoice.⁷ It provides the location on the computer system where the invoices were stored, and instructed that a copy of each invoice "created is also filed under the corresponding lender folder under Vendor Invoices." The file then listed vendors to choose from along with information on that vendor such as "Billboards," "Printing & Direct Mail," "Social Media," and "video production." Finally it reminded the reader to change the invoice number by "4-15" if the invoice will be the same date as the previous invoice. The file's properties showed that the author of this file was T.M.

On March 17, 2014, T.M. was interviewed at the FBI office in Fayetteville, NC. T.M. had agreed to voluntarily speak to investigators about his/her employment at Smith Advertising. At this time, T.M. admitted that he/she created the document entitled "Instructional Manual – Drksd.doc" as a reference document for other Smith employees.

⁷ It is my understanding that "Drksd" stood for Dark Side, that is, the Dark Side of the business.

T.M. stated that the instructions for this manual were first given to him/her by D.J. or Todd Smith and he/she just typed them up. T.M. stated that fellow employees A.M. and M.C. also created false invoices.

On March 17, 2014, A.M. was interviewed at the FBI office in Fayetteville, NC. A.M. had agreed to voluntarily speak to investigators about his/her employment at Smith Advertising. At this time, A.M. admitted that the guidance in "Instructional Manual – Drksd.doc" was exactly how he/she was instructed to and did, in fact, create false invoices. A.M. stated that he/she and T.M. tried to switch job types on invoices to avoid investor suspicion, but it had become so hectic and hard to keep up with that they eventually did not even bother switching them.

Several emails found on the server also provided insight into how victim-lenders were solicited. On January 27, 2011, Todd Smith, using the email address tsmith@smithadv.com, wrote to victim-lender C.S., "we have 48K for 5 days if you want it. The discount is 600 dollars for you. Please let me know if you would like to do. We can email you the paperwork and send you the repayment check and fee. Thanks. Todd."

On January 18, 2011, Todd Smith wrote to victim-lender J.L., "We have secured some new work from one of our top accounts ... We are seeking \$150K to \$200K blocks that would see a return of at least \$25K for this six week period."

On September 15, 2011, Todd Smith wrote to victim-lender C.R., "I may have an opportunity for \$80k later today/tomorrow a.m. The total is \$160,000 and the total discount is \$8000....I am willing to split the discount down the middle."

On January 31, 2012, Todd Smith wrote to victim-lender L.S., "we have a \$4.5

million opportunity available...this is federal grant money to the Health Dept. for a campaign on the flu vaccine. In exchange for the \$4.5 million dollar funding, there would [be] a \$1 million discount paid at the time we execute. The term is 35 days."

On October 15, 2009, Todd Smith wrote to victim-lender W.S., "Hi, [W.], attached is an opportunity to replace the deal due tomorrow." Attached to this email was a promissory note stating W.S would loan Smith Advertising & Associates \$50,000 on October 16, 2009, for a one-time fee of \$3,800. The loan would be paid in full by November 19, 2009. The second attachment to this email was an invoice from Take One Productions to Smith Advertising for a \$107,600 video production job with a \$7,600 "pre-pay discount." The third attachment to this email was an invoice for the video production job from Smith Advertising to the Moore County North Carolina Convention & Visitors Bureau in the amount of \$117,600.

On Monday, January 23, 2012, Todd Smith wrote to victim-lender D.W., "We also have three good ops. that are \$300K each. \$30K discount on each. Funds back Wednesday. This would need to be wired before noon if possible in order to secure the vendor discount." As proposed by Todd Smith, the loan would mature two days later on Wednesday, January 25. Assuming the normal "discount" split, the fee/interest that would be paid to D.W. would be \$15,000.

On February 8, 2012, T.M., using the email address [\[T.M.\]@smithadv.com](mailto:T.M.@smithadv.com) wrote to victim-lender C.S., "The following opportunity is available for your review: Loan Amount: \$40,000.00, Duration: 30 days, Fee: \$4,800."

On January 24, 2012, Todd Smith wrote to victim-lender Marvin Kaplan, "I have 5 extra deals that were approved late by the printers. Each one is \$450k and the

discounts are \$45k each if you can do them. We would overnight down. Thanks, Todd."

Subsequent interviews of former Smith employees T.M. and A.M. corroborates these emails in that these former employees state that Todd Smith set the rates and terms for investments and that investors would usually take the offered rate because it was so favorable.

On February 7th, 2012, A.M. sent an email and attachment to Todd Smith. The attachment contained promissory notes totaling \$1,350,000 to be loaned by victim-lender JC in return for \$233,000 in fees, as well as vendor invoices. In the email, A.M. writes that "all are printing except for one which was 100k for 10k so I made it a billboard job. Let me know if he will also be requiring client invoices with these."

On February 10th, 2012, M.C. sent an email and attachment to Todd Smith. The attachment is a Cumberland County (North Carolina) purchase order purporting to show an \$8,000,000 job with Smith Advertising for printing and direct mail services related to a flu vaccine campaign. The buyer for the county was listed as K.T., that is, an apparent victim of identity theft.

On November 4, 2013, an investigator spoke with Thelma Matthews, a purchasing manager for Cumberland County. Matthews stated that the \$8,000,000 purchase order was false. Matthews stated that the purchase order appears to be one for the City of Fayetteville, but with Cumberland County's information replacing the city's information. Matthews said she did not know who K.T. is, but she did recognize the signature on the bottom of the fraudulent purchase order. Matthews said it is the signature of her counterpart in the purchasing department for the City of Fayetteville,

G.W., who was a victim of identity theft. Matthews said that G.W. was told of her signature being on the purchase order and was troubled by the use of her name on the fraudulent document.

The February 10th purchase order email was followed, minutes later, by a message from M.C. to Todd Smith with a contract attached documenting the \$8,000,000 production job between Smith Advertising and Cumberland County. The contract bears the same stolen signature of G.W. This contract was then emailed to victim-lender L.S. by Todd Smith on February 10, 2012.

Another example of document fabrication was found in emails between M.C. and Todd Smith on March 2, 2012. In the first message, M.C. sent Todd Smith an email containing an invoice from Harperprints of Henderson, NC, which listed six printing jobs of 500,500 items for \$1,000,000 each. Todd Smith replied that the numbers were “too even” and that they should be “mixed up so they are not all \$1mm.” M.C. replied a few minutes later with the request to mix up the numbers on the invoice completed.

An email exchange between victim-lender J.M. and T.M. and A.M. on March 5, 2012, provided insight into the mindset of the employees at Smith Advertising participating in the fraud scheme. Victim-lender J.M. asks T.M. if a set of bridge loans he was involved in were going to be renewing again. T.M. responded that they were going to be renewing. J.M. was surprised by this, commenting, “How are you finding renewals for those?? They are monster deals!!” T.M. forwards the comments from the victim-lender J.M. to A.M. and adds, “Please read below for a good laugh!” A.M. responds, “HAHAHAHAHAHAHA... Yeah they’re monster deals alright.” On March 17, 2014, T.M. and A.M. were both separately shown this email and admitted that they were

involved in this email conversation and then expressed remorse for their actions.

iii. **Evidence related to Marvin Kaplan and Regions Bank**

The CS had informed law enforcement that the media attention to the issue involving Marvin Kaplan and Regions Bank was causing concern for those with whom Smith Advertising dealt. Todd Smith appears to have attempted to provide an explanation for the incident through at least two emails he sent or directed to be sent. On February 6, 2012, M.C. sent an email to M.S., a principal of the RMF group. M.C. wrote that "Todd" had asked her to send the message to him. The email appeared to show messages sent between Todd Smith and D.G., Senior VP of Bridgeview Bank Group and a victim of identity theft, on January 26, 2012. In the initial message from Todd Smith to D.G., Smith asked why several checks were returned when Smith Advertising had the funds available in their account. D.G.'s fabricated reply stated in part, "It appears it was a clerical error... It was our fault. If you want to send them thru a second time they will be honored." This email conversation was also sent by Todd Smith to victim-lender C.S. on February 8, 2012.

I found evidence on the Smith Advertising server that this conversation between Todd Smith and D.G. actually took place on September 14, 2011, and was about a different topic. Emails found on the server show that Todd Smith sent the original, genuine conversation to M.C. on February 6, 2012; the text was edited by M.C. and returned to Todd Smith. The contents of D.G.'s communication to Todd Smith were falsely, fraudulently, and substantially altered.

On March 18, 2014, M.C. was interviewed at the FBI office in Fayetteville, NC. M.C. had agreed to voluntarily speak to investigators about her employment at

Smith Advertising. At this time, M.C. stated that she does recall this email and it "was 100% Todd." Todd asked her to send it. She knew that it was incorrect and it did not feel good, but she claims that she did not know fabricating the content of an email from a bank official was against the law. M.C. stated that she was only doing what she was asked to do and expressed remorse for her involvement in this fraud. Regions Bank had informed investigators that on Tuesday, January 24, 2012, Marvin Kaplan wanted to know why the deposit he had made the previous day did not appear in his account. Kaplan said that he believed the checks had cleared the Smith Advertising account and that he wanted to make a wire transfer. Regions Bank employees attempted to contact Smith Advertising to confirm the clearance of the checks. A.M. stated that she was in Todd Smith's office when he received a call from Kaplan and Regions Bank. According to A.M., Todd Smith went "white." When he finished the call, he asked A.M. to leave his office. A.M. stated that she could tell that something was wrong and, in a colorful way, described an extremely anxious reaction by Todd Smith. A.M. stated that, after she left Todd Smith's office, she assumed that he was going to ask D.J. or M.C. to help him try to fix this issue. A.M. stated that after this, things deteriorated rapidly and Todd spent a lot of time trying to keep other investors from cashing out.

Branch manager Linda Council reported that she received a phone call from Todd Smith, who said that the checks did not clear the Smith Advertising account and that there were enough funds in the account to cover Kaplan's checks. Todd Smith offered to send a screen shot of Smith's account balances. Linda Council reported that she received this screen shot at 10:51 a.m. Council's statement is confirmed by an email found on the server. An email was found dated January 24, 2012, 10:51 a.m.,

from Todd Smith to Linda Council with an attachment. The attachment is a screen shot of a web page that reads, "Welcome Todd Smith. Your last Bridgeview Business Internet Banking sign on was Tuesday, January 24, 2012 at 08:10 AM ET." The page shows the balance for the account ending 8201 to be \$12,489,358.59.

I have reviewed that actual bank statements for Bridgeview account ending 8201 and know that the true balance in this account on January 24, 2012, was not \$12,489,358.59. The true balance, as shown on the monthly statement, was negative \$12,489,358.59. The statement shows the balance with a minus (-) sign in front of the number. It appears that this minus sign was obscured in some fashion (e.g., electronically "whited out") in the screen shot sent to Regions Bank. We submit that this was done to deceive Regions Bank into believing there were funds available to honor Marvin Kaplan's checks, which would allow him to then wire additional funds to Smith Advertising.

G. Factoring of Invoices

The factoring of invoices appears to have begun before the bridge loans. There may have been a factor that predated CapitalPlus. However, for the purpose of this affidavit, the first relevant factor was CapitalPlus. For reasons detailed below, CapitalPlus was replaced as a factor by RMF.

By way of background, on August 5, 2008, Smith Advertising entered into a factoring agreement with CapitalPlus Equity LLC, located in Knoxville, TN. In the agreement CapitalPlus agreed to purchase accounts receivable (here, invoices) from Smith Advertising at a purchase price that was the face value of the invoice less a percentage and other fees and charges. Essentially, Smith Advertising would be selling

its accounts receivable for a portion of their face value, but would receive the money immediately. CapitalPlus would then have the right to collect the full face value of the invoice.

This relationship existed until May 13, 2009, when CapitalPlus Chief Operating Officer, S.A., sent a letter notifying Smith Advertising that they were in default under the terms of the factoring agreement. CapitalPlus declared all of Smith Advertising's obligations immediately due and payable in the amount of \$4,542,302.66. Although the letter does not specify what led to Smith Advertising to be considered in default, subsequent investigation reveals that CapitalPlus discovered that Smith Advertising had been providing it with false invoices.

This statement is supported by the following information. First, on July 30, 2013, an investigator spoke with Janet Emmet who works in the accounting department of Charlotte County. Emmet was provided with a copy of an email found on Smith Advertising's server dated May 13, 2009, from V.P. of CapitalPlus addressed to Emmett in which Emmett was asked to review a list of invoices where Charlotte County owed Smith Advertising money. Attached to the email was a list of invoice numbers and amounts. Next to each invoice number was a check mark or the letter "N" written by hand. Emmett confirmed that she was the one who had made these marks and that the "N" indicated that she, and therefore Charlotte County, had no record of that invoice. The email shows that Emmett then forwarded the documents on to a supervisor at the Charlotte County Visitor & Convention Bureau. The email was eventually forwarded on to Smith Advertising and ultimately to Todd Smith. Emmett said she remembered she told someone at CapitalPlus that the invoices on the list they sent did not match the

invoices she had.

Second, emails found on Smith Advertising's server help to explain what happened. Investigators found emails between Todd Smith and S.A. (C.O.O. of CapitalPlus) dated in late March and April 2009, where S.A. advised Todd Smith that CapitalPlus was going to start sending statements of all the outstanding invoices to the various companies found on the invoices that CapitalPlus was buying from Smith Advertising. Todd Smith's responses made it clear that Smith Advertising did not wish for CapitalPlus to have direct contact with the vendors listed on the invoices. Todd Smith wrote on March 24, 2009, that "We are anxious about anything that could disrupt the client relationships." Also on March 24, 2009, Todd Smith suggested that Smith Advertising "send the statements out on our letter head and forward you copies of what goes out like we did the original letter back in August when we start [sic] with you." After receiving CapitalPlus' default letter on May 13, 2009, Todd Smith acknowledged CapitalPlus' termination of their relationship and asked S.A. not to contact any more of Smith Advertising's clients. On May 14, 2009, S.A. responded that he would agree not to send any statements until May 20th, and then he would only send them if CapitalPlus was not paid off by May 19th.

Finding a Replacement for CapitalPlus

Shortly after being advised in late March of 2009 that CapitalPlus was going to start sending statements directly to Smith Advertising's clients, Todd Smith began to look for a replacement lender. At least one of these potential sources of funds was L.S. The Smiths' relationship with L.S. began at least as early as in 2002. The Confidential Source (C.S.) stated that the Smiths and L.S. were partners in a Florida Limited Liability

Corporation (LLC) named SCS Investments. A check of Florida state records shows this LLC was formed in 2002. Additionally, the C.S. advised, sometime in perhaps 2005, that L.S. lent Smith Advertising \$200,000 that was repaid and the C.S. did not recall any associated IRS 1099 Form. Finally, L.S. was Sarasota Convention and Visitor Bureau Director at a time when Smith Advertising handled its advertising.

On April 2, 2009, Todd Smith emailed L.S. proposed terms for L.S.'s potential 7 million dollar extension of credit to Smith. Among other things, these terms stated:

(a) \$4.2 million is required to secure first position [subordinating CapitalPlus] on all current receivables;

(b) fees will be set at 2% at 30 days collection, an additional 2% at 60 days collection, and an additional 2% at 90 days;

(c) L.S. will set up P.O. Boxes for Smith's clients to send payments. [Smith notes however that many of his clients pay in person or by credit card, in which case Smith will then wire payment to L.S.];

(d) Once a client pays L.S., L.S. will wire Smith back this payment less his initial advance and fee;

(e) "Smith to invest in the proposed contract for L.S. consideration. In other words, Smith to make initial investment into the start up cost of this partnership."

Todd Smith concluded his email by stating that "I project that based on our growth and billings, [L.S.] can earn a range of \$800,000-\$1 million per year. This would be approximately a 20% annual return. Obviously, that number will go up as we grow."

On May 5, 2009, Gary and Todd Smith met with principals organized by L.S. known as the "Investment Group" to discuss replacing CapitalPlus as Smith's factor.

In July, Todd and Gary Smith retained an attorney to help them negotiate a forbearance and repayment schedule with CapitalPlus. The Smiths told this attorney that S.A. had discovered that Smith Advertising was creating false invoices to sell to CapitalPlus and was threatening to go to the FBI unless they paid back all owed monies plus interest.

This attorney travelled to Knoxville, Tennessee, to meet with S.A. and CapitalPlus' attorney. Prior to agreeing to any payment plan, CapitalPlus required a list of disclosures. These items included:

- i. A full disclosure of all assets (e.g., 401(k), IRA's, life insurance, real estate, etc.) owned by Gary Smith, Todd Smith, their spouses and associated legal entities;
- ii. Current bank statements;
- iii. A written confession of their fraud with a statement of what the funds were used for;
- iv. Anyone else who was involved in the fraud;
- v. Last three years tax returns;
- vi. Complete details of their proposed repayment plan; and
- vii. Smith Advertising's listing of monthly expenses to include payroll.

In regards to item iii, a document was prepared titled "Statement of Todd and Gary Smith." In this document, Gary and Todd wrote "[w]e decided the only way we could do so and to whether (sic) the storm was by robbing Peter to pay Paul in hopes the economy would correct itself...we could only do so by making up false invoices....Our intent was to fabricate only for short period of time until payments would

pick back up and we pay you off (sic)."

On July 16, 2009, L.S. and Todd Smith signed a document titled "Letter of Intent for Financing Agreement." This document stated that the parties intend for the Investment Group to extend Smith an \$8 million dollar full recourse line of credit for 5 years at an annual interest rate of 10%. Smith will use this money to pay off their current line of credit [from CapitalPlus] in the amount of \$4.6 million. This "Investment Group" was later incorporated as RMF, LLC.

On October 16, 2009, Todd Smith emailed RMF principals and proposed that the invoices will be factored through RMF "and your return breaks down as follows: 1% initial fee; 30 days-7%; 60 days- 10%; 90 days- 14%. CapitalPlus will subordinate the UCC's on these receivables to RMF."

On July 20, 2009, CapitalPlus agreed on a forbearance of the money owed in exchange for a \$200,000 forbearance fee and the creation of the following legal documents:

(1) A "Continuing Guaranty of Indebtedness" - This document was signed and notarized by the Smiths and their wives. It stated (among other things):

- they acknowledge and agree to pay their current debt to CapitalPlus;
- they are jointly and severally liable for this debt;
- they waive any defenses they may have;
- they subordinate all other debts and obligations to Capital Plus

(2) A "Forbearance Agreement and Release" - This document states that Smith Advertising owes CapitalPlus \$4,757,544.81. This document incorporates by reference and amends the original agreement between Smith Advertising and CapitalPlus (which

was titled "Master Accounts Receivable Purchase and Security Agreement") dated August 5, 2008. This document stated:

- The Debtor (Smith Advertising) acknowledges that it is currently in default;
- CapitalPlus is agreeing to forbear from pursuing its legal rights until November 30, 2009;
- Smith Advertising will continue to operate as a continuing concern;
- Smith Advertising will remit all collections to CapitalPlus within 2 days of collection;
- The salaries for Gary and Todd Smith will be \$25,000 per month and all other payroll will not change nor exceed \$28,000 per month; any other operating expenses will not exceed \$64,600 per month for a total of \$117,600. CapitalPlus will disburse this amount to Smith Advertising bimonthly. (Additionally, during the repayment phase, CapitalPlus had to approve all payments/disbursements that Smith made. This included internal payroll and legal payments.
- The Smiths will execute and record Mortgages or Deeds of Trust against all of their real estate;
- The Smiths will assign all beneficiary designations in insurance policies, retirement accounts, and other assets to Creditor;
- The Smiths will additionally pay Creditor \$200,000 as consideration for this Forbearance.
- A graduated payment schedule is established ranging from \$4,700,000 to

\$4,950,000 based on the date of repayment.

(3) Tennessee state court legal documents - These documents were only to be filed if Smith Advertising was not able to comply with the terms of the Forbearance Agreement and CapitalPlus had to seek redress in the court system. These documents include:

- a Complaint by CapitalPlus detailing their invoice factoring agreement with Smith Advertising and CapitalPlus' subsequent discovery that Smith was submitting "false and fraudulent invoices....Said invoices were either previously collected, or in some cases, wholly fabricated. Based on false and fraudulent information provided by defendant Smith Advertising and persons on its behalf, CapitalPlus did fund to defendant Smith Advertising in excess of \$4,500,000."
- An Answer by Smith Advertising admitting all allegations in the Complaint;
- A Confession of Judgment;
- An Agreed Judgment that provides for both Compensatory damages in the amount \$4,757,544.81, plus attorneys' fees and costs, plus the forbearance fee of \$200,000, plus interest accruing at \$3,000.35, and Punitive damages in the amount of \$2,000,000 based on fraud and intentional misrepresentation.

On August 4, 2009, Smith Advertising's attorney sent a letter to S.A. and CapitalPlus' attorney. In the letter Smith Advertising's attorney states that Todd and Gary Smith went to Sarasota, Florida, and met with key people who would invest in the Smith's "new concept of market advertising." The letter goes on to describe this new

concept which turns out to be the same pre-paid advertising discount model that formed the basis of the bridge loans described earlier in this affidavit. These "key people" later formed Receivable Management Funding (RMF) and include M.S., W.S., and L.S. The Smith's had previously worked with L.S. regarding tourism issues in Sarasota. Gary Smith stated that L.S. was a friend and L.S. had previously extended Smith Advertising bridge loans.

The letter asks for time to line-up new financing and states that "there are only so many ways they [the Smith's] can admit guilt and document they cannot pay you back through their own resources. They can only do so with their new, but well thought through business model combined with their hard earned experience and good reputation along with these new investors..."

Notably, the letter concludes with a request that "when you are paid we understand you are to recommend to any and all law enforcement agencies and prosecutors that the Smith's and their company not be prosecuted and that any and all documents pertaining to the Smith's guilt or forbearance will be destroyed or returned to me to be held in trust and will remain completely confidential and will not be divulged in any way." This raised concerns for the investigators. See 18 U.S.C. § 1519.

Smith Advertising and CapitalPlus' efforts to close the deal with RMF, LLC

In an email dated October 27, 2009, M.S. (a manager of RMF) wrote to Todd Smith that before RMF would transfer any funds they want to speak with CapitalPlus. The email makes it clear that CapitalPlus' reason for terminating their business with Smith Advertising was material to RMF in moving forward with their investment with Smith Advertising. M.S. wrote that he wanted to "hear from the 'horse's mouth' that they are looking to reduce their line because of pressure from their funding sources."

Todd Smith responded that he relayed to S.A. RMF's desire to speak to S.A. about "the fact they were requested by their banks to lower their lines/exposure" but S.A. did not want to talk with RMF. Todd Smith forwarded M.S. a letter from S.A. stating that CapitalPlus was declining the request to communicate with RMF "as to the reason why we would give up Smith Advertising and call your line of credit. While I very much want to help you achieve success....It has long been the policy of our company not to discuss policy or our reasons for pursuing and/or or (sic) continuing to extend credit to a particular customer.... I understand that our decision was sudden and unexpected by you. For that reason we have been very patient while you have pursued a new investor/funding source. Please continue in your endeavors and keep me informed of your progress as will continue to assist in the completion of this transaction." In this forwarded email to M.S., Todd Smith added "I followed up with [S.A.] and he says he is unable to discuss the specifics on any account as it is their policy and made reference to RMF being a potential competitor down the line."

The truth of the matter, however, was that Todd Smith did not want S.A. talking to RMF, lest he tell them the real reason for ending their factoring relationship. Todd Smith was the one who requested that S.A. send RMF a letter instead of speaking directly to them. The letter Todd Smith proposed painted Smith Advertising in a more favorable light than the neutral sounding letter that eventually went out. S.A. refused to send such a favorable letter and stated "We want to help you all but not (sic) putting our neck in noose to your lender if your guys fall apart and they try to say we misled or misrepresented to them."

M.S. was, however, insistent about speaking with CapitalPlus and on October 29, 2009, Todd Smith emailed him S.A.'s phone number. M.S. told investigators that he called S.A. and S.A. told him several times that CapitalPlus was ending its relationship with Smith Advertising purely for business reasons. According to M.S., S.A. once elaborated on a conference call with RMF principals that it was a credit line issue, and that Smith Advertising's business had become too large for CapitalPlus.⁸

On December 23, 2009, S.A. sent an email to the Smith's attorney in which he wrote "I want to get this deal done and over with but my partners aren't willing to accept the \$2.5 million. So we either work something out or your guys go to jail."

RMF replaces CapitalPlus as Smith Advertising funding source

On October 29, 2009, a UCC Subordination Agreement was signed by S.A. and M.S. In this agreement CapitalPlus agreed to subordinate its security interest in Smith's collateral (accounts receivable and proceeds thereof) to RMF. "CapitalPlus represents

⁸ On July 17, 2013, M.S. and his attorney placed a telephone call to S.A. in which S.A. re-affirmed that CapitalPlus' decision was made for purely business reasons. This telephone call was consensually monitored by law enforcement, that is, your co-affiant, Tom Baugher, listened in to the call. This call was not recorded, however.

and warrants (i) that the security interest ... is valid,....”

The deal was ultimately completed on December 24, 2009, when RMF wired the final buyout payment to CapitalPlus. CapitalPlus then filed a UCC Financing Statement Amendment which cancelled the original financing statement between CapitalPlus and Smith Advertising. RMF then became Smith Advertising’s factor until Smith closed its doors for good in March 2012.

Structure and functioning of RMF, LLC

RMF’s operating agreement described how the company was made up of managing members and limited members. Both classes of members made capital contributions to the company in which \$100,000 purchased a 1% interest in the company. RMF grew to have approximately seventy members with capital contributions of over \$12.6 million. It is our understanding that virtually 100% of this money was used to provide a revolving line of credit for Smith Advertising through invoice factoring. From the perspective of an investigator, RMF effectively served as a “feeder fund,” bringing in individuals who invested in RMF for the sole purpose of lending money to Smith Advertising through factoring. Many of these individuals who invested and eventually lost money were friends, family, and business contacts of RMF principals. The Smiths effectively supplemented their own efforts to find new lenders with the efforts of RMF.

An RMF Offering Memorandum states that it was “organized October 29, 2009 to raise and manage a revolving business line of credit for [Smith Advertising]....RMF serves as the primary conduit of financing for SMITH to operate an invoice factoring program on client accounts receivable. The Manager has raised over \$15 million since

the Fund's inception. SMITH and its principal's respective assets significantly collateralize the funds that are advanced to SMITH. RMF Partners, as manager of Fund I, inspects and approves all invoices submitted for the program, controls the flow of capital in and out and handles all administrative and reporting requirements for Fund I and its members. Since opening to Limited Partners in April 2010, Fund I has generated a total gross annualized return of 33.27% resulting in a net annualized return of to (sic) investors of 23.6%" This document continues: "SMITH is responsible for the collection of invoices. Clients of SMITH send payments directly to RMF or in the case of credit card payments by SMITH clients, the total invoice collections are processed by SMITH and then forwarded directly to RMF along with the corresponding batch reports, via same day wire."

RMF Managing Partners were M.S., W.S., L.S., and Mi.S. RMF contracted with Suplee & Shea, P.A., in Sarasota, Florida for quarterly reviews and a year-end audit. Outside General Counsel duties were handled by D.R.

During the course of this investigation an RMF investor with the initials H.R. was interviewed by investigators. H.R. stated that in approximately May of 2011, RMF Principal L.S. told H.R. about investment opportunities with Smith Advertising and that he (L.S.) was realizing a significant return-on-investment ("ROI"). H.R. stated that L.S. told him in a hushed tone that this was "a friends and family deal" and later told him that he could get him in as an investor. H.R. stated that L.S. pitched this investment opportunity as very safe with a guaranteed 10% ROI. H.R. told investigators that, in retrospect, he realized that "very safe" and "guaranteed 10% ROI" are not congruent

terms. H.R. also stated that he felt like L.S. "baited him" and that he was a "whale."⁹ H.R. invested a total of \$300,000 and immediately received \$10,000 in upfront interest per each \$100,000 loan.

H.R. stated that, in October 2011, he asked one of his employees with the initials G.H. to do some "due diligence" on invoices backing up the Smith Advertising factoring agreements. G.H. began his research by calling the clients listed on Smith Advertising's invoices. All of the clients G.H. called had either never heard of Smith Advertising or had a past or current relationship with them but not for the amounts shown on the invoices. Around this time, H.R. also discovered that an RMF principal had previously been arrested and prosecuted federally for wire fraud.¹⁰

H.R. immediately met with L.S. and requested the return of his investment. H.R. told L.S. that he needed his money back for a real estate closing, that is, he did not initially disclose why he wanted his money back. According to H.R., L.S. told him that that was fine, but H.R. would forgo the interest and promised return. After speaking with fellow RMF Principal M.S. and Todd Smith, L.S. returned H.R.'s money in three checks from two different bank accounts. One of these checks was for \$135,000 and was post-dated. On the day of the post-date, H.R. went to the issuing bank and was told there was not enough money in the account to cover the check. Eventually, however, this check did clear. Once it cleared, H.R. said that he returned to the offices of RMF and confronted L.S. with the real reasons for withdrawing his money. In the presence of H.R., L.S. called Todd Smith on speaker phone and asked for an explanation. Todd Smith told L.S. to tell Rodriguez not to talk to clients and that he

⁹ "Whale" is a term we understand to mean someone who could bring significant funds into an investment.

¹⁰ This conviction had been overturned on appeal.

would get to the bottom of it and then he would get back to them. According to H.R., L.S. called him the next day and told him that M.S. had flown up to North Carolina to make sure everything was alright. L.S. told H.R. that the reason some of these clients had not heard of Smith Advertising was because a bunch of little cities had aggregated their bills. H.R. told investigators that L.S. said "it is unfortunate that this has happened because now you can no longer invest in this fund."

During the final days of Smith Advertising, as allegations of check-kiting became public, RMF principal L.S. sent Todd and Gary Smith several emails in an attempt to get clarity. For example, L.S. sent the following emails:

On March 2, 2012, at 8:06 PM—"You are killing your credibility on my floor and as a result in this town, why are you letting this happen. You are putting me in a position where I can no longer defend you....I am writing checks out of my personal account to cover your obligations (which I should not have to do) and to save your reputation ... My wife is being asked if our family is ok. You are putting me in a position, from which, I won't have the answers to questions that are asked. Are you guys ok? I cannot continue my support of Smith without complete transparency (sic).

Gary, you have not called me back. Todd, you have not walked me through the Kaplan deal. You need to make me totally comfortable this weekend. I am afraid that you are going to be sued by investors in the coming weeks. I want to know the truth and I want to know it now. If you can't make me comfortable this weekend, I would like you to give up your office space and allow me to tell the press that you are not associated with our floor and I can direct all inquiries involving RMF to Matt. In short, you guys are ruining my life. I will not let you do this. I will make an announcement (sic) Monday one way or another. Thanks for your attention.

On March 2, 2012, at 10:30 PM – "Good luck to both of you. I am out as you are not responding to me. I am filing a law suit against you on Monday. I will also encourage others to do the same."

On March 2, 2012, at 10:30 PM – "Todd. You have ruined my life. I am going to let this be known on Monday. Good luck in jail. L."

It is noted by the investigators that we have found no evidence of a reply to L.S.

repudiating L.S.'s statements in the emails.

H. Summary of the Interview of Todd Smith

On May 30, 2012, a voluntary, non-custodial interview of Todd Smith was conducted at the United States Attorney's Office in Tampa, FL. Todd Smith was joined by his attorney and no promises, protections, or proffer agreements were in effect at the time of the interview.

Todd Smith stated that soon after Smith Advertising began factoring invoices with CapitalPlus, the fees began to become overwhelming. Smith Advertising then began to present CapitalPlus with invoices that were not true. Smith said the same thing was going on with the bridge loans, stating that they were being "overtaken" by the fees Smith Advertising had to pay to the lender. Smith stated that the fees associated with the factoring and bridge loans were eating up any margins the business was making.¹¹

Smith said that they made the false invoices based on true clients, but with inflated numbers, or were invoices for work that was completely made up. Smith said he was not aware of anyone other than Gary Smith, A.M., M.C., T.M., and D.J. that knew about what they called the "dark side" of the business.

Todd Smith said that S.A. from CapitalPlus advised that he was going to have to start checking the invoices CapitalPlus was factoring from Smith Advertising. According to Todd Smith, S.A. told Gary Smith that he discovered a false invoice and that the Smiths had to pay off CapitalPlus or he was going to report the Smiths to the FBI. Todd Smith said that they scrambled to find a replacement for CapitalPlus and this eventually

¹¹ Interviews of two former Smith Advertising employees (including a former CFO) reveal that the company had been experiencing financial problems going back to at least 2005. The former CFO attributed many of these problems to Gary and Todd Smith's very high salaries.

became Receivable Management Funding.

Over time, Todd Smith has offered additional information, including by and through his counsel.

I. **Summary of the Interview of Gary Smith**

On July 2, 2012, a non-custodial interview of Gary Smith was conducted at United States Attorney's Offices in Tampa, FL. Gary Smith was joined by his attorney and no promises, protections, or proffer agreements were in effect at the time of the interview.

Gary Smith said that he became aware of the use of false invoices to obtain funds through bridge loans or factoring when he was asked in late 2008 by Todd Smith to help open post office boxes. The post office boxes were to be used as the address for the vendors listed on the false invoices and prevent any correspondence from reaching the real businesses.¹² Gary Smith said that he knew false invoices had already been submitted to CapitalPlus and that he needed to go along with this plan in order to try to dig them out of the hole.

Eventually, Gary Smith received a phone call from S.A., who told him that he had discovered an invoice that was not real. Gary Smith said that S.A. threatened to go to the FBI if Smith Advertising was unable to find a new factoring company to replace CapitalPlus.

¹² During the execution of the search warrant of Smith Advertising in North Carolina, we recovered approximately thirty-three P.O. Box keys.

Gary Smith explained that, in the early 1980's, Smith Advertising gained the Sarasota County tourism entity as a client and he met a lot of business people in the area as a result. It was from these connections that the group who formed RMF was found.

J. Bank Balances for Smith Advertising

Starting in December 2010, the average balance in the Smith Advertising Bridgeview account ending -8201 fell below zero and steadily increased to an average balance of -\$4,965,819 in January 2012. Monthly deposits and withdrawals for 2011 averaged \$7.4 million and \$7.6 million respectively. The monthly ending balances in 2011 on the account averaged -\$316,000. Smith Advertising incurred significant overdraft fees for the negative balances. Smith Advertising paid \$79,551 in overdraft fees to Bridgeview Bank in 2011.

K. Victim-Lenders Receive 1099-INT and/or 1099-MISC FORMS

Investigators have been notified by several victim-lenders that, after Smith Advertising had closed down in March of 2012, they received Internal Revenue Service 1099 forms from Smith Advertising. Victim-lenders have claimed that the amounts were inflated.

As an example, victim-lender M.W. received a 1099-MISC for 2012 which lists \$9,174,482.71 in non-employee compensation in Box 7. Victim-lender M.W. has advised that he does not agree with the issuance of this 1099-MISC (as well as similar forms for 2010 and 2011) and he has claimed a theft loss deduction pursuant to Revenue Procedure 2009-20.

While not an IRS revenue agent but having access to certain financial records,

we have performed our own rough calculation of interest victim-lender M.W. received in 2012 from his participation as a bridge lender to Smith Advertising. We found that M.W. received approximately \$4.2 million, less than half of the amount reported on the 1099-MISC for 2012 that he received. It is unclear to investigators why the interest was characterized as non-employee income. That being said, it is difficult, at this time, to reconstruct the finances in a fashion that would give us the ability to fully and accurately reconstruct the accuracy of any particular 1099 nor are we IRS revenue agents so equipped to perform such calculations.

L. Financial Consequences of the Scheme and Artifice

Investigators have sent requests for victim impact statements to all of the known victim-lenders that apparently suffered a financial loss; we did not send such a letter to the “means of identification” victims. We have identified at least 129 individuals whom we believe to have provided funds directly to Smith Advertising as bridge lenders or indirectly as members of Receivable Management Funding. As of this writing, we have received over 74 responses. As they have individually calculated it by the recipients of the letters, the responding victims have claimed losses that exceed \$55,000,000. That is not to say that your affiants have independently verified each loss claimed but rather this is the information as provided to us by the responding victims and in the manner provided by them.¹³

Another way to understand the consequences of the fraud flows from the financial records of the company itself. Smith Advertising maintained two sets of

¹³ Please note that this conception of the financial consequences of the losses may – and is likely – to be different from what might be cognizable as a loss under the relevant legal authority. In other words, this is the loss as the victims have described it to us.

financial books, a false set and an accurate set. From their accurate books, on February 23, 2012, the total assets from the corporation were valued at -\$66,723,391.55 and the total equity was -\$103,140,084.68.

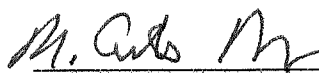
M. One of the Wires In Execution of the Scheme

A wire in execution of the scheme was the January 24, 2012, email sent from Todd Smith in Fayetteville, North Carolina, to Linda Council, at Regions Bank in Sarasota, Florida. The attachment to that email was the screen shot of a web page that falsely showed a positive balance of \$12,489,358.59 in Smith Advertising's Bridgeview bank account. The email is attached hereto as Exhibit A. A copy of the true daily balance for that day is attached hereto as Exhibit B and it shows the balance was actually -\$12,489,358.59. This email was an electronic transmission of data that crossed state lines, terminating here in the Middle District of Florida. As a result of this email and other actions, FDIC-insured Regions Bank suffered a loss of approximately \$9,000,000.

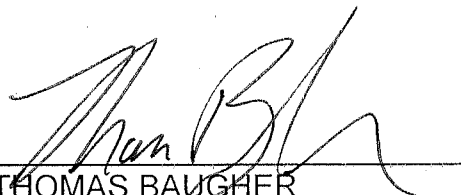
IV. CONCLUSION

Based upon your affiants' knowledge, training, and experience as criminal investigators, and the facts presented in this affidavit, your affiant respectfully submits that there is probable cause to believe that Todd Smith and Gary Smith, aiding and abetting each other and by others known and unknown, have committed the crime of wire fraud affecting a financial institution, in violation of Title 18, United States Code, Sections 1343 and 2.

FURTHER YOUR AFFIANTS SAYETH NAUGHT.

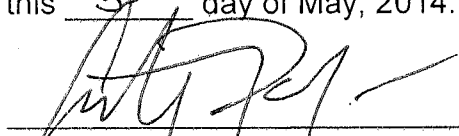


M. ANTHONY MAGOS
Special Agent
United States Secret Service



THOMAS BAUGHER
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed before me
this 5th day of May, 2014.



HONORABLE ANTHONY E. PORCELLI
United States Magistrate Judge