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CIVIL RICO PLEADING MANUAL

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# CIVIL RICO PLEADING MANUAL

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By  
Janet E. Ferris

March 1990



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NATIONAL ASSOCIATION  
OF ATTORNEYS GENERAL

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## FOREWORD

Founded in 1907, the National Association of Attorneys General (NAAG) has a membership of the chief legal officers of the 50 states as well as American Samoa, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. The United States Attorney General is an honorary member. The Association provides a forum for the exchange of information and experience among Attorneys General; fosters interstate cooperation on legal and law enforcement issues; conducts policy research and analysis of issues pertaining to the states and territories; and facilitates communication between the states' and jurisdictions' chief legal officers and all levels of government.

In September, 1988, the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice, provided a grant to NAAG to create the State Civil RICO Drug Enforcement Project (Civil RICO Project). The grant program assists state Attorneys General in using civil RICO as a litigation tool in the war on drugs. As part of this Project, the offices of the Attorneys General of Washington and Colorado were funded to develop prototype civil RICO drug enforcement projects. BJA later broadened the demonstration aspect of the Project by the selection of two additional offices of Attorneys General, Arizona and Oregon, to develop civil RICO drug enforcement projects. One of the goals of the four offices of Attorneys General is to develop information and experience that can be transferred to other states which want to establish civil RICO drug prosecution units. The Civil RICO Project, which provides training and technical assistance to the demonstration states and to other interested Attorneys General, also publishes a periodic newsletter on issues relevant to civil RICO and drug enforcement.

Janet Ferris, an attorney currently in private practice in Florida, prepared this manual for governmental civil RICO units. It contains sample pleadings and practical information about RICO litigation designed to assist states embarking on a civil RICO enforcement effort. Ms. Ferris was formerly Chief of the RICO Section of the Florida Department of Legal Affairs. She has also served as Chief Counsel of the Florida Department of Law Enforcement.



## **I. INTRODUCTION**

Although the Federal RICO Act was enacted almost 20 years ago, to this day it retains an air of mystery. Because of the unusual nature of the offenses and penalties that the RICO act described, the early 1970s found prosecutors and private attorneys avoiding RICO. Other than a few prosecutions brought by the United States Department of Justice, the statute languished on the books for many years, even though those who understood RICO suspected that it was a sleeping giant. It was.

There can be no doubt that the federal and state RICO statutes have been discovered. Prosecutors are filing RICO charges in criminal cases ranging from fraud to narcotics, and the civil remedies found in many RICO acts have proven particularly effective against money-making criminal organizations. But RICO enforcement, civil and criminal, continues to be approached cautiously: the statutes are unfamiliar, the proofs are complex, and civil proceedings are anomalies in most prosecutors' offices. This manual is therefore intended to provide government attorneys with a basic understanding of what RICO statutes can do and to provide new civil litigators with a blueprint for construction of a RICO case.

## **II. THE RICO ACTS: AN OVERVIEW**

It is difficult to summarize or even characterize the widely varying statutes generically known as RICO acts. There is little question, though, that most RICO laws were designed to address complex criminal activity: they often focus on an individual's involvement with a criminal organization, or on the interaction between a criminal and a legitimate enterprise.

When Congress and various state legislatures looked closely at the nature of organized crime, it became clear that most criminal enterprises existed to make money. With the considerable sums being realized in endeavors such as pornography, prostitution, gambling, and narcotics trafficking, law enforcement concluded that while the arrests of members of crime syndicates caused little concern, disruptions in cash flow were a serious problem. Drafting a statute that could deal effectively with the activities and profits of criminal organizations became the challenge that resulted in RICO laws.

An enforcement effort that combines jail time with forfeiture and injunctive relief can be very successful. By arresting organized crime members, the criminal justice system can instantly restrict their liberty through incarceration. Civil remedies, including physical seizures of property and preliminary injunctions to restrict dissipation of other assets, effectively restrict a defendant's access to funds that would provide counsel and bail. In the end, criminal prosecution of individuals and a dismantling of the enterprise and its profits will have more far-reaching effects than criminal prosecution alone. So why have RICO investigations been, until recently, so rare?

In part, this may be because the legal concepts, litigation options, and administrative responsibilities related to management of seized properties under RICO are not well-defined statutorily. Admittedly, criminal RICO prosecutions are somewhat more straightforward in that they are circumscribed by the same state and federal procedural guidelines that govern all criminal cases. In the civil arena, the lack of statutory guidance on the subject of how to "do" a RICO case can be frustrating, but it can also provide an opportunity for creativity.

In states just beginning civil RICO enforcement efforts, the government is in the enviable position of being able to design the civil remedy and, in many respects, chart the course of the litigation. In most cases, there is no right or wrong way to do something: each state will have unique laws and procedures that will supplement or complement the provisions set out in the RICO statute. Knowing what to do and how to do it will come from an understanding of what remedies the RICO statute created, what procedures are described within the RICO act, and which other state laws will be necessary to fully implement the RICO remedy.

As an example, although some state RICO statutes allow the courts to "...enjoin violations of the RICO act by issuing appropriate orders and judgments...", they do not

specifically address procedural matters such as securing a temporary restraining order to prevent dissipation of assets. Rather than assuming that a temporary restraining order is not available, state law and state procedural rules should be consulted to devise a plan for obtaining a temporary restraining order when necessary. The "plan" should include a thorough understanding of the grounds for issuance of a TRO without notice, what kind of evidence must be presented to the court, who can be bound by such an order, how persons subject to the order must be served, and how long such an order will remain in effect until a full evidentiary hearing is required. Being prepared to confidently address such issues takes time and effort, but preparation can mean the difference between a RICO case that accomplishes nothing and a RICO case that destroys a criminal enterprise.

### **III. STATE AND FEDERAL RICO LAWS: THE DEFINITIONS AND OFFENSES**

Although the elements of a RICO offense vary from state to state, the underlying theories of RICO are fairly consistent: in separate offenses, the statute punishes (1) participation in a criminal organization through a "pattern" of criminal activity; (2) use or investment of the proceeds of a pattern of criminal activity; and (3) using pattern criminal activity to acquire control of a legitimate business-type enterprise. These three theories are obviously very different, and require very different proofs. It is therefore important to know which provision is most appropriate to the fact situation and to develop the case accordingly.

It is also important to study your particular statute to determine how closely it follows the "model" described above. The Arizona RICO act,<sup>1</sup> for example, does not require pattern criminal activity; the federal RICO act,<sup>2</sup> on the other hand, contains an additional interstate commerce element that is not found in state laws.

#### **A. Statutory Definitions**

The definitional sections of the statute are quite different from state to state. In most cases, the state statutes have significantly improved the definitions of the primary elements by making them more complete; the interpretational controversies that occupied, and to some extent continue to occupy, the federal courts were resolved in many state statutes by including more detailed definitions of terms like "pattern of racketeering activity." It should be noted that much of the federal civil RICO case law is based on the federal statute's less detailed definitions, and therefore should be read with that understanding.

##### **1. Racketeering Activity**

Where some state RICO statutes may have clarified definitions, others changed them. The definition of "racketeering activity" may contain not only different lists of criminal statutes known as predicate crimes or predicate acts, but may also change the kind of activity that will constitute racketeering. The federal RICO act, for example, defines racketeering activity as any "act or threat" involving selected state criminal laws, or any "act indictable" under specified provisions of federal law. On the other hand, Florida's RICO act,<sup>3</sup> and many other state statutes, contain the following language: "racketeering activity means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit" listed predicate crimes that are chargeable by indictment or information, or "conduct" defined as racketeering activity under the federal RICO law. In this context, the state statutes have clearly said that conspiring to commit a predicate crime, or solicitations of another to commit a predicate crime, fall within the definition of racketeering; that is, the individual does not always have to participate in the crime at the level of a principal.



## 2. Pattern of Racketeering Activity

The term "pattern of racketeering activity" may be the least susceptible of a common definition. The federal act's scanty definition became a frequent issue in litigation; arguments over the term often reflected extremely creative and, in many cases, extremely convoluted theories of what Congress really meant by the word "pattern." The continuing debate has reached the United States Supreme Court on several occasions,<sup>4</sup> but has resulted in little other than consistent demands that Congress clarify the definition once and for all. Fortunately, most of the problematic cases travelling through the federal system cannot be applied to state RICO laws, since many state legislatures provided definitions of "pattern of racketeering activity" that addressed the federal courts' complaints.

In considering appropriate definitions for "pattern of racketeering activity," state legislatures frequently arrived at unique formulations by adding and subtracting elements. Colorado used the basic federal definition and added a requirement that the acts of racketeering be "...related to the conduct of the enterprise."<sup>5</sup> Florida's definition is far more detailed, but basically requires demonstration of a relationship between the incidents of racketeering, and a showing that they are not isolated incidents.<sup>6</sup> To Florida's definition, Oregon adds: "...including a nexus to the same enterprise."<sup>7</sup> Arizona, on another theory altogether, has dispensed with the concept of a "pattern" of criminal acts, but has defined "racketeering" to require that predicate acts be committed "...for financial gain."<sup>8</sup>

The one definition of "pattern" that most completely addresses judicial concerns about the term is that drafted by a staff working group of Assistant Attorneys General on RICO in August, 1985.<sup>9</sup> Each segment of the definition reveals a particular legal controversy that has been efficiently disposed of in the proposed language: for example, the definition addresses the relationship of criminal activity to the enterprise, the requirement of non-isolated incidents, and the need to prove that predicate crimes arose from separate criminal episodes. As a practical matter, adhering to the proposed definition's four main criteria<sup>10</sup> when proving a pattern will deflect most legal arguments regarding the correct interpretation of the term.

## 3. Enterprise

The term "enterprise" is probably the one most consistently defined, although newer statutes have added a few possibilities. Most statutes define enterprise by listing a variety of legal entities, such as corporations, partnerships, and associations; the definitions usually then divert to enterprises that have no legal existence, and are merely "a group of individuals associated in fact although not a legal entity." Interpretational problems with the federal act led some states to include "governmental" and "licit as well as illicit" entities in their definition of enterprise. The common feature, however, of the term "enterprise" is the breadth of the definition, since it is obviously intended to cover any conceivable type of entity involved in complex criminal activity.

In United States v. Turkette,<sup>11</sup> the United States Supreme Court articulated three requirements for association-in-fact enterprises. The Court concluded that such enterprises must have: (1) a formal or informal ongoing organization; (2) the various associates functioning as a continuing unit; and (3) an existence separate and apart from the pattern of activity in which it engages. Most criminal organizations that exist for even a short period of time will develop enough of a structure to meet the Turkette test.

The most important thing to remember about the term enterprise is the very different meanings it has when used in each of the individual RICO offenses. Although racketeering activity and pattern of racketeering activity mean the same thing in each of the three primary offenses, enterprise does not. For example, in the "investments" offense,<sup>12</sup> an enterprise is the vehicle for the use or investment of RICO proceeds. In the "substantive" offense,<sup>13</sup> the enterprise can be a criminal organization like a narcotics trafficking group, or it can be a corporation that is serving as a front for illegal activities. In the "takeover" offense,<sup>14</sup> the enterprise referred to is most likely to be a legitimate business.

One task attorneys and investigators will face is to arrive at an appropriate characterization of an association-in-fact enterprise in a "substantive" offense. Fortunately, there is no right or wrong answer to the "what is the enterprise?" mystery. An accurate characterization is important for proof purposes, and it must be consistent with the theory of the case. Thus, if the investigation reveals that two separate and distinct narcotics trafficking organizations occasionally cooperated in importing a shipment of cocaine, an enterprise that is characterized as all of the individuals in both groups may not accurately reflect the situation. A better strategy might be to address the activities of each organization in a separate case, using evidence of their cooperative efforts to show the scope and effect of each enterprise.

Once again, the purpose behind describing the variations in state RICO acts is to stress the need to understand and interpret your state law accordingly. Decisional case law from other states and from the federal system may be helpful on some issues, but should be scrutinized for similarity in statutory provisions when they will be used to interpret particular provisions.

## **B. The RICO Offenses**

As noted above, most RICO acts contain three separate offenses, but many also include a fourth offense that is the conspiracy to violate one or more of the other three provisions. Because state statutes often adopted both the text and the ordering of the federal RICO offenses, few divert significantly from the federal RICO concepts. One obvious exception is deletion of an interstate commerce reference in state laws. For purposes of simplicity, the elements of the individual RICO offenses described below are taken from the federal law. Also, the titles preceding each section are intended to describe the essence of the section it introduces, and is not a term found in the statute.

## 1. The Investments Section

This offense, which is found in subsection (A) of 18 U.S.C. § 1962, is primarily designed to punish the use of ill-gotten gains to acquire or operate a legitimate business. The elements of the statute can be described as follows:

**Subsection A (Investments):** It is unlawful

1. For any **person**
2. Who has acquired any **income, or proceeds from income**, from a pattern of racketeering activity **in which he has participated as a principal**
3. To **use or invest** any part of that income or proceeds
4. To **establish, operate, or acquire any interest in any enterprise** which is engaged in, or whose activities of which affect interstate or foreign commerce

It is interesting to note that the federal statute requires that the person receiving racketeering proceeds acquire them through his or her **actual participation as a principal** in the RICO offense. This would appear to preclude using the offense to punish the use of racketeering proceeds by third parties such as accountants, lawyers, and stock brokers who are assisting racketeers. Florida's investments offense clearly includes such activities within its purview by deleting the principal language, but its scope is restricted somewhat by requiring that the person who receives the proceeds do so "with criminal intent." Florida's law also prohibits investments in real property, as does the State of Washington's; Arizona and New Jersey have followed the federal model by restricting the offense to investments in enterprises alone.

## 2. The Takeover Section

The so-called "takeover" offense, based on subsection (B) of 18 U.S.C. § 1962(B), is a fairly limited one. It is directed primarily at individuals who commit criminal acts, usually violent, in order to acquire an interest in or control of an enterprise. In this offense, the term enterprise would most often refer to a legitimate business, although cases have been developed where the takeover target is an on-going criminal enterprise such as a pornography or narcotics trafficking operation. The elements are:

**Subsection B (Takeover):** It is unlawful

1. For any **person**
2. To **acquire or maintain**

3. Any **interest in or control of any enterprise** (which is engaged in, or the activities of which affect interstate or foreign commerce)
4. Through a **pattern of racketeering activity**

Although no reflection on the efficacy of the offense itself, relatively few RICO cases have been based on a subsection (B) theory.

### 3. The Substantive RICO Section

Why this subsection became known as the "substantive" RICO offense is not clear, but the name appears firmly attached. This subsection, which is patterned after 18 U.S.C. § 1962(C), is by far the broadest of the three main offenses. Because it covers the widest range of activities, it has certainly been used more frequently than the others. It is also the most appropriate provision for addressing the criminal acts of individuals involved in organizations that are, in RICO terms, illicit association-in-fact enterprises. The elements of a subsection (C) offense are:

**Subsection C (Substantive):** It is unlawful

1. For any **person**
2. Who is **employed by, or associated with any enterprise** (which is engaged in, or the activities of which affect, interstate or foreign commerce)
3. To **conduct or participate** in the conduct of the enterprise's affairs
4. Through a **pattern of racketeering activity**

In dealing with association-in-fact enterprise cases, it is necessary to remember that the enterprise is not the defendant: the **person** who conducts or participates in the enterprise **through a pattern of racketeering activity** is the focus of the charge. Each subsection (C) defendant must therefore have engaged in a pattern of racketeering activity, and he or she must have conducted or participated in the enterprise through that pattern.

Thus, if the enterprise has been defined as a group of individuals associated in fact for purposes of drug trafficking, Defendant X can participate in the conduct of the enterprise through, for example, a series of narcotics offenses, or a narcotics offense and a homicide. If the predicate acts are not the same (ie., they are not both narcotics offenses), some proof will be necessary to show that the predicate acts were "interrelated": that is, that Defendant X's participation in the enterprise included both a narcotics offense and the murder of a rival drug gang member.

The importance of understanding the elements of RICO's definitions and offenses is obvious: whether the proceeding is criminal or civil, the foundation of the case will be the

same. Attorneys handling civil RICO cases must be prepared to prove the RICO offenses and their predicate crimes, even though the civil burden of proof will not require proof beyond a reasonable doubt.

## **IV. CIVIL RICO PROCEEDINGS**

### **A. Overview**

Civil RICO remedies generally include two categories of relief available to the government: forfeiture and injunctive relief. In some states, government entities that have suffered harm may seek damages that are subject to trebling by the court, and costs of investigation and attorneys' fees are often recoverable. Many civil RICO laws also include detailed provisions that allow for investigative subpoenas, seizures of property, liens to protect property from dissipation, and distribution of forfeited assets.

The primary thrust of most civil RICO cases is to secure all available assets while litigation is pending, and eventually to forfeit everything that can be linked to the racketeering violation. Injunctive relief provisions are therefore important companions to requests for forfeiture, especially in states where special RICO liens are not available, or where they only apply to real property. If a defendant's assets cannot be seized or secured by court order, they will certainly be dissipated before resolution of the case. The court's authority to control assets is an important aspect of many civil RICO laws, and that power should be invoked in all cases where protection of assets is an issue.

Statutory language providing for injunctive relief can range from the general to the very specific. Although the Florida Attorney General has been successful in obtaining temporary restraining orders and preliminary injunctions to prohibit dissipation of property, the statute says only that the court may "...after making due provision for the rights of innocent persons, enjoin violations of ...[the RICO act] by issuing appropriate orders and judgments..." Section 895.05(1), Fla. Stat. (1987). On the other hand, Arizona's law covers every conceivable issue that might arise in regard to asset conservation:

In any proceeding pursuant to this chapter, the court, on application of the state, may enter any restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, appraisers, accountants or trustees or take any other action to seize, secure, maintain or preserve the availability of property subject to forfeiture under this title, including a warrant for its seizure, whether prior or subsequent to the filing of a notice of pending forfeiture, complaint, indictment or information. [Ariz. Stat. Ann. § 13-4310 (A).]

Although statutory specificity can be invaluable where the government is requesting comprehensive injunctive relief, creative advocacy can encourage a court to use broad but non-specific grants of authority to accomplish the same objective: even though the statute does not specifically provide for appointment of a receiver or trustee, the government's authority

to seize a business as a forfeitable asset must permit it to somehow conserve that asset until resolution of the case.

State civil RICO provisions frequently include a list of specific orders the court may issue, particularly in regard to entities that were formed as legitimate business concerns. These orders include divesting an individual of his interest in an enterprise, dissolving or reorganizing an enterprise, suspending or revoking state licenses or permits, forfeiting corporate charters, and imposing "reasonable restrictions" on the future activities or investments of a defendant. The availability of such remedies can be particularly helpful in a fraud or white collar crime case, but are also applicable to business or money laundering interests involved in narcotics trafficking.

The forfeiture provisions of the federal and state RICO laws vary a great deal. Different properties subject to forfeiture, different theories of forfeiture, and different conditions precedent for forfeiture have resulted in each state proudly displaying its own unique patchwork of forfeiture predicates and procedures. In some cases, the forfeitures may not be civil at all; like the federal RICO act, they may be criminal forfeitures that become a part of the criminal RICO prosecution. Other statutes will require a criminal RICO conviction before civil forfeiture can be sought. The majority of statutes, however, allow for separate civil proceedings that are not officially connected to criminal prosecutions.

The theories of forfeiture contained in your statute will determine what kinds of properties are forfeitable. For example, Florida's statute permits the state to seek forfeiture of all real and personal property, including money, that was:

- used in the course of;
- intended for use in the course of;
- derived from; or
- realized through

conduct that violates the RICO act. Other statutes may be more specific, and therefore more restrictive in their reach. In describing forfeitable proceeds of racketeering, the Washington law includes several qualifying terms. It permits forfeiture of

All proceeds **traceable to** or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value **significantly** used or intended to be used **significantly** to **facilitate** commission of the offense. [emphasis supplied].

It is essential to be aware of the unique aspects of your civil RICO forfeiture provisions and to seek appropriate evidence to meet the requirements of the statute.

There are many special investigative and procedural provisions contained in state RICO laws, and some of them have been carefully drafted after years of experience with special problems. Although this manual cannot discuss them all, some issues that directly affect civil litigation are mentioned in the practice notes accompanying the forms in Section V. The overviews of the RICO definitions, offenses, and civil remedies sections are intended to provide a basic understanding of what RICO is all about and a foundation for informed litigation.

### **B. Pursuing a RICO Case: Targeting, Investigative Planning, and Enforcement Options**

Even where a particular set of facts technically describes a RICO case, some crucial decisions must be made regarding whether RICO will be the most effective and efficient remedy against the activities in question. A few words must therefore be said about targeting, investigative planning, and choosing the enforcement options that are most appropriate to your case.

RICO statutes are most often applied in fairly complex cases that will focus on the activities of the defendants as a group. RICO can also ensure that only one trial takes place. Where, for example, an investigation reveals a large or particularly well-defined organization that would meet the requirements of a subsection (C) ["substantive"] case, RICO can provide an effective means of pulling all defendants into a single trial. The evidentiary benefits are substantial: despite the varying levels of culpability of the defendants in terms of their participation in criminal activities, the trier of fact will hear all of the evidence against all of the participants, since members of the enterprise in a substantive RICO charge are tried together. Such trials provide an excellent opportunity to describe the full extent of the criminal organization and what individual members did on its behalf, which is something that would not occur in separate trials of defendants on non-RICO offenses.

Unfortunately, evidentiary benefits are only one small factor to be taken into account in deciding whether to use RICO statutes. One of the most significant inquiries certainly is whether use of the RICO statute's criminal or civil provisions will accomplish the goals of the investigation or whether other statutes would be more appropriate.

If, for example, a group of individuals in your jurisdiction is engaged in street-level crack cocaine distribution, the law enforcement officers and attorneys involved in the investigation must decide what level of enforcement is most desirable. If the individual sellers change frequently, have several sources of supply, are only loosely connected, and appear to have few substantial assets, it may be difficult to develop a solid RICO theory for the case, even though it involves extensive narcotics trafficking. One option might be to use state in rem forfeiture statutes to quickly dispose of property and cash being used directly in the selling process, and consider a long term RICO investigation against the sources of supply in the community who are more likely to possess organizational ties and substantial hidden assets.



To produce more acceptable targets for RICO enforcement, some states have created formal structures to screen cases. In Florida, a screening panel was established at the state level, and included representatives from state-level law enforcement, prosecution, civil enforcement and, where appropriate, regulatory agencies. The target selection criteria used by the panel included the following:

1. Amount of organized criminal activity.
2. Geographic scope and multi-jurisdictional nature of the activity.
3. Identity and level of activity of individual suspects in the group.
4. Likelihood of the group leading to higher level criminal activity.
5. Availability of witnesses or victims.
6. Availability of reliable confidential sources.
7. Availability of admissible physical evidence.
8. Likelihood and feasibility of statewide prosecution.
9. Probability of regulatory sanctions.
10. Probability of asset identification, seizure, and forfeiture;
11. Likelihood of disruption of criminal activity.
12. Probability of federal agency assistance and involvement.

Another obvious benefit of formal targeting structures is the ability to coordinate complex investigations that may encompass an entire state.

In addition to a formal targeting process, established financial investigative support is an important consideration. While financial investigative information can be helpful in criminal RICO prosecutions, it is crucial to civil enforcement actions. If a connection must be proven between the illegal activities of a defendant and property he now owns, experienced financial investigators are an invaluable part of the investigative and litigation teams. Because many of the sources of financial information are obscure, and because few lawyers have the expertise or the time to evaluate bank records, corporate ledgers, or other financial documents, it is extremely important to identify financial investigators who will be available to assist in the civil RICO effort.

### **C. Case Coordination**

Although this manual can only touch briefly on the complexities of combining civil enforcement efforts with a criminal investigation and prosecution, the civil unit must work in tandem with the criminal investigation. Even where a civil unit has the ability to individually subpoena testimony and documents through the use of a civil subpoena or investigative demand, the existence of an ongoing and probably covert investigation makes that form of fact-gathering impossible. The most effective system seems to be that followed in states like Arizona and Florida: the civil enforcement team works hand-in-hand with the law enforcement officers and prosecutors involved in the case. Only then is investigative coordination ensured, and only then can the civil unit be kept informed of the changing theories, defendants, and evidence involved in the investigation. It is nearly impossible to step in at the end of a long-term investigation and begin to unravel the asset issues.

Agreements should be reached with prosecutors regarding use of particular evidence and witnesses in the civil proceedings. It is also especially important to consider the timing of arrests in the criminal case. If arrests are made before the civil unit is ready to file its case and secure the defendants' property, much of the property will be lost to attorney's fees, bail money, or attempts to remove it outside the state or country. Although some state RICO statutes require criminal convictions before the government can seek forfeiture of assets, all statutory means of protecting the property from dissipation should be invoked at the earliest point in time.

Where assets, and particularly real property, are to be seized at the beginning of civil litigation, property management and maintenance issues should be resolved prior to seizure. If liens or mortgages against real or personal properties have been identified, consideration should be given to how mortgage or loan payments will be made if the defendant/owner defaults. If an ongoing business or other commercial enterprise is subject to forfeiture, provisions must be made for the appointment of a receiver or some similar device for management of the entity during the pendency of the litigation.

### **D. Pre-Filing Case Memorandum: A Final Checklist**

With the burdens imposed by extraordinary case loads and the demands of complex litigation, drafting a pre-filing case memorandum may seem like an impossible luxury. In civil RICO cases, however, it is imperative that the legal requirements of each claim against each defendant be examined in detail one last time before the case is filed. It is also important to review and, where necessary, research legal issues that are certain to arise in the case. Careful preparation before filing will permit attorneys to concentrate on moving the case ahead, rather than scrambling to research each new claim or legal issue asserted by the defense.

A pre-filing civil RICO memorandum should contain the following:

1. **Identification of all defendants:** This section should list each proposed defendant's name and known aliases, date and place of birth, and current and past addresses. It should also describe each defendant's:

- a. criminal history;
- b. history of administrative or civil enforcement violations;
- c. connection with other prospective defendants;
- d. organized crime ties;
- e. financial information, including a schedule of all forfeitable assets and other properties that might be available to satisfy a judgment;
- f. connection to business entities or enterprises involved in the case.

In each category, all physical, demonstrative, or testimonial evidence that will be used to prove those matters should be listed. It is also helpful to note addresses and phone numbers for witnesses, and the location of physical evidence that may be introduced.

2. **Summary of the case:** This section should summarize the legal theories upon which the suit is premised, the relief sought, and the evidence that will be used to prove the case.

3. **Summary of the facts:** This section should contain a detailed statement of the important facts in the case, including the testimony of each key witness. The events involved in the case should be listed separately and chronologically, and all facts should be supported by admissible evidence.

4. **Statement of the law:** This section should describe, in detail, how the RICO elements will be applied to the facts in the case. It should include:

- a. A precise formulation of the RICO enterprise;
- b. A precise description of the pattern of racketeering: in a subsection (1) or (2) case, the pattern should be generally described, but in a subsection (3) case, the pattern should be articulated separately for each defendant;

- c. The RICO offense(s) that will be used;
- d. The theories of forfeiture that will be invoked;
- e. The relevant case law that supports each RICO aspect of the case;
- f. The relevant case law, statutes, and court rules that will be used to obtain the relief sought;
- g. Any untested legal theories, difficult issues, or procedural concerns

5. **Anticipated problems and defenses:** This section should cover any factual or evidentiary weaknesses in the case and identify defense theories and tactics that are anticipated. Problematic areas that should be considered are:

- a. Jurisdiction and venue;
- b. Parallel proceedings;
- c. Availability, authenticity, and custody of necessary records, exhibits, and other evidence;
- d. Availability and credibility of witnesses;
- e. Discovery;
- f. Admissibility of evidence, including consideration of issues such as the use of suppressed evidence, privilege, etc.

6. **Contacts with prosecuting agencies:** This section should contain a summary of contacts with prosecuting agencies and any agreements made with them regarding the concurrent handling of civil and criminal cases.

7. **Management plan for the litigation:** This section should include the case attorney's and the case agent's opinions on the proposed course of the litigation, and their solutions to foreseeable problems. The management plan should also cover:

- a. An assessment of the legal, investigative, support and expert resources needed and their availability;
- b. The coordination of asset seizures;
- c. The management of seized assets and a proposal for their ultimate distribution;

- d. The management of any ongoing businesses or entities, including an assessment of the need for receiverships or trusteeships;
- e. The protection of the rights of innocent third parties such as lien holders and financial institutions; and
- f. The protection of witnesses.

8. **Draft of the complaint:** A proposed complaint, along with any motions for preliminary relief, seizure orders, liens or other matters, should be attached to the memorandum.

## FOOTNOTES

1. Ariz. Rev. Stat. Ann. § 13-3212
2. 18 U.S.C. § 1961 et. seq.
3. Chapter 895, Florida Statutes (1987); Section 895.02 (1).
4. See H.J. Inc., v. Northwestern Bell Telephone Co., \_\_\_ U.S. \_\_\_ (1989); Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985); Russello v. United States, 464 U.S. 16 (1983); and United States v. Turkette, 452 U.S. 576 (1981).
5. Colo. Rev. Stat. § 18-17-101.
6. Section 895.02(4), Fla. Stat.: "Pattern of racketeering activity means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents..."
7. Or. Rev. Stat. § 166.715.
8. Ariz. Rev. Stat. Ann. § 13-2301(C)(4).
9. "Pattern of criminal activity means two or more occasions of conduct;
  - (1) That:
    - (i) Constitute criminal activity;
    - (ii) Are related to the affairs of the enterprise;
    - (iii) Are not isolated; and
    - (iv) Are not so closely related to each other and connected in point of time and place that they constitute a single event; and
  - (2) Where:
    - (i) At least one of the occasions of conduct occurred after the effective date of this Act;
    - (ii) The last occasions of conduct occurred within [insert period of general criminal statute of limitations] excluding any period of imprisonment served by any person engaging in the conduct, after a prior occasion of conduct; and
    - (iii) ...[A]t least one of the occasions of conduct would have been chargeable or indictable as a felony under the [insert appropriate reference], or if committed subject to the jurisdiction of the United States or any state of the United States would constitute a felony under the law of this state if committed in this state.

10. See Sections (i)-(iv) of Subsection (1), footnote 9, *supra*.
11. *Supra*, at footnote 4.
12. The offense patterned after Subsection A of the Federal RICO Act: 18 U.S.C. § 1962 (A).
13. The offense patterned after Subsection (C) of the Federal RICO Act: 18 U.S.C. § 1962 (C).
14. Those offenses patterned after Subsection (B) of the Federal RICO Act: 18 U.S.C. § 1962 (B).





## V. INTRODUCTION TO THE CIVIL RICO FORMS

This section of the manual contains examples of forms that have been used in civil RICO actions brought by state and federal governments. Where possible, several different examples from different states have been included.

Introducing each section is a practice commentary. These commentaries will point out some of the practical legal and procedural issues that may arise in various stages of RICO litigation; they do not, however, comment directly on the actual forms included in that section. Again, the significant variations in state law and procedure require that an attorney carefully consider the examples provided, and make appropriate changes. The forms will provide an excellent starting point for that process.



## CIVIL INVESTIGATIVE DEMANDS

As was previously noted, investigative fact-finding in civil RICO cases is a sensitive issue. In other cases pursued by Attorneys General as plaintiffs, such as consumer and antitrust matters, secrecy may not be a factor in evidence gathering. In most civil RICO litigation, however, the fact that the investigation itself is criminal in nature and is focussed on high-level criminal activities makes the use of civil investigative demands (CID) or subpoenas difficult. Even where the information sought is in the possession of third parties, the need for confidentiality may preclude service of a CID.

To address the need to obtain bank records, telephone toll information and other third party information during a civil RICO investigation, some states have enacted laws to ensure secrecy. These laws mandate that the subpoenaed person or entity not disclose the existence of the subpoena or CID for a specified period of time. In Florida, the Attorney General may apply ex parte to a trial court for an order directing the subpoenaed individual or entity to maintain confidentiality or risk punishment by the court for contempt [see Section 895.06, Florida Statutes (1987)]. If extensive use of CIDs is contemplated for civil RICO investigations, statutory secrecy provisions like those mentioned should be considered.

The costs involved in a third party's compliance with a CID or subpoena also must be taken into account. Banks have been quite successful in obtaining legislation that permits them to charge the government for retrieval and copying of information or records requested pursuant to subpoena. If the law permitting such charges does not specify an amount, it is preferable for the government agency to take the initiative in setting a reasonable level for costs by specifying them in the body of the subpoena or in a transmittal letter. Should an institution refuse to comply with the subpoena because of a disagreement about costs, the requesting agency can bring the matter to the court's attention via a motion for contempt.

One further word of caution. Where an Attorney General's office has both prosecutive and civil enforcement jurisdiction, it is important to be aware of any statutory or case law-created prohibitions on the exchange of information between the prosecuting and civil sections of the office. For example, information obtained pursuant to an electronic intercept may not be available to civil litigators without a court order or may not be available at all until disclosed in a criminal trial. Information obtained by a grand jury may have similar protection from disclosure to civil enforcement units. However, most information obtained by law enforcement investigators, either through investigation or search warrant, can be disclosed to civil enforcement units without consequence. Any concerns regarding search warrant information or documents can usually be resolved by requesting permission to disclose from the judge who issued the warrant.



CIVIL INVESTIGATIVE DEMAND  
UNITED STATES DEPARTMENT OF JUSTICE

CRIMINAL DIVISION  
WASHINGTON, D.C. 20530

To \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This civil investigative demand is issued pursuant to 18 U.S.C. § 1968, in the course of a racketeering investigation, to determine whether there is, has been, or may be a violation of

\_\_\_\_\_

by conduct, activities or proposed action of the following nature:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are required by this demand to produce all documentary material described in the attached schedule that is in your possession, custody or control, and to make it available at your address indicated above for inspection and copying or reproduction by a custodian named below. Such production shall occur on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ at \_\_\_\_\_ a.m. p.m.

The production of documentary material in response to this demand must be made under a sworn certificate, in the form printed on the reverse side of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production.

For the purposes of this investigation, the following are designated as the custodian and deputy custodian(s) to whom the documentary material shall be made available:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Inquiries concerning compliance should be directed to

\_\_\_\_\_  
\_\_\_\_\_

Issued at Washington, D.C., this \_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Title]

Form of Certificate of Compliance \*/

I/We do hereby certify that all of the documentary material required by Civil Investigative Demand No. \_\_\_\_\_ which is in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to a custodian named therein.

Any documentary material otherwise responsive to this demand which has been withheld from production under a claim of privilege or otherwise has been identified as required therein.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
\*/ In the event that more than one person is responsible for producing the documentary material called for by this demand, the certificate shall identify the specific numbered items for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for in 28 U.S.C. § 1746.





SCHEDULE  
Definitions

As used herein:

1. "And" and "or" are terms of inclusion and not of exclusion, and should be construed either disjunctively or conjunctively as necessary to bring within the scope of this schedule any document or information that might otherwise be construed to be outside its scope. The term "each" includes "every" and vice versa. The terms "a," "an," and "any" include "all," and "all" includes "a," "an," and "any." All of these terms should be construed as necessary to bring within the scope of this schedule any document or information that might otherwise be construed to be outside its scope.

2. "Document" means any written, recorded, or graphic material of any kind, whether prepared by your company or by any other person, that is in the possession, custody, or control of your company. The term includes but is not limited to agreements; contracts; letters; telegrams; inter-office communications; memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs; drafts; minutes of meetings, conferences, and telephone or other conversations or communications; invoices; purchase orders; bills of lading; publications; transcripts of telephone

conversations; ledgers; financial statements; microfilm; microfiche; tape or disc recordings; and computer print-outs. It also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term "document" includes the original document (or a copy thereof if the original is not available) and all copies which differ in any respect from the original, including but not limited to any notation, underlining, marking, or information not on the original.

3. "Identify" means (a) with respect to a natural person, to state the person's full name, employer, current job title, business address and telephone number, and residential address and telephone number; and (b) with respect to any other person, to state its full name and principal address and telephone number.

4. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, or other business or legal entity.

5. "Relate to" or "relating to" means discussing, describing, referring to, reflecting, containing, analyzing, studying, reporting on, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning or pertaining to, in whole or in part.

6. "You" or "your company" means (a) [name of financial institution], its predecessors, successors,

groups, subsidiaries, divisions, and affiliates, and (b) present and former officers, directors, employees, agents and other persons acting on behalf of it or its predecessors, successors, groups, subsidiaries, divisions or affiliates, including but not limited to consultants, attorneys, or other agents having possession, custody, or control of documents or information called for by this Civil Investigative Demand.

7. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa.

#### Instructions

1. Unless otherwise specified, (a) the documents requested are documents prepared, written, sent, dated, received or in effect at any time between January 1, 1981, and the date of your company's compliance with this Civil Investigative Demand, and (b) the information requested is for the period between January 1, 1981, and the date of your company's compliance with this Civil Investigative Demand. Unless otherwise specified, any data shall be provided separately for each calendar year, and the data for January 1, 1988, to the date of your compliance with this request shall be provided separately for each month.

2. In responding to the requests for information in this Civil Investigative Demand, preface each answer by restating the specification and number to which the answer is addressed.

3. If you are unable to answer a request for information fully, or if precise information cannot be supplied, (i) submit your best estimate or judgment, so identified, and set out the source or basis of the estimate or judgment, and (ii) provide such information available to you as comes closest to providing the information requested and explain why your answer is incomplete. Where incomplete answers, estimates or judgments are submitted, and your company knows of or has reason to believe that there are other sources of more complete or accurate information, identify or describe those other sources of information.

4. If any portion of any document is responsive to any documentary request, then the entire document must be produced. Documents produced pursuant to this Civil Investigative Demand shall be produced in the order in which they appear in your files, and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form. Please mark each page with the initials of your company and number each page consecutively beginning with "1." These marks should be placed at the lower right-hand corner of each page, but should not be so placed as to obscure any information on the

document. We request that you place all documents produced in file folders or other enclosures bearing your name or its abbreviation. We further request that you advise us in writing, as to each document produced, the number of the request to which it is responsive.

5. If you have any questions regarding the scope, meaning, or intent of these requests for documents or information, contact [Attorney name, phone number, and address].

6. This Civil Investigative Demand for information is made without our prior knowledge of what documents exist at your company or the form in which information is kept. We do not intend to impose any unnecessary burden on your company. Therefore, after you have reviewed each request and determined what documents and information are available, the form in which they are available, and the extent of the search required to comply, we are prepared to discuss any problem you may have that will avoid unnecessary burden in complying with each request.

7. For each document withheld under a claim of privilege, submit a sworn or certified statement from your counsel or one of your employees in which you identify the document by author, addressee, date, number of pages, and subject matter; specify the nature and basis of the claimed privilege and the specification of this Civil Investigative Demand to which the document is responsive; and identify each person to whom the document was sent, and each person

to whom the document or its contents, or any part thereof, was disclosed.

If you refuse to provide an answer to any specification pursuant to any claim of privilege, submit a sworn or certified statement from your counsel or one of your employees setting forth the nature and basis for the privilege claimed.

Information and Documentary Materials Requested

Any and all documents relative to all accounts, transactions, and dealings with, for, or on behalf of, or under the control of the persons listed on Attachment A, in those names, or under whatever designation entered, including but not limited to the following:

1. Savings Accounts
  - a. signature card
  - b. monthly (or quarterly, etc.) account statements, and ledger sheets
  - c. deposit tickets and individual deposit items
  - d. withdrawal slips, credit/debit memos
  - e. interest statements (Forms 1099, etc.)
2. Checking Accounts
  - a. signature card
  - b. monthly (or quarterly, etc.) account statements, and ledger sheets
  - c. cancelled checks (both sides)
  - d. deposit tickets, and individual deposit items, and credit/debit memos
3. Certificates of Deposit
  - a. signature card
  - b. statements of account and ledger sheets
  - c. interest statements (Forms 1099, etc.)
  - d. deposit items and withdrawal items
4. Credit Cards (BankAmericard, Visa, MasterCharge, etc.)
  - a. applications
  - b. account statements (monthly, quarterly, etc.)
  - c. purchase slips and charges on account

5. All loans, including but not limited to personal installment, signature (passbook), auto, and chattel loan accounts
  - a. loan applications and credit reports
  - b. financial statements
  - c. closing statements
  - d. payment ledgers
  - e. cancelled checks for proceeds of loan
  - f. record of collateral utilized
6. Notes (30, 60, 90-day, etc.)
  - a. loan applications and credit reports
  - b. financial statements
  - c. closing statements
  - d. payment ledgers
7. Mortgage Accounts
  - a. loan applications and credit reports
  - b. financial statements
  - c. closing statements
  - d. payment ledgers
8. Safe Deposit Boxes
  - a. contracts and signature cards
  - b. records of access
9. Certified Cashier's and Bank Checks
10. Bank Money Orders, Personal Money Orders
11. Trust Accounts
  - a. signature cards
  - b. trust agreements
  - c. checks for distribution from trust account
  - d. deposits to account
  - e. statements of income and transactions
12. Correspondence
13. Credit and Debit Memos
14. Individual Retirement Accounts (IRA) and similar accounts
  - a. signature card
  - b. IRA (or similar) contract/agreement
  - c. monthly (or quarterly, etc.) account statements and ledger sheets
  - d. deposit tickets and individual deposit items
  - e. withdrawal slips, penalty (or similar) notices
  - f. interest/earnings statements
  - g. elections, designations as to year of deduction
15. Ready Money Accounts

16. Records in regards to investment counseling and/or brokerage services provided

17. Teller proof sheets

18. Letters of credit issued and received

19. Currency transaction reports

20. Records of wire transfers both:

1. domestic and
2. international

with any of the persons listed in Attachment A, individually or with others, as either:

1. sender or
2. receiver

or by any agent, employee, or nominee acting on their behalf, specifically including:

- a. customer orders and instructions, signature cards and authorizations
- b. correspondence, notes and memoranda, and letters of credit
- c. tape recordings of telephone orders
- d. hard copy wire transfers sent or received, wire transfer orders, records of transmittal or receipt, and terminal sheets
- e. records of source or disposition of wired funds, account charged or credited, method of payment, cash receipt, (microfilm) copy of check received, credit memos, debit memos, charge or credit slips, deposit slips, withdrawal slips, statements of account
- f. work.copies and call-in sheets
- g. customer-signed slips, account authorizations, and telephone order authorizations

#### Attachment A

[list names of persons or entities whose records you are seeking]



## THE COMPLAINT

Drafting a civil RICO complaint is no easy task. The complaint must explain how each individual violated the provisions of the statute, what assets are related or traceable to those offenses, and what type of relief is requested. The drafting process forces the distillation of an often complex set of facts into a clear description of the RICO violations involved, and the connection between those activities and the remedies sought. All of this must be done with a thorough understanding of your state statute's definition of a RICO offense, and with an understanding of what evidence will link the defendants' assets to the theories of forfeiture or injunctive relief described in the complaint.

It is also important to be familiar with your state's rules of civil procedure and any statutory or case law that could affect handling of the case (for example, the rules and laws related to filing of lis pendens against real property). A great deal will depend upon whether the civil provisions of your RICO act give the court broader authority to act in RICO cases than it would have in all other situations. If, for example, your state RICO statute allows the trial court to enjoin violations of the statute by issuing "appropriate" orders, it can be argued that the court has broader authority to control the defendants' activities and assets than might ordinarily be available under state injunctive procedures. It may still be necessary, however, to utilize state procedural rules to secure an ex parte temporary restraining order where the RICO act does not articulate a special kind of proceeding.

In regard to the structure of the complaint, state procedural requirements should be followed. Generally, this will include a statement of jurisdiction, a description of the parties involved that includes sufficient information to articulate venue (if venue is based upon the residence of a defendant), the factual basis for the complaint, the various RICO provisions violated by those facts, and a demand for relief. One unique allegation that is found in most civil RICO complaints is a complete legal description of any real property subject to forfeiture; some courts have required that real property forfeitures be plead with particularity to properly notify owners of the claim, so it is wise to preclude an attack on the complaint by including property descriptions.

With basic notice pleading, relatively little detail is needed to withstand a motion to dismiss. Some federal courts, however, have required that certain matters, such as the enterprise and each defendant's pattern of racketeering activity, be plead with some particularity. It may therefore be wise to avoid merely tracking statutory language and to provide the court with sufficient facts to clearly describe all necessary elements of the RICO case. Where state RICO acts are silent as to the nature of the forfeiture permitted, it is probably safe to assume that either in rem or in personam actions are permissible. In an in rem action, the government is proceeding only against the property for its participation in the offense. Some states have used this theory to forfeit property that was used in the course of a RICO violation, but may be owned by a fictitious person or entity that could not be made a party to a RICO

lawsuit. Choosing an in rem cause of action would preclude the court from using its injunctive powers against individuals to, for example, restrain them from dissipation. As a practical matter, where the property owner is fictitious or not a participant in the RICO enterprise, the filing of lis pendens and, where available, RICO lien notices will adequately protect the property from dissipation. Other personal property that becomes the subject of an in rem RICO action, such as automobiles, boats, and airplanes, should be seized and maintained by the government until resolution of the litigation.

As noted above, the primary vehicle for most civil RICO litigation is a lawsuit naming people and other legal entities as defendants. Again, the benefit of proceeding against individual defendants is that they are brought under the court's jurisdiction by naming and serving them in the case. The court will then have the authority to require the defendants' compliance with orders restricting the use or dissipation of certain assets, and will have the ability to place complicated assets such as businesses under the court's supervision.

To ensure that the court has jurisdiction over all parties having an interest in or custody of assets subject to forfeiture, it is usually necessary to name them as defendants in the case; if such individuals or entities are not before the court as part of the litigation, it is difficult, if not impossible, to enforce orders directing them to do something. The problem that immediately arises is the potentially harmful effect of naming an innocent bank, attorney, or corporation as a defendant in a civil racketeering complaint. It is therefore advisable to attempt to enter into written agreements with such individuals to provide for their cooperation when that can be done without breaching the confidentiality of the investigation. Where such agreements are not possible, it may be advisable to name non-racketeering defendants in a special category in the style of the case (e.g., "property interest defendants").

It should also be remembered that the court's authority to act will depend upon the government's ability to prove the nexus between the illegal activities of the defendants and the assets in question. These proofs must be made in an abbreviated form at the initial stages of the litigation if preliminary relief is sought to protect assets. It is therefore important to anticipate the need for such evidence, and to be prepared to proceed with a hearing regarding preliminary relief immediately upon filing the case.

COMPLAINT FOR FORFEITURE (IN PERSONAM)

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,  
Plaintiff

vs.

Case No. \_\_\_\_\_

A.B.; C.D.; E.F.; G.H., as  
Trustee; XXX, INC., a Florida  
corporation; and ZZZ, N.V., an  
alien business organization,

Defendants.

COMPLAINT

Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL  
AFFAIRS, brings this civil action for forfeiture and other  
statutory relief under the Florida RICO (Racketeer Influenced and  
Corrupt Organization) Act, Ch. 895, Fla. Stat. (1985), and says:

JURISDICTION

1. This Court has jurisdiction pursuant to the  
provisions of §895.05, Fla. Stat. (1985).

PARTIES

2. Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL  
AFFAIRS, is authorized to bring this action by §895.05(5), Fla.  
Stat. (1985).

3. Defendant A.B. is a resident of the State of  
Florida residing at [address].

4. Defendant C.D. is a resident of the State of New  
York whose address is [address]. C.D. is engaged with the  
other individual Defendants in various business ventures in the  
State of Florida, and also owns real property in the State of

Florida, as described in this Complaint. C.D. is subject to the process of this Court under §§48.181 and 48.193, Fla. Stat. (1985).

5. Defendant E.F. is a resident of the State of Florida who is currently a fugitive. His last known address is [address].

6. Defendant G.H. is a resident of the State of Florida residing at [address]. G.H. holds title to real property as trustee for the individual Defendants, and is sued in his capacity as trustee.

7. Defendant XXX, INC., is an active Florida corporation for profit having its principal place of business at [address].

8. Defendant ZZZ, N.V., is an alien business organization ostensibly organized under the laws of the Netherlands Antilles, but transacting business and owning real property in the State of Florida. ZZZ, N.V., has failed to maintain a registered office and registered agent, in violation of the requirements of §607.325, Fla. Stat. (1985).

#### FACTS COMMON TO ALL COUNTS

9. Beginning in March 1981 and continuing through and including June 1984, Defendants A.B., C.D. and E.F., combined, as a group of individuals associated in fact although not a legal entity, for the object and purpose of possessing, importing and trafficking in cannabis in the State of Florida. This combination of persons constitutes an "enterprise" as defined in §895.02(3), Fla. Stat. (1985). In furtherance of the affairs of the enterprise Defendants committed the following acts:

10. [First Predicate Crime and specific statute violated]

11. [Second Predicate Crime and Additional Predicate Crimes and specific statutes violated]

12. The conduct described in paragraphs 10 and 11 above evidence similar intents, results, accomplices, and methods of commission, and are otherwise interrelated and not isolated incidents, so as to form a "pattern of racketeering activity" as defined in §895.02(1) and (4), Fla. Stat. (1985).

COUNT I

13. This is a claim for civil relief for violation of §895.03(1), Fla. Stat. (1985). The allegations of paragraphs 9 through 12 are incorporated by reference.

14. Defendants A.B., C.D. and E.F. with criminal intent received proceeds derived, directly or indirectly, from the pattern of racketeering activity described above, and used or invested, directly or indirectly, such proceeds in the acquisition of title, rights, interest or equity in real property, and in the establishment and operation of the Defendant corporations, in violation of §895.03(1), Fla. Stat. (1985).

15. Defendant A.B. used the proceeds of the pattern of racketeering activity to purchase the following described real property, held in trust for him by the Defendant G.H.:

[legal description]

16. Defendant C.D. used the proceeds of the pattern of racketeering activity to acquire the following described real property in his own name:

[legal description]

17. Defendant E.F. used and invested the proceeds of the pattern of racketeering activity to form the corporate Defendant XXX, Inc. XXX, Inc., used the illegally invested funds to acquire the following described real property:

[legal description]

18. Defendants A.B., C.D., and E.F. used and invested the proceeds of the pattern of racketeering activity to form or acquire the corporate Defendant ZZZ, N.V. ZZZ, N.V., used the illegally invested funds to acquire the following described real property:

[legal description]

19. The real property described in paragraphs 15 through 18 above was derived from or realized through conduct in violation of the RICO Act.

#### COUNT II

20. This is a claim for civil relief for violation of §895.03(3), Fla. Stat. (1985). The allegations of paragraphs 9 through 12 are incorporated by reference.

21. The Defendants A.B., C.D. and E.F. were associated with the enterprise described in paragraph 11, and conducted or participated, directly or indirectly, in that enterprise through a pattern of racketeering activity, as described in paragraph 12.

22. The following described property was used as an off-loading site for the cannabis trafficking operations described in paragraphs 10 and 11:

[legal description]

23. The following described property was used as a hidden stash house and meeting place in the cannabis trafficking operations described in paragraphs 10 and 11:

[legal description]

24. The corporate Defendants XXX, INC., and ZZZ., N.V., and the respective corporate assets thereof, were intended for use to conceal or launder the proceeds of the cannabis trafficking operations described in paragraphs 10 and 11. The corporate assets intended for use in this process included the following described real property:

[legal description]

25. Defendants realized the real property described in paragraphs 15 through 18 above with the proceeds of the cannabis trafficking operations described in paragraphs 10 and 11 above.

26. Defendants have used the proceeds from their violation of the RICO Act to purchase, invest in, acquire interests in, and improve other real property; to purchase motor vehicles, aircraft and other tangible personal property; to establish bank accounts and acquire securities, receivables and other intangible property; and to make loans, bailments and gifts, the further descriptions of which cannot be ascertained by Plaintiff at the time of filing this Complaint.

27. The properties described in paragraphs 15 through 18, and 22 through 26 above were used, intended for use, derived from or realized through conduct in violation of the RICO Act.

RELIEF

Plaintiff requests the Court to grant the following relief:

(1) Subject all Defendants' real and personal property to Court supervision, and order Defendants to refrain from disposing of, transferring, relocating, dissipating or otherwise altering the status of said properties without prior approval of the Court, during the pendancy of this action, under §895.05(5), Fla. Stat. (1985);

(2) Order forfeiture of all real property described in the Complaint to the State of Florida, pursuant to §895.05(2), Fla. Stat. (1985);

(3) Order forfeiture of all corporate stock in the corporate Defendants to the State of Florida, pursuant to §895.05(2), Fla. Stat. (1985);

(4) Order forfeiture of the corporate charter of the corporate Defendant XXX, INC., pursuant to §895.05(1)(e), Fla. Stat. (1985);

(5) Order a money judgment against Defendants in an amount equal to the fair market value of any property subject to forfeiture which Defendants have rendered unavailable for forfeiture after the filing of this action, under §895.05(2), Fla. Stat. (1985).

(6) Award Plaintiff such costs of investigation and litigation, including attorneys fees, as may be taxable by law.

(7) Retain jurisdiction to direct the proper distribution of the proceeds of forfeiture pursuant to §895.09, Fla. Stat. (1985).

(8) Award other relief the Court deems appropriate.



COMPLAINT FOR FORFEITURE (IN REM)

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA

IN RE: The Forfeiture of  
Real Property Located in Dade  
County, Florida, more particularly  
described as [legal description].

Case No. \_\_\_\_\_

COMPLAINT

Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL  
AFFAIRS, brings this civil action for forfeiture under the  
Florida RICO (Racketeer Influenced and Corrupt Organization) Act,  
Ch. 895, Fla. Stat. (1985), and says:

1. This Court has jurisdiction pursuant to the  
provisions of §895.05, Fla. Stat. (1985).
2. Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL  
AFFAIRS, is authorized to bring this action by §895.05(5), Fla.  
Stat. (1985).
3. The real property sought to be forfeited in this  
action is located in Dade County, Florida, and is more  
particularly described as follows:

[legal description]

4. The above described property is presently owned by  
X.Y.Z., Inc., pursuant to a deed dated October 12, 1984, and  
recorded in the records of Dade County at O.R. Book \_\_\_\_\_,  
Page \_\_\_\_\_.

5. The present owner, X.Y.Z., Inc., has no equitable  
interest in the subject premises, but is merely a straw or alter  
ego for one or more members of the illegal enterprise described  
below.

6. The following additional persons may claim an interest in the subject property:

(a) A.B. is a resident of the State of Florida residing at [address].

(b) C.D. is a resident of the State of New York whose address is [address].

(c) E.F. is a resident of the State of Florida who is currently a fugitive. His last known address is [address].

(d) SUNSHINE BANK of FLORIDA, INC., a Florida corporation, holds a Mortgage dated July 1, 1980, and recorded in the records of Dade County at O.R. Book \_\_\_\_, Page \_\_\_\_.

#### FACTS

7. Beginning in March 1981 and continuing through and including June 1984, the aforementioned A.B., C.D. and E.F. combined, as a group of individuals associated in fact although not a legal entity, for the object and purpose of possessing, manufacturing and trafficking in cocaine in the State of Florida. This combination of persons constitutes an "enterprise" as defined in §895.02(3), Fla. Stat. (1985). In furtherance of the affairs of the enterprise they committed the following acts:

8. [First Predicate Crime and specific statute violated]

9. [Second Predicate Crime and Additional Predicate Crimes and specific statutes violated]

10. The conduct described in paragraphs 8 and 9 above evidence similar intents, results, accomplices, and methods of commission, and are otherwise interrelated and not isolated incidents, so as to form a "pattern of racketeering activity" as defined in §895.02(1) and (4), Fla. Stat. (1985).

11. A.B., C.D. and E.F. were associated with the enterprise described in paragraph 7, and conducted or participated, directly or indirectly, in that enterprise through a pattern of racketeering activity, as described in paragraph 10, in violation of the Florida RICO Act, §895.03(3), Fla. Stat. (1985).

12. The subject premises were used or intended for use in connection with the violations described above as a laboratory for the manufacture of cocaine; as a storage site for materials used in connection with such manufacturing process; as a storage site for the manufactured product; and as a front to conceal the foregoing activities through the appearance of legitimate use. The property is subject to forfeiture as property used or intended for use in the course of a RICO Act violation, under §895.05(2), Fla. Stat.

#### RELIEF

Plaintiff requests the Court to grant the following relief:

(1) Order forfeiture of the subject property, subject to the rights of any innocent persons duly established in this cause, pursuant to §895.05(2), Fla. Stat. (1985);

(2) Retain jurisdiction to direct the proper distribution of the proceeds of forfeiture pursuant to §895.09, Fla. Stat. (1985).

(2) Award other relief the Court deems appropriate.



COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

CITY OF DADESVILLE,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B., C.D., E.F., and XYZ,  
Inc., a Florida corporation,

Defendants.

COMPLAINT

Plaintiff, CITY OF DADESVILLE, brings this civil action for damages, injunction, and other statutory relief under the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, Chapter 895, Fla. Stat. (1985), and says:

JURISDICTION

1. This Court has jurisdiction pursuant to the provisions of §895.05, Fla. Stat. (1985).

PARTIES

2. Plaintiff, CITY OF DADESVILLE, a municipality within Dade County, Florida, is authorized to bring this action pursuant to the provisions of §895.05(7), Fla. Stat. (1985).

3. Defendant A.B. is a resident of the State of Florida residing at [address].

4. Defendant C.D. is a resident of the State of Florida residing at [address].

5. Defendant E.F. is a resident of the State of Florida residing at [address].

6. Defendant XYZ, Inc., is a Florida corporation for profit having its principal place of business at [address]. Defendant A.B. is the president and chief executive officer of XYZ, Inc. Defendant C.D. is an employee of XYZ, Inc., who keeps books and records, issues invoices, and accounts for receipts. Defendant E.F. is a supplier of raw materials to XYZ, Inc.

#### FACTS

7. The Defendant XYZ, Inc., is engaged in the manufacture and installation of bulletproof glass windows and doors. In August 1983 the CITY OF DADESVILLE, awarded XYZ, Inc., a contract to manufacture and install glass windows and doors for two city buildings. The contract authorized XYZ, Inc., to submit invoices for payment as the work progressed, and to be paid pursuant to such invoices on a "cost-plus-percentage" basis. The contract imposes a duty to verify on each invoice submitted that the costs of supplies reported thereon were actually and necessarily incurred, and that they reflect the market price for such supplies of like quantity and quality. The contract is attached hereto as Exhibit A.

8. The Defendant E.F. supplied sand to Defendant XYZ, Inc., to manufacture bulletproof glass for the contract.

9. The Defendants A.B., C.D. and E.F. planned and participated in a scheme whereby E.F. knowingly submitted inflated invoices for sand to Defendant XYZ, Inc.; C.D. processed and paid these invoices, knowing them to be false; and C.D. thereupon submitted inflated invoices to the CITY OF DADESVILLE for payment under the contract.

10. Specifically, the Defendant C.D. knowingly submitted false invoices to the CITY OF DADESVILLE on the following dates with the following overcharges:

(a) On [date] C.D. submitted a verified invoice for performance of the contract on [building], said invoice stating that the sand purchased from E.F. for performance cost [amount], when in fact C.D. knew comparable sand was readily available from other suppliers at [amount].

(b) On [date] C.D. submitted a verified invoice for performance of the contract on [building], said invoice stating that the sand purchased from E.F. for performance cost [amount], when in fact C.D. knew comparable sand was readily available from other suppliers at [amount].

In each of the foregoing acts Defendants C.D. and E.F. knowingly obtained or used, or endeavored to obtain or use, property of the CITY with intent to temporarily or permanently deprive the CITY of the right to the property or the benefit therefrom, or to appropriate property to their own use or to the use of a person not entitled thereto, in violation of §812.014(1), Fla. Stat. (1983).

11. When T.U., an employee of the CITY OF DADESVILLE auditor's office, questioned the payment of the invoices on [date], the Defendants A.B. and C.D. corruptly offered T.U. a pecuniary benefit not authorized by law for the future nonperformance of his duty, i.e., to induce T.U. not to report the overcharge, in violation of §838.016(1), Fla. Stat. (1983).

12. When T.U. refused to accept the corrupt pecuniary benefit offered by Defendants on [date], the Defendant C.D. intentionally caused bodily harm to T.U. by shooting at him with a firearm and wounding him, in violation of §784.045(1)(b), Fla. Stat. (1983).

13. The CITY OF DADESVILLE has paid the false invoices, and as a result, has been damaged in the amount of [amount] for overcharges. The CITY has also paid hospital and medical expenses and workers compensation for T.U., and has been subrogated to all claims of T.U., and has by virtue thereof been damaged in the additional amount of [amount].

#### RICO VIOLATION

14. The Defendant XYZ, Inc., is an "enterprise" within the meaning of §895.02(3), Fla. Stat. (1985).

15. The unlawful acts described in paragraphs 9 through 12 have the similar intents, results, accomplices, victims or methods of commission, or are otherwise interrelated and not isolated incidents, so as to constitute a "pattern of racketeering activity" within the meaning of §895.02(4), Fla. Stat. (1985).

16. The Defendants A.B., C.D., and E.F. were associated with the enterprise XYZ, Inc., and conducted or participated in the enterprise directly or indirectly through a pattern of racketeering activity, in violation of §895.03(3), Fla. Stat. (1985).

#### RELIEF

Plaintiff requests the Court to grant the following relief:

(1) Enter its judgment in favor of the Plaintiff against all Defendants jointly and severally for threefold the actual damages sustained by the CITY OF DADESVILLE, plus reasonable costs of investigation and litigation and attorney's fees, pursuant to §895.05(7), Fla. Stat. (1985).



(2) Require the Defendants A.B. and C.D. to divest themselves of all interest in or control over XYZ, Inc., and enjoin their future conduct of or participation in the affairs of said corporation or any successor, pursuant to §895.05(1)(a) and (b), Fla. Stat. (1985).

(3) Enjoin the Defendants A.B., C.D. and E.F. from bidding on public contracts, supplying public contractors, or participating in the same for a reasonable period to be determined by the Court, pursuant to §895.05(1)(b), Fla. Stat. (1985).

(4) Forfeit the charter of XYZ, Inc., pursuant to §895.05(1)(c), Fla. Stat. (1985).

(5) Award such other relief as the Court deems appropriate.



FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO

COUNTY OF SANTA FE

STATE OF NEW MEXICO ex rel  
PAUL BARDACKE, Attorney General,

Plaintiff,

vs.

No. \_\_\_\_\_

Racketeering Defendants:

WESLEY R. SCHAAL, a/k/a WESLEY  
RALPH SCHALL, a/k/a THOMAS  
CHARLES SCHOOLEY,

Fraudulent Conveyance Defendants:

WESLEY R. SCHAAL, a/k/a WESLEY  
RALPH SCHALL, a/k/a THOMAS  
CHARLES SCHOOLEY, and LUANN  
MILLER,

Property Interest Defendants:

WESTERN REALTY ASSOCIATES,  
a New York limited partnership,  
SOMABA, LTD., a Cayman Islands  
Corporation,

COMPLAINT FOR FORFEITURE AND  
SETTING ASIDE OF FRAUDULENT CONVEYANCE

The State of New Mexico, by and through Paul Bardacke the  
Attorney General, complains of the defendants, and each of them,  
as follows:

GENERAL ALLEGATIONS

1. This action is brought pursuant to the New Mexico Racketeering Act Sections 30-42-1 to 30-42-6 NMSA 1978 as amended, the Controlled Substances Act Sections 30-31-1 to 30-31-40 NMSA 1978, as amended, and Sections 56-10-1 et seq. NMSA 1978.

2. The Plaintiff, State of New Mexico, is authorized to proceed herein pursuant to Sections 30-42-5 & 6 NMSA 1978, as amended, Section 30-31-35 NMSA 1978, as amended, and Sections 56-10-1 et seq. NMSA 1978.

3. Upon information and belief, the defendant, Wesley R. Schaal, resided in Santa Fe County, New Mexico, for some time prior to the filing of this Complaint at the following described real estate (hereinafter the "Property"):

Tract 11-A of the Brownell-Howland Tract; the beginning point of the description of this tract is a point on the westerly side of a roadway for which the southwest corner of Tract 7, identical with the southeast corner of Tract 8, the northwest corner of Tract 10 and the northeast corner of Tract 11 of the Brownell-Howland Tract in Ward Number Four of the City of Santa Fe, New Mexico as delineated upon a plat entitled "Amended Plat Showing lands within the Brownell-Howland Tract and other lands Ward Number Four Santa Fe New Mexico Scale 1 in 120 ft" filed in the office of the County Clerk of Santa Fe County, New Mexico on June 22, 1944, bears North a distance of 75 feet. The described reference point (southwest corner of Tract 7) bears S. 22 18' W., 572.1 feet

from the center of the cover of a concrete well which houses a transformer on Tract 7 and also bears approximately S. 11 00'E., 2448.0 feet from the One Mile corner on the north boundary of the Santa Fe Grant. From the point of beginning thus established on the westerly side of a roadway on the easterly side of the tract being described, thence along the following courses and distances:

South a distance of 121.0 feet;  
S. 32° 36' W. a distance of 48.3 feet;  
S. 74° 57' W. a distance of 297.2 feet;  
N. 6° 25' E. a distance of 316.0 feet;  
East a distance of 252.8 feet; and  
S. 18° 27' E. a distance of 79.0 feet  
to the point and place of beginning.

The foregoing described Tract 11-A, consisting of 1.789 acres, more or less, is and is intended to be Tract 11-A as shown on that certain plat of survey entitled "AMENDED" PLAT SUBDIVISION OF TRACT 11 BROWNELL-HOWLAND TRACT WARD NO. 4 - SANTA FE NEW MEXICO" prepared by Walter G. Turley from surveys completed on October 14, 1948 and amended by him on September 19, 1953, bearing his identification No. 53E51 and also shown on that certain plat entitled "PLAT SHOWING SURVEY OF PROPERTY FOR JOHN K.S. WALTER TRACT 11, BROWNELL-HOWLAND TRACT WARD No. 4, SANTA FE, NEW MEXICO SCALE 1" = 100 FEET prepared as a resurvey of Tracts 11-A and 11-E by Samuel P. Davelos on September 7, 1973, which latter plat is recorded in Book 371, Page 466 of the records of Santa Fe County, New Mexico.

and,

Tract 11-E of the Brownell-Howland Tract; the beginning point of the description of this tract is the northeast corner of this tract and is a point

from which the southwest corner of Tract 7 identical with the southeast corner of Tract 8, the northwest corner of Tract 10 and the northeast corner of Tract 11 of the Brownell-Howland Tract in Ward Number Four of the City of Santa Fe, New Mexico as delineated upon a plat entitled "Amended Plat Showing lands within the Brownell-Howland Tract and other lands Ward Number Four Santa Fe New Mexico Scale 1 in. = 120 feet" filed in the office of the County Clerk of Santa Fe County, New Mexico on June 22, 1944, bears East 253.8 feet, thence S. 18° 27' E., 79.0 feet and thence North 75.0 feet. The described reference point (southwest corner of Tract 7) bears S. 22° 18' W., 572.1 feet from the center of the cover of a concrete well which houses a transformer on Tract 7 and also bears approximately S. 11° 00' E., 2448.0 feet from the One Mile corner on the north boundary of the Santa Fe Grant.

From the point and place of beginning thus establish as the northeast corner of the tract being described, thence along the following courses and distances:

S. 6° 23' E. a distance of 316.0 feet;  
S. 69° 53' W. a distance of 538.9 feet;  
N. 31° 37' E. a distance of 301.8 feet;  
N. 15° 07' E. a distance of 104.2 feet;  
West a distance of 306.3 feet;  
N. 70° 36' E. a distance of 180.6 feet;  
N. 46° 16' E. a distance of 118.45 feet;  
and  
East a distance of 406.2 feet  
to the point and place of beginning.

The foregoing described Tract 11-E, consisting of 3.872 acres, more or less, is and is intended to be Tract 11-E as shown on that certain plat of survey entitled "AMENDED PLAT SUBDIVISION OF TRACT 11 BROWNELL-HOWLAND TRACT WARD NO. 4 - SANTA FE NEW MEXICO" prepared by Walter C. Turley from surveys completed

on October 14, 1948, and amended by him on September 19, 1953, bearing his identification No. 53E51, BROWNELL-HOWLAND TRACT WARD No. 4, SANTA FE, NEW MEXICO SCALE 1" - 100 FEET prepared as a resurvey of Tracts 11-A and 11-E by Samuel P. Davelos on September 7, 1973, which latter plat is recorded in Book 371, Page 466 of the records of Santa Fe County, New Mexico.

4. Upon information and belief, defendant Western Realty Associates was the owner of record of the Property under two warranty deeds recorded in Book 450, Page 869-872 on November 1, 1982, at the office of the County Clerk, Santa Fe County, New Mexico.

5. Upon information and belief, defendant Western Realty Associates is a New York limited partnership with offices at 1370 Avenue of the Americas, New York, New York.

6. Upon information and belief, the defendant Somaba, Ltd. is a corporation organized under the laws of the Cayman Islands.

7. Upon information and belief, the defendant Somaba, Ltd. is the sole limited partner of defendant Western Realty Associates and is entitled to 95% of all profits. Defendant Schaal is the agent for Somaba, Ltd.

8. Upon information and belief, the defendant Schaal is the owner of record of certain additional real estate (hereinafter the "Tesuque Property") located in Santa Fe County, New

Mexico, within Section 30, T18N. R10E, N.M.P.M. being more particularly described as follows:

Beginning at the Northwest corner of the tract herein described from whence U.S.G.L.O. Brass Cap marking the 1/4 corner common to Section 30, T18N, R10E, and Section 25, T18N, R9E, bears, N 22 deg. 35' W 1234.60 feet, thence from said point and place of beginning along the following bearings and distances:

S 52 deg. 48' E 167.75 feet;  
S 36 deg. 50' W 180.65 feet;  
S 30 deg. 39' W 162.50 feet;  
N 40 deg. 02' W 32.87 feet;  
N 40 deg. 01' W 177.30 feet;  
N 39 deg. 23' W 16.70 feet;  
N 43 deg. 37' E 291.00 feet;

to the point and place of beginning. All as shown on plat of survey by Sammuell Davalos, dated June 16, 1967, which plat was filed in the Office of the County Clerk, Santa Fe County, New Mexico on November 14, 1967, in plat Book 17, Page 17, as Document No. 304,583 and as shown on improvement plat by Robert L. Wheeler, dated May 17, 1981, and amended March 16, 1985 as drawing No. 81-19; 85-30.

A warranty deed for the Tesuque Property to the defendant Schaal was recorded in the Office of the County Clerk on March 22, 1985, and recorded in Book 516, Page 542.

COUNT 1  
Forfeiture under Section 30-42-4(E) NMSA 1978  
RACKETEERING ACT



9. The allegations contained in paragraphs 1-8 of this complaint are incorporated herein by reference in this count as if fully restated herein.

10. Upon information and belief, during the period from 1974 through August, 1985, the defendant, Wesley R. Schaal, either as a principal or an accessory, acting in concert with others or another, engaged in a pattern of racketeering activities by trafficking in controlled substances on two or more occasions in violation of Section 30-31-20 NMSA 1978, as amended.

11. As part of defendant Schaal's plan of laundering the illicit proceeds acquired while trafficking in controlled substances, and while simultaneously furthering his unlawful trafficking practices, Schaal used said proceeds in whole or in part to purchase real and personal property in Santa Fe County, New Mexico, including the Property, for use as a safe hiding place for both the controlled substances and moneys related thereto.

12. As part of defendant Schaal's plan, Schaal caused renovations to be made on some of the acquired real estate, including the Property, in order to appear to be a real estate entrepreneur.

13. As a further part of the defendant Schaal's money laundering plan, each property acquired was used as a safe

container for controlled substances and money and was held for appreciation and to be sold at a later date.

14. Upon information and belief, during a portion of the time the defendant Schaal was engaging in said pattern of racketeering activities, the defendant Schaal caused defendant Western Realty Associates to purchase the Property.

15. Upon information and belief, at the time defendant Schaal caused defendant Western Realty Associates to purchase the Property, Schaal intended to use the Property to assist in his unlawful trafficking in controlled substances.

16. Upon information and belief, during the course of a renovation of the main house on the Property, the defendant Schaal caused a hidden safe to be placed in the basement of said house.

17. Upon information and belief, the hidden safe was placed on the Property by defendant Schaal in order to provide a safe container for controlled substances and moneys defendant Schaal acquired while unlawfully trafficking in controlled substances.

18. Upon information and belief, the defendant Schaal is in control of defendant Western Realty Associates.

19. Upon information and belief, the defendant Schaal was the beneficial owner of the Property.

20. Upon information and belief, the defendants Schaal, Western Realty Associates and Somaba, Ltd. and/or Schaal and Western Realty Associates and/or Schaal and Somaba, Ltd. constitute an enterprise within Section 30-42-3-C NMSA 1978, as amended.

21. Upon information and belief, the Property was subject to forfeiture pursuant to Section 30-42-4-E(1) as property the defendant Schaal acquired, conducted or controlled for use in a pattern of racketeering activity.

22. Pursuant to a written stipulation filed with the Court on December 19, 1985, the Property was sold. Plaintiff, pursuant to the stipulation and certain escrow instructions, asserts forfeiture rights to the equity interests in the benefits Western Realty Associates claims from the sale of the Property.

WHEREFORE, Plaintiff demands this Court grant Judgment on this count in favor of the Plaintiff including:

A. Forfeiture of all defendants' rights in and to the benefits Western Realty Associates claims as a result of the sale of the Property;

B. Attorneys fees and costs;

C. Such other and further relief as to this Court seems just and appropriate.

COUNT 2

Forfeiture under 30-42-4(E) NMSA 1978  
RACKETEERING ACT

23. The allegations contained in paragraphs 1-22 of this complaint are incorporated herein by reference in this count as if fully restated herein.

24. The Property was subject to forfeiture pursuant to Section 30-42-4-E(2) because defendant Schaal conducted, directly or indirectly, the enterprise's affairs by engaging in a pattern of racketeering activity involving the use of the Property.

WHEREFORE, plaintiff demands this Court grant judgment on this count in favor of the plaintiff including;

A. Forfeiture of all defendants' rights in and to the benefits Western Realty Associates claims as a result of the sale of the Property;

B. Attorneys fees and costs;

C. Such other and further relief as to this Court seems just and appropriate.

COUNT 3  
Forfeiture under 30-42-4(E) NMSA 1978  
RACKETEERING ACT

25. The allegations contained in paragraphs 1-24 of this complaint are incorporated herein by reference in this count as if fully restated herein.

26. Upon information and belief, the Property, the Tesuque Property and all the defendant Schaal's personal property including, but not limited to furniture and records are subject to forfeiture pursuant to Section 30-42-4-E(1) as property acquired with proceeds acquired from a pattern of racketeering activity in violation of Sections 30-42-1 through 30-42-6 NMSA 1978, as amended.

WHEREFORE, plaintiff demands this Court grant Judgment on this count in favor of the Plaintiff including;

A. Forfeiture of all defendants' rights in and to the benefits Western Realty Associates claims as a result of the sale of the Property;

B. Forfeiture of all defendant Schaal's rights in and to the Tesuque Property;

C. Issuance of a deed granting Plaintiff title in and to the Tesuque Property;

D. Forfeiture of all the defendant Schaal's rights in and to all of his personal property, including but limited to furniture and records.

E. Attorneys fees and costs;

F. Such other and further relief as to this Court seems just and appropriate.

COUNT 4  
FRAUDULENT CONVEYANCE OF PERSONAL PROPERTY

27. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 26 of this complaint.

28. On December 4, 1985, the defendant Wesley Schaal was indicted by the Santa Fe County Grand Jury for Racketeering, among other offenses.

29. On or about December 15, 1985, the defendant Wesley Schaal orally attempted to convey to defendant LuAnn Miller right, title and interest in and to all of his personal property contained in the house at Brownell-Howland Road in Santa Fe, New Mexico.

30. On December 27, 1985, a "Bill of Sale" was executed from John Jasper, defendant Wesley Schaal's attorney-in-fact to defendant LuAnn Miller, allegedly transferring Schaal's right, title and interest in his personal property to LuAnn Miller. Said "Bill of Sale" is attached hereto as Exhibit A and incorporated herein by reference.

31. Upon information and belief, the personal property allegedly sold pursuant to said "Bill of Sale" is property

subject to forfeiture pursuant to Section 30-42-4-E(1) NMSA 1978. .

32. Upon information and belief, the conveyance referred to in the preceding paragraphs was made with actual intent by defendant Wesley Schaal to hinder, delay or defraud either present or future creditors, including Plaintiff herein.

33. Upon information and belief fair consideration was not given by defendant LuAnn Miller for the personal property conveyed to her pursuant to said "Bill of Sale."

34. Upon information and belief defendant LuAnn Miller resided at defendant Wesley Schaal's house on Brownell-Howland Road in Santa Fe, New Mexico from approximately July 5, 1985 through January 5, 1986 without the payment of any rent.

35. Upon information and belief the purported conveyance of the personal property from defendant Wesley Schall to defendant LuAnn Miller is a fraudulent conveyance pursuant to Sections 56-10-1 through 56-10-13 NMSA 1978.

36. Plaintiff is informed and believes and thereon alleges that Defendant LuAnn Miller has negotiated a sale of the above described personal property and will dispose of said personal property without an immediate restraining order from this Court.

WHEREFORE, Plaintiff demands this Court grant Judgment on this count in favor of the Plaintiff including;

A. Setting aside the conveyance of title to personal property from Defendant Wesley Schaal to Defendant LuAnn Miller in total to satisfy the plaintiff's claim;

B. Restraining the defendants, Wesley Schaal and LuAnn Miller, from disposing of Schaal's personal property pending a Final Decision in this matter.

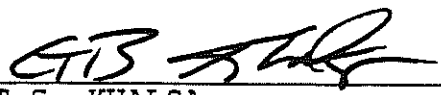
C. Appointing a receiver to take charge of Schaal's personal property pending a Final Decision in this matter.

D. Attorneys fees and costs;

E. Such other and further relief as to this Court seems just and appropriate.

Dated: January 6, 1986.

PAUL BARDACKE  
Attorney General

  
G.T.S. KHALSA  
Assistant Attorney General

Attorney for Plaintiff  
Post Office Drawer 1508  
Santa Fe, New Mexico 87504-1508  
(505) 827-6020



VERIFICATION

I have read the foregoing Complaint and know the contents thereof. The allegations set forth are true except for those matters stated on information and belief, and as to those, I believe them to be true.

Executed this 6th day of January, 1986, at Santa Fe, New Mexico.



G.T.S. KHALSA  
Assistant Attorney General



EXHIBIT "A"

The following described personal property, all located in that certain residence on Brownell-Howland Road, Santa Fe, New Mexico, the legal description of which is Tract 11-A of the Brownell-Howland Tract:

MASTER BEDROOM:

Queen Bed  
2 Tub Chairs  
Brass Lamp  
Books  
Radio  
Two-Drawer Dresser  
Sony Television  
VCR

GUEST BEDROOM, DOWNSTAIRS:

Twin Bed  
Night Stand  
Desk and Chair  
Desk Lamp  
Floor Lamp  
Radio

GUEST BEDROOM, UPSTAIRS:

Queen Bed  
Night Stand  
Four-Drawer Dresser  
Floor Lamp  
Desk Lamp  
Television Stand  
Clock Radio/Phone  
2 Tweed Chairs

OUTSIDE PATIO:

Couch  
2 Chairs  
Ottoman  
3 Glass Tables  
Grill  
Lounge Chair  
Umbrella Table  
4 Chairs  
6 Metal Chairs

DINING ROOM:

Glass Table/Marble Base  
6 Chairs

BREAKFAST ROOM:

Glass Table/Wood Base  
4 Chairs  
La onda Table  
File Cabinet  
Step Stool  
Radio

KITCHEN:

Misc. Items: Pans, Dishes,  
Glasses, Utensils, Linens,  
Vacuum, etc.

BATHROOMS:

Linens, Blankets, Sheets,  
Towels, All Clothes, Luggage

GARAGE:

Hoses, Ladders, Gardening Tools,  
Wheelbarrows, Misc. Tools

LIVING ROOM:

Primitive Pine Table  
Pine Chair  
2 Couches  
Glass Coffee Table  
Armoire  
2 Art Deco Floor Lamps  
Mexican Pot - Tall Grass  
Wall Hanging Over Fireplace  
Mexican Lamp  
Corn/Feather Wall Hanging  
Wooden Shelf  
Wooden Chest

All Rugs and Pads



BILL OF SALE

For valuable consideration, receipt of which is acknowledged by the transferee, WESLEY R. SCHAAAL, a single person, transfers and sells to LU ANN MILLER, a single person, all of his right, title and interest in the personal property described in Exhibit "A" attached and incorporated by reference.

Signed this 27th day of December, 1985.

WESLEY R. SCHAAAL

By: 

John G. Jasper, his attorney-in-Fact

ACKNOWLEDGMENT

STATE OF NEW MEXICO )

: ss.

COUNTY OF SANTA FE )

The foregoing Bill of Sale was acknowledged before me this 27th day of December, 1985, by John G. Jasper, acting in his capacity as Attorney-in-Fact for WESLEY R. SCHAAAL.

  
Notary Public

My commission expires:

8/17/89



DISTRICT COURT, OTERO COUNTY, COLORADO

Case No. 39 CV 76

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COMPLAINT

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STATE OF COLORADO ex rel. DUANE WOODARD, Attorney General,

Plaintiff,

v.

ADAN HERNANDEZ; BETTY HERNANDEZ; DEBBIE ANN HERNANDEZ; SUSIE HERNANDEZ a/k/a MARIA HERNANDEZ; HARVEY RIVERA; the residence located at 510 N. 5th, Rocky Ford, Colorado; the mobile home located at 502 N. 5th St., Rocky Ford, Colorado; the mobile home located at 512 N. 11th, Rocky Ford, Colorado; seventy one thousand seven hundred twenty-six dollars and two cents (\$71,726.02) in United States currency; two thousand nine hundred twenty-nine dollars and ninety-four cents (\$2,929.94) in United States currency; one 1988 Jaguar, VIN 1J9FS162XRI1033072; one 1987 Dodge stationwagon, VIN 3B4GWI2T5HM715338; one 1987 Ford, VIN 1FAPP259-OHW320074; one 1985 Chevrolet pickup, VIN 3GCCW80H0FS921104; one 1978 GMC, VIN TPL3283505940; one 1973 Chevrolet, VIN 1L69H30244162; one 1973 Chevrolet, VIN 1H57K3K451026; and one 1977 Chevrolet van, VIN CGR267U19613,

Defendants.

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Plaintiff, the People of the State of Colorado, upon relation of Duane Woodard, attorney general, by and through the undersigned assistant attorney general, states and alleges the following:

JURISDICTION

1. This action is brought pursuant to the Colorado Organized Crime Control Act ("COCCA"), §§ 18-17-101 through 109,

C.R.S. (1986 & 1988 Supp.) to enjoin and restrain defendants from engaging in certain unlawful conduct and business practices and to prevent, restrain and remedy racketeering activity as defined in § 18-17-103(5), C.R.S. (1986 & 1988 Supp.) and COCCA violations as proscribed by § 18-17-104, C.R.S. (1986). In addition this action seeks forfeiture of property, real and personal, pursuant to § 18-17-106(2), C.R.S. (1986 & 1988 Supp.).

2. Under the Colorado Organized Crime Control Act ("COCCA"), § 18-17-106(5), C.R.S. (1986), the attorney general is empowered to institute civil proceedings to enforce its provisions, and to prevent, restrain and remedy racketeering activity. Under abatement of Public Nuisance statute § 16-13-307(4), C.R.S. (1988 Supp.) the attorney general is empowered to bring an action in the name of the people of the State of Colorado and with the consent of the District Attorney to abate a public nuisance. The District Attorney for the County of Otero has consented to the bringing of this action.

3. The district court has jurisdiction to enter appropriate orders with respect to the COCCA claims both prior to and following a determination of liability pursuant to § 18-17-106, C.R.S. (1986 & 1988 Supp.). The district court also has jurisdiction over the public nuisance action pursuant to § 16-13-307(1) and (2), C.R.S. (1986 & 1988 Supp.) because the subject matter of the action is located in Otero County, Colorado and the public nuisance acts were committed in Otero County, Colorado.

#### PARTIES

4. The plaintiff is the sovereign state of Colorado ex rel. Duane Woodard, the duly elected attorney general for the State of Colorado.

5. Defendant Adan Hernandez is a Colorado resident who owns certain real property, vehicles, and money which was used for the unlawful sale or distribution of controlled substances or is proceeds traceable to his public nuisance acts or is property derived from or realized through Adan Hernandez' racketeering acts.

6. Defendant Harvey Rivera is a Colorado bondsman who received seventy one thousand seven hundred twenty-six dollars and two cents (\$71,726.02) from or on behalf of Adan Hernandez



which money is proceeds traceable to the public nuisance acts of Adan Hernandez or is derived from or realized through Adan Hernandez' racketeering acts.

7. Betty Hernandez is a Colorado resident and is the wife of Adan Hernandez. She has an interest in certain defendant property along with Adan Hernandez which is subject to forfeiture either because it was used in the commission of a felony or because it is proceeds traceable to Adan Hernandez' public nuisance acts or is derived from or realized through Adan Hernandez' racketeering acts.

8. Seventy-one thousand seven hundred twenty-six dollars and two cents (\$71,726.02) is money given to defendant Harvey Rivera by or on behalf of Adan Hernandez for his bond and is proceeds traceable to Adan Hernandez' public nuisance acts or is derived from or realized through Adan Hernandez' racketeering acts.

9. Defendant vehicles are vehicles owned by Adan Hernandez or by Adan Hernandez and Betty Hernandez which were used in the commission of a felony, to wit: the unlawful distribution of cocaine, or are proceeds traceable to Adan Hernandez' public nuisance acts or were derived from or realized through Adan Hernandez' racketeering acts.

10. The residence located at 510 N. 5th, Rocky Ford, Colorado is real property owned by Adan Hernandez, Betty Susie Hernandez, Debbie Hernandez and Hernandez which is proceeds traceable to the public nuisance acts of Adan Hernandez, or were derived from or realized through Adan Hernandez' racketeering acts.

11. The mobile home located at 512 N. 11th, Rocky Ford, Colorado is real property owned by Adan Hernandez and Betty Hernandez which was used in the commission of a felony, to wit: unlawful distribution of cocaine, and is proceeds traceable to the public nuisance acts of Adan Hernandez, or were derived from or realized through Adan Hernandez' racketeering acts.

12. The mobile home located at 510 N. 5th, Rocky Ford, Colorado is real property owned by Adan Hernandez and Debbie Ann Hernandez which is proceeds traceable to Adan Hernandez' public nuisance acts, or was derived from or realized through Adan Hernandez' racketeering acts.

13. Debbie Ann Hernandez is a Colorado resident and the daughter of Adan Hernandez.

14. Susie Hernandez a/k/a Maria Hernandez is a Colorado resident and the daughter of Adan Hernandez.

15. Two thousand nine hundred twenty-nine dollars and ninety-four cents (\$2,929.94) is money given to defendant Harvey Rivera by Adan Hernandez which is traceable to Adan Hernandez' public nuisance acts or was derived from Adan Hernandez' racketeering acts.

#### RACKETEERING ENTERPRISE

16. During the times relevant to this complaint, Adan Hernandez, Eduardo Marquez, Michael Zamora, Alfonso Maynes and Viola Maynes constituted a group of persons associated in fact although not a legal entity which formed a racketeering enterprise within the meaning of § 18-17-103(2), C.R.S. (1986). The purpose of the enterprise was to distribute controlled substances and acquire wealth for members of such enterprise.

#### PATTERN OF RACKETEERING ACTIVITY

17. During the times relevant to this complaint, defendant Adan Hernandez was associated with the racketeering enterprise defined above and did engage in a "pattern of racketeering activity" within the meaning of § 18-17-103(5)(b), C.R.S. (1986 & 1988 Supp.) which was related to the conduct of such enterprise consisting of but not limited to the following acts:

A) Multiple offenses relating to unlawful distribution, manufacturing, dispensing, sale or possession of a controlled substance in violation of § 18-18-105, C.R.S. (1986) which acts constitute predicate COCCA offenses pursuant to § 18-17-103(5)(b), C.R.S. (1986 & 1988). These offenses were perpetrated as follows:

1. On May 18, 1986, defendant Adan Hernandez possessed with intent to distribute approximately one ounce of cocaine and, in fact, sold such cocaine to Alfonso and Viola Maynes for \$900.

2. On May 21, 1989, defendant Adan Hernandez possessed with intent to distribute approximately one ounce of

cocaine and, in fact, delivered such cocaine to Alfonso and Viola Maynes on credit for a purchase price of \$900 which was paid on May 24, 1989.

3. On May 24, 1989, defendant Adan Hernandez possessed with intent to distribute approximately two ounces of cocaine and, in fact, sold such cocaine to Alfonso and Viola Maynes for \$1,800.

4. On May 24, 1989, at the time of his arrest, Adan Hernandez knowingly possessed approximately one-half ounce of cocaine.

B) At least one offense relating to taxation and fraud on the Department of Revenue as defined in §§ 39-21-118, 39-23-621, and 39-28.7-101 through 109, C.R.S. (1982 & 1988 Supp.) and made a predicate COCCA offense pursuant to §§ 18-17-103(5)(b)(XII) and (XIV), C.R.S. (1986). This offense was perpetrated in the following manner:

1. On May 24, 1989, defendant Adan Hernandez possessed approximately one-half ounce of cocaine which he had failed to remit tax on pursuant to § 39-28.7-102, C.R.S. (1988 Supp.) as was evidenced by the absence of the tax stamp which is required to be affixed to packages containing controlled substance pursuant to § 39-28.7-103, C.R.S. (1988 Supp.).

#### INCORPORATION OF AFFIDAVIT

18. Plaintiff hereby incorporates by reference the attached Affidavit in Support of Complaint and Temporary Restraining Order made and signed by Robert W. Kalutkiewicz.

#### ALLEGATIONS REGARDING DISPOSITION OF SEIZED PROPERTY

19. The Colorado Attorney General is the "seizing agency" within the meaning of § 16-31-311 and 314, C.R.S. (1986 & 1988 Supp.) and is a "law enforcement agency" within the meaning of § 18-17-106(2), C.R.S. (1986 & 1988 Supp.).

20. The Colorado Attorney General can use the property forfeited and/or the proceeds from the sale of such property to

further its law enforcement efforts.

FIRST CLAIM FOR RELIEF

ILLEGAL USE OF THE ENTERPRISE  
§ 18-17-104(3), C.R.S. (1986)

21. Plaintiff here repeats the allegations contained in paragraphs 1 through 20 of this complaint.

22. Defendant Adan Hernandez is associated with the racketeering enterprise defined in this complaint.

23. During the relevant times herein, defendant Adan Hernandez knowingly conducted and participated in the racketeering enterprise through the pattern of racketeering activity described herein in violation of § 18-17-104(3), C.R.S. (1986).

SECOND CLAIM FOR RELIEF

INVESTMENT OF RACKETEERING PROCEEDS  
§ 18-17-104(1)(a), C.R.S. (1986).

24. Plaintiff here repeats the allegations contained in paragraphs 1 through 20 of this complaint.

25. Defendant Adan Hernandez, during times relevant to this complaint, knowingly received proceeds derived, directly or indirectly, from a pattern of racketeering activity and has used or invested, directly or indirectly, part of such proceeds or the proceeds derived from the investment or use thereof in the acquisition of a title, right, interest, or equity in real property or in the establishment or operation of the enterprise.

THIRD CLAIM FOR RELIEF

RACKETEERING CONSPIRACY  
§ 18-17-104(4), C.R.S. (1986)

26. Plaintiff here repeats the allegations contained in paragraphs 1 through 20 of this complaint.

27. During the times relevant to this complaint, defendant Adan Hernandez knowingly conspired with with other persons including but not limited to Eduardo Marquez, Michael Zamora, Alfonso Maynes and Viola Maynes to conduct or participate in the racketeering enterprise through a pattern of racketeering activity in violation of § 18-17-104(4), C.R.S. (1986).

FOURTH CLAIM FOR RELIEF

RACKETEERING PROCEEDS  
§ 18-17-106(2), C.R.S. (1986)

28. Plaintiff here repeats the allegations contained in paragraphs 1 through 20 of this complaint.

29. All defendant property, real and personal, including money, is subject to forfeiture to the state as property used in the course of, intended for use in the course of, derived from, or realized through conduct prohibited by § 18-17-104, C.R.S. (1986). Section 18-17-106(2), C.R.S. (1986).

FIFTH CLAIM FOR RELIEF

ACTION TO ABATE A PUBLIC NUISANCE  
§ 16-13-303, C.R.S. (1986)

30. Plaintiff here repeats the allegations contained in paragraphs 1 through 20 of this complaint.

31. Defendant property, real and personal, including money, is subject to forfeiture pursuant to § 16-13-303, C.R.S. (1986 & 1988 Supp.) as proceeds traceable to the public nuisance acts of Adan Hernandez.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief as follows:

Relief Pursuant to COCCA

1. Civil forfeiture to the state, pursuant to § 18-17-106(2), C.R.S. (1986), of all of the interests of Adan Hernandez, Betty Hernandez, Debbie Ann Hernandez, and Susie Hernandez a/k/a Maria T. Hernandez in defendant property, real and personal including money. Such property interests shall be delivered to the Attorney General for its use in the extent the court finds that it can be used by such law enforcement agency pursuant to § 18-17-106(2)(b), C.R.S. (1986);

2. Civil forfeiture to the state, pursuant to § 18-17-106(2), C.R.S. (1986), of all defendant United States currency on the grounds that it was used in the course of, derived from, or realized through conduct in violation of the provisions of § 18-17-104;

3. Reasonable attorney fees;

4. The costs of investigation and litigation;

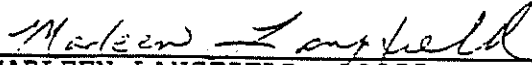
Relief Pursuant to Action to Abate a Public Nuisance

5. Permanent injunction to restrain, abate and prevent the continuance or recurrence of the public nuisance and an order directing the confiscation and forfeiture of property as follows:

a. order directing the forfeiture of all defendant property pursuant to § 16-13-303(3), C.R.S. (1986 & 1988 Supp.) as proceeds traceable to public nuisance acts of Adan Hernandez and directing appropriate disposition of such seized property pursuant to § 16-13-311, C.R.S. (1986 & 1988 Supp.) including delivery to the Attorney General of property which can be used by the Attorney General and proceeds from the sale of all other property upon this court's finding that the Colorado Attorney General, the seizing agency, can use such property and proceeds to further its law enforcement objectives; and

6. Such other relief as the court deems proper.

Respectfully submitted  
FOR THE ATTORNEY GENERAL

  
MARLEEN LANGFIELD, 40355  
Assistant Attorney General  
Special Prosecutions Unit

Attorneys for Plaintiff

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Denver, Colorado 80203  
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F2;5-89;9604m  
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF 3 \_\_\_\_\_

STATE OF ARIZONA ex rel	)	
ROBERT K. CORBIN, Plaintiff,	)	NO. _____
	)	
v.	)	
	)	
3 5 _____	)	
_____	)	COMPLAINT
_____	)	
_____ Defendant(s).	)	(Non-Classified Civil,
	)	Racketeering, Forfeiture)
_____	)	

Plaintiff alleges:

JURISDICTION AND VENUE

1. This action is brought pursuant to the Arizona Racketeering Act, A.R.S. §§ 13-2301, et seq., 11 \_\_\_\_\_ and 13-4301, et seq.

2. Under the Arizona Racketeering Act and A.R.S. § 13-4301, et seq., the Attorney General is empowered to bring a civil action to enforce its provisions, to prevent, restrain or remedy racketeering as defined by A.R.S. § 13-2301(D)(4) or a violation of A.R.S. § 13-2312, and to do so by seeking civil forfeitures.

3. The Superior Court in and for this County has jurisdiction to enter appropriate orders both prior to and following a determination of liability pursuant to A.R.S. § 13-2314, including forfeiture orders pursuant to A.R.S. §§ 13-2314, 13-4301, et seq., particularly 13-4302.

4. Venue is proper in this County pursuant to A.R.S. § 13-2314 and A.R.S. § 13-4303 because [check one or more]

- ☐ some of the property was seized for forfeiture in this County,
- ☐ one or more owners or interest holders in the property could be complained against in this County for the conduct alleged to give rise to forfeiture,
- ☐ defendants have transacted business and engaged in conduct in Arizona and in this County,
- ☐ defendants have engaged in conduct constituting elements of the offenses alleged in this County,
- ☐ defendants have caused results constituting elements of offenses alleged in this County, aided and abetted offenses while in this County and committed conspiracy in which acts in furtherance of the conspiracy were committed in this County.

#### PARTIES

5. The party bringing this action is the State of Arizona ex rel. Robert K. Corbin, the Attorney General.

6. Defendants <sup>35</sup> \_\_\_\_\_ are residents of \_\_\_\_\_ County.

7. At all times material hereto defendants were acting on behalf of their marital community with reference to the acts complained of herein.

8. Where applicable, the spouse of defendant is being named herein because she may have an interest in property

or enterprises representing the proceeds of the unlawful conduct alleged herein or otherwise subject to restraining orders, prohibitions, damages, forfeiture or other restraints pursuant to A.R.S. § 13-2314 and A.R.S. § 13-4301, et seq. [and because of his/her accountability for acts of racketeering].

9. Defendants XYZ ENTERPRISES 1-5, ABC CORPORATIONS 1-5 and JOHN/JANE DOES 1-5 are various enterprises, corporations, officers, principals, trustees, employees, agents, or representatives of defendants who have participated in the unlawful acts alleged herein, and whose names or full accountability are not known at the present time. Plaintiff will amend this complaint to show the true names of such defendants when the same have been ascertained.

10. The property interests against which in rem forfeitures are asserted in this action are listed in Appendix One, consisting of property interests seized for forfeiture to date and not released, which are forfeit to the State of Arizona, pursuant to the Arizona Racketeering Act, A.R.S. §§ 13-2301, et seq., and 13-4301, et seq.

11. Whenever in this complaint reference is made to any act of defendants, such allegations shall be deemed to mean that each defendant, acting individually, jointly and severally, did such act or is accountable for it.

#### NATURE OF ACTION

12. This is an action to remedy, restrain and prevent the racketeering acts of defendants and to remedy, restrain, and prevent defendants' illegal conduct of an enterprise

through racketeering. This action consists of an in personam racketeering action under A.R.S. § 13-2314 seeking remedies of named persons, including in personam civil forfeiture of property under the procedures in A.R.S. § 13-4301 et seq., particularly § 13-4312, and an in rem racketeering forfeiture action seeking forfeiture of specified property under A.R.S. § 13-2314(F) and the procedures in A.R.S. § 13-4301 et seq. particularly § 13-4311. [The forfeiture actions were initiated by Notice of Pending Forfeiture on (date) \_\_\_\_\_, to be followed by the filing of this complaint under A.R.S. § 13-4308(B)].

13. The racketeering acts are <sup>29</sup> \_\_\_\_\_,  
\_\_\_\_\_ and the enterprise consists of a group of persons, including, but not limited to, <sup>34</sup> \_\_\_\_\_ associated in fact for the purpose of engaging in such acts for financial gain.

Racketeering By Acts Involving  
A.R.S. § 13-2301(D)

14. The defendants have engaged in the following conduct, by way of example and without limitation, in violation of the Arizona Racketeering Act, A.R.S. §§ 13-2301, et seq., <sup>31</sup> \_\_\_\_\_ from <sup>24</sup> \_\_\_\_\_ to the date of this Complaint, each act being for financial gain and chargeable or indictable under the laws of the state in which they occurred and of Arizona and punishable by imprisonment for more than one

year, or an overt act in furtherance of a conspiracy that is so chargeable or indictable.

15. The conduct included, by way of example and without limitation:

(a) Between approximately <sup>24</sup>\_\_\_\_\_, and the date of this Complaint, in <sup>3</sup>\_\_\_\_\_ County, Arizona, <sup>34</sup>\_\_\_\_\_ and others, with the intent to promote or aid in the commission of the offenses of <sup>29</sup>\_\_\_\_\_, agreed with each other and others that at least one of them would engage in conduct constituting those offenses and that, in furtherance of those offenses, overt acts were committed.

(1)

<sup>32</sup>\_\_\_\_\_

(b)

<sup>33</sup>\_\_\_\_\_

Illegally Conducting an Enterprise  
A.R.S. § 13-2312(B)

16. Between <sup>24</sup>\_\_\_\_\_, and the date of this Complaint, <sup>34</sup>\_\_\_\_\_ and others were employed or associated with an enterprise, to wit: a group of persons associated in fact including <sup>34</sup>\_\_\_\_\_, and conducted or participated in the conduct of the affairs of such enterprise, hereafter referred to as the <sup>30</sup>\_\_\_\_\_

Enterprise, through <sup>29</sup> \_\_\_\_\_,  
as more specifically set forth in paragraphs 14 and 15 above,  
in violation of <sup>31</sup> \_\_\_\_\_ and A.R.S.  
§ 13-2312(B).

17. Between <sup>24</sup> \_\_\_\_\_, and the date of this  
Complaint, <sup>34</sup> \_\_\_\_\_, with the intent to promote or aid  
the commission of the offense of being employed by or  
associated with the <sup>30</sup> \_\_\_\_\_ Enterprise, and  
conducting or participating in the conduct of such enterprise's  
affairs through racketeering, agreed with one or more persons  
that at least one of them or another person would engage in  
conduct constituting the offense, through the offenses of  
A.R.S. § 13-2312, <sup>31</sup> \_\_\_\_\_. In  
furtherance of said conspiracy, they performed one or more of  
the overt acts alleged in paragraph 15 in violation of A.R.S.  
§§ 13-2312(B) and 13-1003.

FIRST CLAIM FOR RELIEF

Judgment in an Amount Equal to the Gain  
Acquired or Maintained Through Racketeering  
A.R.S. § 13-2314(D)(7)  
A.R.S. § 13-2301(D)(4)

18. Plaintiff incorporates by this reference each of  
the allegations contained in Paragraphs 1-17 as though as set  
forth in full here.

19. Defendants and others acquired or maintained gain  
through the offenses of <sup>29</sup> \_\_\_\_\_  
\_\_\_\_\_, which are included in  
the definition of racketeering in A.R.S. § 13-2301(D)(4),

including, but not limited to, in excess of \$ \_\_\_\_\_  
plus all of the fruits of such gain since its acquisition.

SECOND CLAIM FOR RELIEF

Judgment in an Amount Equal to the Gain  
Through Illegal Conduct of an Enterprise

A.R.S. § 13-2314(D)(7)

A.R.S. § 13-2312(B)

20. Plaintiff incorporates by this reference each of  
the allegations contained in Paragraphs 1-19 as though set  
forth in full here.

21. Defendants and others acquired or maintained gain  
through the conduct of the <sup>30</sup> \_\_\_\_\_ Enterprise through  
racketeering, or became liable for such acquisition or  
maintenance of gain, in an amount not less than \$ \_\_\_\_\_  
plus all of the fruits of such gain since its acquisition.

THIRD CLAIM FOR RELIEF

Forfeiture Resulting From Illegal  
Conduct of an Enterprise

A.R.S. § 13-2312(B)

A.R.S. § 13-2314

22. Plaintiff incorporates by this reference each of  
the allegations contained in Paragraphs 1-21 as though set  
forth in full here.

23. Between <sup>24</sup> \_\_\_\_\_, and the date of this  
Complaint, one or more defendants

a. acquired or maintained interests, in  
violation of A.R.S. § 13-2312(B), including without  
limitation [check one or both]

\_\_\_\_\_ in excess of \$ \_\_\_\_\_.

\_\_\_\_\_ the property described in Appendix One.

b. had interests in, security of, claims against, or property, office, title, license or contractual rights affording a source of influence over the <sup>30</sup> \_\_\_\_\_ Enterprise, including without limitation the property described in Appendix One.

c. acquired proceeds traceable to the conduct alleged herein, including without limitation, the property described in Appendix One.

d. used or intended to use monies, negotiable instruments, securities, property or other things of value in any manner or part to facilitate the commission of the conduct alleged, including without limitation, the property described in Appendix One.

FOURTH CLAIM FOR RELIEF  
Illegal Control of an Enterprise  
A.R.S. § 13-2312(A)

24. Plaintiff incorporates by this reference each of the allegations contained in Paragraphs 1-23 as though set forth in full here.

25. Between <sup>24</sup> \_\_\_\_\_ and the date of this Complaint, <sup>34</sup> \_\_\_\_\_, through <sup>29</sup> \_\_\_\_\_ or the proceeds of such conduct more specifically set forth in paragraphs 14 through 15 above, knowingly acquired or maintained, by investment or otherwise, control of one or more enterprises, particularly \_\_\_\_\_, in violation of <sup>31</sup> \_\_\_\_\_ and A.R.S. § 13-2312(A) .



26. Between <sup>24</sup> \_\_\_\_\_ and the date of this Complaint, <sup>34</sup> \_\_\_\_\_ with the intent to promote or aid the commission of the offense of illegally controlling an enterprise through racketeering or its proceeds, agreed with one or more persons that at least one of them or another person would engage in conduct constituting the offense, and in furtherance of said conspiracy, they performed one or more of the overt acts alleged in paragraph 15, in violation of A.R.S. § 13-2312(A) and § 13-1003.

27. Between <sup>24</sup> \_\_\_\_\_ and the date of this Complaint, one or more of the defendants

a. acquired or maintained interests, in violation of A.R.S. § 13-2312(A), including without limitation [check one or both],  
\_\_\_\_\_ in excess of \$ \_\_\_\_\_.  
\_\_\_\_\_ the property described in Appendix One.

b. had interests in, security of, claims against, or property, office, title, license or contractual rights affording a source of influence over the <sup>30</sup> \_\_\_\_\_ Enterprise, including without limitation the property described in Appendix One.

c. acquired proceeds traceable to the conduct alleged herein, including without limitation, the property described in Appendix One.

d. used or intended to use monies, negotiable instruments, securities, property or other things of

value in any manner or part to facilitate the commission of the conduct alleged, including without limitation, the property described in Appendix One.

FIFTH CLAIM FOR RELIEF  
Forfeiture of Substitute Assets  
A.R.S. § 13-2314  
A.R.S. § 13-4313

28. Plaintiff incorporates by this reference each of the allegations contained in Paragraphs 1-27 as though set forth in full here.

29. Property of defendants is described in A.R.S. § 13-2314, providing for its forfeiture.

30. All property representing property of a defendant up to the value of property otherwise subject to forfeiture which cannot be located; has been transferred or conveyed to, sold or deposited with a third party; has been substantially diminished in value by an act or omission of the defendant; or has been commingled with other property which cannot be divided without difficulty, is subject to forfeiture as a substitute asset pursuant to A.R.S. § 13-4313(A).

SIXTH CLAIM FOR RELIEF  
Involuntary Trusteeship  
A.R.S. § 13-2314(E)

31. Plaintiff incorporates by this reference each of the allegations in Paragraphs 1-30 as though fully set forth here.

32. Defendants have acquired property through racketeering or a violation of A.R.S. § 13-2312, and were not bona fide purchasers for value reasonably without notice of the

unlawful conduct and not knowingly taking part in an illegal transaction.

33. Defendants hold the property, its proceeds and its fruits, including the property described in Appendix One, in constructive trust for the benefit of the State.

IN REM ACTION  
SEVENTH CLAIM FOR RELIEF

In Rem Forfeiture of Property,  
Things of Value and Other Interests

A.R.S. § 13-2314(F)

A.R.S. § 13-2312(B)

34. Plaintiff incorporates by this reference each of the allegations contained in Paragraphs 1-33 as though fully set forth here.

35. With respect to the property described in Appendix One hereto, <sup>14</sup> \_\_\_\_\_ and others have committed one or more acts for financial gain which is/are chargeable or indictable under the laws of this state, and punishable by imprisonment for more than one year involving one or more of the offenses enumerated in A.R.S. §13-2301(D)(4), to wit: preparatory or completed offenses involving A.R.S. § <sup>11</sup> \_\_\_\_\_.

36. The property described above has been forfeited in its entirety to the extent not recovered by claimants pursuant to A.R.S. § 13-4304, from the time of the first occurrence of said act or acts, subject only to recovery of such lawful interests as are claimed and established by claimants under A.R.S. §§ 13-4304 and 13-4311.

37. The property described in Appendix One is forfeited because:

[INDICATE BY NUMBER ON THE MASTER DATA SHEET THE PARAGRAPH(S) TO BE INCLUDED]

2.7a — The property or other interest was acquired or maintained by a person in violation of A.R.S. § 13-2312;

2.7b — The property or interest is an interest in, security of, claim against or property, office, title, license or contractual right of any kind affording a source of influence over the <sup>38</sup> \_\_\_\_\_ enterprise or other property which a person has acquired or maintained an interest in or control of through conduct described in A.R.S. § 13-2301(D)(4) or the proceeds of such conduct;

2.7c — The property or interest is an interest in, security of, claim against or property, office, title, license or contractual right of any kind affording a source of influence over the <sup>30</sup> \_\_\_\_\_ enterprise, an enterprise whose affairs a person conducted or participated in the conduct of through conduct described in A.R.S. § 13-2301(D)(4);

2.7d — The property constitutes proceeds traceable to conduct described in A.R.S. § 13-2301(D)(4), as defined in A.R.S. § 13-2314(O)(3); and/or

2.7e — The property or interest constitutes monies, negotiable instruments, securities, property and/or other things of value used or intended to be used in any manner or part to facilitate the commission of conduct described in A.R.S. § 13-2301(D)(4).

38. The following persons are within the definition set forth in A.R.S. § 13-4301(4) of "person known to have an interest" in the property:

12

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39. All persons known to have an interest in the property have been served with a Notice of Pending Forfeiture pursuant to A.R.S. § 13-4307.

40. The following persons are parties in that they have timely filed claims pursuant to A.R.S. § 13-4311:

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41. Thirty (30) days has elapsed since the service of Notice of Pending Forfeiture. Only persons who filed claims within that period may be recognized as claimants in the in rem action. Those claimant parties are:

12

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EIGHTH CLAIM FOR RELIEF  
In Rem Forfeiture of Property Interests  
Related to the <sup>30</sup>\_\_\_\_\_ Enterprise  
A.R.S. § 13-2314(F)(2)  
A.R.S. § 13-2312

42. Plaintiff incorporates by this reference each of the allegations contained in Paragraphs 1-41 as though set forth in full here.

41. The <sup>30</sup>\_\_\_\_\_ Enterprise is an enterprise whose affairs a person has [check one]

\_\_\_\_\_ conducted or participated in the conduct of through <sup>29</sup>\_\_\_\_\_,

conduct described in A.R.S. § 13-2301(D)(4).

\_\_\_\_\_ acquired or maintained control of, by investment or otherwise, through <sup>29</sup>\_\_\_\_\_,

conduct described in A.R.S. § 13-2301(D)(4), or through the proceeds of such conduct.

44. All interest in, security of, claim against or property, office, title, license or contractual right of any kind affording a source of influence over the <sup>30</sup>\_\_\_\_\_ Enterprise is forfeited to the State to the extent that no claimant or claimants comply with A.R.S. § 13-4311 and make the proof of exemption required by A.R.S. § 13-4304.

PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that:

1. The Court order each defendant to pay, jointly and severally, to the STATE OF ARIZONA an amount equal to the gain acquired or maintained by reason of acts of racketeering enumerated in A.R.S. § 13-2301(D)(4). The amount equal to the

gain which plaintiff seeks as monetary relief is an amount not less than '\$' \_\_\_\_\_.

2. The Court order each defendant to pay, jointly and severally, to the STATE OF ARIZONA an amount equal to the gain acquired or maintained through [check one or both]

\_\_\_\_\_ the illegal conduct of an enterprise in violation of A.R.S. § 13-2312(B).

\_\_\_\_\_ the illegal control of an enterprise in violation of A.R.S. § 13-2312(A).

The amount equal to the gain which plaintiff seeks as monetary relief is an amount not less than '\$' \_\_\_\_\_.

3. The Court order each defendant to pay, jointly and severally, treble damages to all persons injured by reason of defendants' acts of racketeering or by their violation of A.R.S. § 13-2312, in an amount not less than  
'\$' \_\_\_\_\_.

4. The Court enter an order restraining and enjoining defendants, temporarily, preliminarily and permanently, from engaging in the acts and practices alleged in this Complaint.

5. The Court issue an injunction enjoining the defendants from transferring, receiving, dissipating, altering, selling, pledging, assigning, liquidating or otherwise disposing of, or taking control or possession of property acquired or maintained by any person in violation of A.R.S. § 13-2312 and all such interest in, security of, claims against or property or contractual rights affording a source of

influence over any enterprise or other property established, operated, controlled, conducted or in whose conduct any person participated in violation of A.R.S. § 13-2312.

6. The Court order defendants to file annual financial statements and other reports necessary to determine defendants' compliance with the injunction and orders of the Court entered in connection with this matter.

7. The Court order defendants to pay the State's costs and expenses of investigating the matter of complaint herein, court costs, and costs of prosecuting this matter, including reasonable attorneys' fees.

8. The Court enter an order declaring that all property acquired through an offense included in the definition of racketeering in A.R.S. § 13-2301(D)(4) or through a violation of A.R.S. § 13-2312 and all property fraudulently conveyed, and the proceeds thereof, unless held by a person who acquired it as a bona fide purchaser for value reasonably without notice of the unlawful conduct and who was not knowingly taking part in an illegal transaction, is held in constructive trust for the benefit of the State for satisfaction of further orders of the Court.

9. The Court set a hearing on the in rem claims pursuant to A.R.S. § 13-4311 within sixty (60) days after service of this Complaint, and, after the hearing, enter orders under A.R.S. §§ 13-4310, 13-4311, 13-4314 and 13-4315.

10. The Court consider an application for orders of forfeiture under A.R.S. § 13-4314 showing jurisdiction, notice



and facts sufficient to demonstrate probable cause for forfeiture with regard to all interests in property described in Appendix One not properly and timely claimed and order disposition pursuant to A.R.S. §§ 13-2314, 13-4314 and 13-4315.

11. The Court enter an order forfeiting to the State of Arizona:

a. any property or other interest acquired or maintained by a person in violation of A.R.S. § 13-2312, including property described in Appendix One;

b. any interest in, security of, claims against, property, office, title, license or contractual right of any kind affording a source of influence over any enterprise which any person has controlled or has conducted or participated in the conduct of in violation of A.R.S. § 13-2312, including the property described in Appendix One;

c. all proceeds traceable to an offense included in the definition of racketeering in A.R.S. § 13-2301(D)(4) including the property described in Appendix One;

d. all monies, negotiable instruments, securities, property and other things of value used or intended to be used in any manner or part to facilitate commission of such offense, including those described in Appendix One; and

e. all property of any defendant up to the value of the property described above to the extent that any of the property described in the statute providing for its forfeiture cannot be located; has been transferred or conveyed to, sold to or deposited with a third party; has been placed beyond the

jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or has been commingled with other property which cannot be divided without difficulty.

12. The Court enter an order that the property and interests described in Appendix One are forfeit to the State, in the event that no claimant makes the proof required by § 13-4304, within the time prescribed by A.R.S. § 13-4311(D), and order disposition pursuant to A.R.S. §§ 13-2314, 13-4314 and 13-4315.

13. The Court enter an order declaring that the proceeds of all property forfeited to the State from the time of the forfeiture to the time of disposition are held in constructive trust for the benefit of the State for satisfaction of further orders of the Court and forfeited to the State under A.R.S. § 13-4310(F).

14. The Court order claimants, if any, to pay the costs of any claimant who establishes that his entire interest is exempt from forfeiture under A.R.S. § 13-4304 and the State's costs and expenses of the investigation and prosecution of this matter, including reasonable attorney fees.

15. The Court enter an order providing that this Court retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered herein, and in order to entertain any suitable applications or motions by plaintiff or the conservator or

receiver appointed by the Court for additional relief within the jurisdiction of the Court.

16. The Court grant such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of \_\_\_\_\_, 1989.

ROBERT K. CORBIN  
Attorney General

By \_\_\_\_\_  
Assistant Attorney General  
Attorneys for the STATE

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 1989.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_



VERIFICATION

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF ' \_\_\_\_\_)

      18 \_\_\_\_\_, being duly sworn, upon  
his oath deposes and says:

      1.    He makes this Verification for and on behalf of  
the State in this action, being acquainted with the facts;

      2.    He has read the foregoing Complaint and knows the  
contents thereof; that each of the allegations made therein are  
true of his own personal knowledge or upon information and  
belief, and that he believes each of such allegations to be true.

\_\_\_\_\_  
18  
\_\_\_\_\_  
19  
\_\_\_\_\_  
13  
\_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of  
' \_\_\_\_\_, 19' \_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_



APPENDIX ONE<sup>10</sup>

(a)

(b)





MASTER DATA SHEET

1. Attorney's name \_\_\_\_\_

2. Bar # \_\_\_\_\_

3. County \_\_\_\_\_

4. Captioned property.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Month \_\_\_\_\_

6. Year \_\_\_\_\_

7. Indicate by paragraph number the appropriate paragraph(s) to be included listing the statutes authorizing forfeiture: \_\_\_\_\_

\_\_\_\_\_

8. Describe each type of property to be seized, its present whereabouts and condition and any other fact useful to the Court in issuing its seizure order and in describing the parties in rem.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Describe the action necessary to acquire in rem jurisdiction and preserve the property for forfeiture. (Add new paragraphs repeating 8 if necessary for each additional piece of property.)

or by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Include necessary instructions to minimize the impact of the seizure, guide a third party possessor of the property in compliance, and particularize the duties of the peace officer serving the warrant. Indicate by paragraph number the appropriate paragraph(s) to be included.

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10. List each item of property in A separately, in the order in which they appear in A, designated as "(a)", "(b)", "(c)", etc.; add another page if necessary

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11. Add any particular forfeiture statute relating to this case, e.g., § 13-3413 (drugs), § 13-3460 (imitation drugs), § 13-3310 (gambling), § 13-3105 (weapons and explosives), etc.

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12. List persons known to have an interest

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13. Seizing agency; agent/officer making verification is employed by

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14. Address of seizing agency

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15. Date and place, if necessary, of seizure for forfeiture.

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16. Add any special instructions or information for interest holders or persons in possession of property, e.g., if property is money and has been deposited, include account or institution.

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17. List of persons known to have an interest with full information needed for service, including last known address, statutory agent, agency/public official that interest is on file with and description of the interest filed there, alternative address such as jail. List separately, in the order they appear in 12, designated "(a)", "(b)", "(c)", etc.

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18. Agent/Officer making verification

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19. Agent's/officer's title making verification

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20. Name of Clerk of Superior Court in the County

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21. Indicate by paragraph number the appropriate paragraph(s) to be included

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22. Describe generally the use or the status of the property which gives rise to forfeiture in non-racketeering in rem case (transportation of narcotics, weapon in possession of felon, etc.) and person possessing or using it, if applicable.

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23. Indicate by paragraph number the appropriate paragraph(s) to be included (parties to Complaint after filing claim)

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List of parties:

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24. Beginning date of enterprise or conduct giving rise to forfeiture.

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25. Conduct giving rise to forfeiture, offenses, etc.

26. Specific status of property (gambling device, boat with altered number, etc.).

27. Indicate by paragraph number the appropriate paragraph(s) to be included (theories of racketeering in rem forfeiture)

28. Persons associated in the alleged enterprise.

29. Names of offenses violated in conduct of the alleged enterprise.

30. Name of enterprise.

31. Statutes violated in conduct of the alleged enterprise.

32. Acts in furtherance of the conspiracy to violate specific racketeering statutes alleged in paragraph 14(b) or 19(b).

42. Indicate by paragraph number the appropriate paragraph, a or b, describing application or hearing process.

43. Indicate by paragraph number the appropriate paragraphs for the Order of Forfeiture.

44. Custodian or agency holding property

45. Lienholder

46. Indicate by paragraph number the appropriate paragraph(s) to be included

47. Name of Petitioner

48. Indicate by paragraph number the appropriate paragraph(s) to be included

49. List the title of petition filed, name of Petitioner, and date of filing.

50. Indicate by paragraph number the appropriate paragraph(s) to be included

51. List specific reasons for lack of remission or mitigation (facts of case which give rise to forfeiture).

52. Describe the reasons for mitigation.

33. List of additional acts of racketeering, designated "(c)", "(d)", etc.

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34. Named active participants in racketeering activity listed.

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35. In personam defendants in order they will appear in the caption.

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36. Place of residence of each defendant.

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37. Indicate by paragraph number the appropriate paragraph(s) to be included \_\_\_\_\_

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38. Name of enterprise controlled through the proceeds of racketeering, if any.

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39. Amount equal to the gain. \_\_\_\_\_

40. Amount of damage to persons injured. \_\_\_\_\_

41. Indicate by paragraph number the appropriate paragraph(s) to be included (types of proofs of forfeitability) \_\_\_\_\_

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53. Describe the reasons for denial of remission or mitigation (economic circumstances serve remedial goals of forfeiture).

54. Describe the specific interest of the Petitioner to the property.

55. Indicate by paragraph number the appropriate paragraph(s) to be included.

56. State amount of costs to be paid by Petitioner.

57. State the property, amount of money, or other interest which a Petitioner retains by mitigation.

58. List of persons know to have an interest, mode of service and date.

Name

Mode of Service

Date

59. Indicate by paragraph number the appropriate paragraph(s) to be included





## SERVICE OF PROCESS

The legal requirements for service of process are uniquely tied to state statutes and state procedural rules. Where defendants are available, service of the summons and complaint will be easily accomplished by adhering to the same procedures that exist for all civil actions.

State long-arm statutes should be invoked for service on non-resident defendants. These statutes describe the jurisdictional prerequisites necessary in order to sue an out-of-state resident: racketeering violations will usually fall under several predicates listed in the statute as grounds for jurisdiction. Long-arm laws will also indicate how service should be made on a person outside the state.

Service of process laws may contain special provisions for service on corporate and other business entities. Often, the laws will also provide for service in special situations: in many states, service on nonresidents engaging in business within a state can be accomplished by serving the Secretary of State's office, and nonresident motor vehicle and boat owners may have also agreed to accept service through the Secretary of State where such property is involved in an incident leading to litigation. If civil RICO defendants have already been arrested, many service of process laws specifically allow service on incarcerated individuals. However, if a defendant is a fugitive or is otherwise unavailable, the statutory criteria for constructive service must be met.

Where an in rem forfeiture is contemplated and the RICO act does not describe how "service" is accomplished against property, the procedure used for service or notice in state forfeiture actions should be used. Forfeiture "service" is often very different from service on a person in a civil suit, and care must be taken to follow these procedures.



PROCEEDINGS FOR SERVICE OF PROCESS  
BY PUBLICATION (In Rem)

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

IN RE: The Forfeiture of  
Real Property Located in  
Dade County, Florida, more  
particularly described as  
[legal description].

CASE NO. \_\_\_\_\_

STATE OF FLORIDA    )  
                          )  
COUNTY OF \_\_\_\_\_ )

AFFIDAVIT FOR CONSTRUCTIVE  
SERVICE OF PROCESS BY PUBLICATION

BEFORE ME, the undersigned authority, personally  
appeared [name], Assistant Attorney General, who, as attorney for  
Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, after  
being duly sworn, swears and deposes as follows:

1. Affiant is attorney of record for Plaintiff in the  
above-captioned cause.

2. Affiant, along with state and local law enforcement  
officers, has made a diligent search and inquiry to discover the  
whereabouts of [name], the owner of record of the property sought  
to be forfeited to the State of Florida in the above-captioned  
cause, in order to effect personal service of process. Based on  
the aforementioned diligent search and inquiry, Affiant believes,  
and has so alleged in the above-captioned cause, that the name  
[name], insofar as it relates to ownership of the subject  
property, is a fictitious name used by one or more of the  
individuals referred to in the Complaint in this action to  
conceal the ownership of the subject property.

3. Affiant is uncertain of [name's] present residence, in that Affiant has been unable to locate the said [name]. However, the last known residence address from all records available to the Affiant is [address].

4. Based on all evidence available to Affiant at this time, the said [name] is not a minor and also is not a member of the armed forces of the United States of America or its allies.

\_\_\_\_\_  
[name]  
Assistant Attorney General

Sworn to and subscribed before  
me in the State and County  
aforesaid, this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

IN RE: The Forfeiture of  
Real Property Located in  
Dade County, Florida, more  
particularly described as  
[legal description].  
\_\_\_\_\_

CASE NO. \_\_\_\_\_

NOTICE OF ACTION

TO: [name]  
WHOSE PRESENT RESIDENCE ADDRESS  
IS UNKNOWN, BUT WHOSE LAST KNOWN  
RESIDENCE ADDRESS IS [address]

YOU ARE NOTIFIED that an action seeking forfeiture to  
the State of Florida of the following property in Dade County,  
Florida:

[legal description]

has been filed by Plaintiff, STATE OF FLORIDA, DEPARTMENT OF  
LEGAL AFFAIRS, under the provisions of the Florida RICO Act,  
Chapter 895, Fla. Stat.

You are required to serve a copy of your written  
defenses to the Complaint, if any, on [name], Assistant Attorney  
General, Department of Legal Affairs, [address], attorney of  
record appearing on behalf of Plaintiff, on or before [date], and  
file the original with the clerk of this Court either before  
service on Plaintiff's attorney or immediately thereafter;  
otherwise a default will be entered against you for the relief  
demanded in the Complaint.

WITNESS my hand and the seal of this Court on [date].

[name]  
Clerk of the Circuit Court

By: \_\_\_\_\_  
Deputy Clerk

Publication dates:  
[dates]



## LIS PENDENS AND RACKETEERING LIENS

One objective of any RICO forfeiture action is to preserve the properties subject to forfeiture while the litigation is pending. There are usually several ways to accomplish this objective; some RICO statutes contain special provisions such as RICO lien notices and court authority to grant preliminary injunctive relief. But state laws can also provide assistance by granting a litigant the right to file a notice of lis pendens, which informs interested parties that the property in question is the subject of litigation. As a practical matter, the filing of a lis pendens will operate to preclude the sale of property, since the purchaser is generally held to take the property subject to the claim noted in the lis pendens.

RICO lien notices are usually a more desirable means of restricting dissipation of property. RICO liens establish a lien against the property in favor of the government, although the exact nature of the lien will depend to some extent upon the statutory provisions creating the RICO lien. Some RICO lien provisions hold trustees of property personally liable for any conveyances or dissipations of the asset after being served with a notice; they may also allow for the filing of a lien notice prior to filing of the civil action upon a showing of probable cause. It is therefore important to understand the parameters of the lien notices described in your state RICO statute.

What kind of property is subject to a RICO lien notice? Unfortunately, some statutes do not specify whether real and personal property are appropriate subjects for RICO liens. Since the lien notices are usually filed in the official records of the county in which the property is located, its applicability to real property is obvious. Since personal property is movable, a lien notice may be of limited value if it is filed in the county clerk's office. It may therefore be advisable to file RICO liens with the appropriate state or federal titling agencies that customarily accept liens against property like cars, boats, and airplanes.





Please return original or recorded original to: Cameron Holmes, Attorney General's Office  
Special Investigations Division  
Phoenix, Arizona 85007

# NOTICE OF RACKETEERING LIEN

THIS NOTICE IS BEING GIVEN PURSUANT TO ARS SECTION 13-2314.02

The State of Arizona hereby gives notice to all persons that the State of Arizona claims a lien against the entire right, title and interest of all persons, including all individuals or entities capable of holding a legal or beneficial interest in property, in and to the real and personal property described in Appendix One hereto in order to secure the claim of the State of Arizona that the property described below is forfeited to the State pursuant to A.R.S. §§ 13-2314 and A.R.S. § 13-4301, et seq.

The property has been seized for forfeiture pending proceedings in the Superior Court in and for Maricopa County, in which a Complaint is pending numbered CV88-34047 and entitled:

In the Matter of: Jaime Javier Figueroa-Soto,  
Maria Elena Rivera de Figueroa, Jose Alfredo  
Carrillo, Alma Quinones Carrillo, Manuel Jesus  
Duarte, Julia D. Duarte, and David Villalobos  
Acosta; One Residence Located at 10261 East  
Jenan Drive, Scottsdale, Arizona, et al.;  
John/Jane Does 1-5; XYZ Enterprises 1-5; and  
ABC Corporations 1-5

and cross-reference numbered SW88-00284

In particular, the interests of the following persons known to have an interest are forfeited:

Jaime Javier Figueroa-Soto  
Maria Elena Rivera Yescas de Figueroa  
Jose Alfredo Carrillo  
Alma Quinones Carrillo  
Manuel Jesus Duarte  
Julia Delores Duarte  
David Villalobos Acosta

and, if property subject to forfeiture is conveyed, alienated, disposed of or otherwise rendered unavailable for forfeiture after the filing of this lien notice or provision of notice of pending forfeiture or after the filing and notice of a civil proceeding or criminal proceeding alleging forfeiture, whichever is earlier, the state may institute an action against any of the above persons to recover an amount equal to the fair market value of the property so rendered unavailable, together with reasonable investigative expenses and attorney fees.

The property subject to forfeiture is listed in Appendix One hereto.

In addition to being subject to forfeiture, the above property is separately subject to racketeering lien to the extent of any interest of any defendant in the above-referenced action now pending in the Superior Court in and for Maricopa County, in which the State claims liability of not less than \$126,987,500.00.

The defendants in the action and their present residences or principal places of business are:

Jaime Javier Figueroa-Soto  
Maria Elena Rivera Yescas de Figueroa  
10444 N. 69th Street  
Scottsdale, Arizona 85253

Jaime Javier Figueroa-Soto  
Maria Elena Rivera Yescas de Figueroa  
10261 East Jenan Drive  
Scottsdale, Arizona 85260

Manuel Jesus Duarte  
Julia Delores Duarte  
3312 East Arroyo Chico  
Tucson, Arizona

Jose Alfredo Carrillo  
Alma Quinones Carrillo  
9208 South Kachina  
Tempe, Arizona 85284

Jose Alfredo Carrillo  
Alma Quinones Carrillo  
P.O. Box 927 or  
3288 Potero Drive  
Nogales, Arizona 85628

David Villalobos Acosta  
3506 West Tyson  
Chandler, Arizona

The filing of this lien pursuant to A.R.S.

§ 13-2314.02 creates a lien in favor of the state in:

1. Any interest of any of the above persons in real property situated in any county in which it is filed, now maintained or hereafter acquired in the name of any of the above;

2. Any interest of any of the above persons in personal property situated in Arizona, now maintained or hereafter acquired in the name of any of the above except as expressly released by the filing of an amended lien, which will be made for the purposes of attorney's fees necessary under the


Sixth Amendment right to counsel in criminal cases and for necessary living and property maintenance expenses; and

3. Any of the property in Appendix One hereto, to the extent of the interest of any of the above.

The State is represented in the above-entitled action by Cameron H. Holmes, Assistant Attorney General, 1275 West Washington, Phoenix, Arizona, (602) 542-4853.

DATED this 29<sup>th</sup> day of December, 1988.

ROBERT K. CORBIN  
Attorney General

By   
CAMERON H. HOLMES  
Assistant Attorney General  
Attorneys for the STATE

STATE OF ARIZONA            )  
                                      )    ss.  
COUNTY OF MARICOPA        )

This instrument was acknowledged before me this 29<sup>th</sup> day of December, 1988, by Cameron H. Holmes, known to me.

  
NOTARY PUBLIC

My Commission Expires:

Aug 25, 1992

When recorded return to:  
Suzanne M. Chynoweth  
Asst. Attorney General  
1275 W. Washington, Room 259  
Phoenix, Arizona 85007

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## NOTICE OF PARTIAL RELEASE OF RACKETEERING LIEN

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Notice is hereby given that Plaintiff, State of Arizona, hereby partially releases its Racketeering Lien with regard to State of Arizona ex rel. Robert K. Corbin, Attorney General; Mary C. Short, Superintendent of Banks; and the Arizona Corporation Commission v. Timothy L. Sasak, et al., Maricopa County Superior Court Cause No. CV88-12008, recorded with the Motor Vehicle Division, Driver's License Group, on May 11, 1988, only as and to the following property listed on the Lien document on page 38, and only to the extent and purpose set forth below:

PROPERTY:

1984 Chrysler, listed on said racketeering lien as VIN 1C3BT56E0EC7209, LPN CER-030, and listed on Certificate of Title as Vehicle I.D. No. 1C3B T56E OEC 307209, Lic. No. CER 030.

This release is applicable only to the above-described property. All remaining portions of said racketeering lien remain in full force and effect and all other forfeited

property and interest referenced therein remain forfeited to  
the State as described therein.

DATED this 8<sup>th</sup> day of August, 1988.

ROBERT K. CORBIN  
Attorney General  
PATRICK M. MURPHY, Chief Counsel  
Financial Fraud Division

By Katrin M. Nelson  
SUZANNE M. CHYNOWETH  
KATRIN M. NELSON  
FRANK L. MURRAY  
Assistant Attorneys General  
Attorneys for Plaintiffs

SUBSCRIBED AND SWORN to before me this 8<sup>th</sup> day  
of August, 1988.

Susan L. Hill  
Notary Public

My Commission Expires:  
My Commission Expires Dec. 10, 1989

7133C  
FFD87-404

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

CHARLES W. BURSON, in his )  
official capacity as the )  
Attorney General and Reporter )  
of Tennessee, ex rel., The )  
STATE OF TENNESSEE, )

Plaintiff, )

v. )

No. \_\_\_\_\_

HENRY WALKER LUMPKINS, et al., )

Defendants. )

NOTICE OF TN-RICO LIEN

TAKE NOTICE that on April 19, 1989, the Attorney General and Reporter of Tennessee (the Attorney General) instituted the above-styled proceeding under the Tennessee Racketeer Influenced and Corrupt Organization Act of 1986 (TN-RICO), per Tenn. Code Ann. § 39-1-1001, et seq., in the Chancery Court of Davidson County, Tennessee, against HENRY WALKER LUMPKINS, et al.

1. This notice is filed pursuant to the provisions of Tenn. Code Ann. § 39-1-1007. Pursuant to Tenn. Code Ann. § 39-1-1007(a), no filing fee may be required for the filing of this RICO lien notice.

2. Pursuant to Tenn. Code Ann. § 39-1-1007(d)(1), this notice creates, as of the date of filing, a lien in favor of the State of Tennessee upon the defendant's interest in the following property:

- a) a 1989 Mercedes 300, VIN WDBEA30D5KA848412,
- b) the house and land known a 361 Nesbitt Lane, Madison, Davidson County, Tennessee, Davidson County Register of Deeds, Book 7653, Page 874,

c) a 1988 Camaro,  
d) a 1988 Dodge Caravan, VIN 2B4FK4131HR238717,  
e) retail food equipment and supplies and the business partnership known as Brin Tin Fish Market, located at 3101 Clarksville Highway, Nashville, Davidson County, Tennessee.

3. This lawsuit seeks forfeiture of the listed property to the State pursuant to Tenn. Code Ann. § 39-1-1006(b).

4. Pursuant to Tenn. Code Ann. § 39-1-1007(b)(2), this notice states that defendant's last known residential address and business address are:

HOME: 361 Nesbitt Lane	BUSINESS: Brin Tin Fish Market
Madison, Tennessee	3101 Clarksville Hwy
	Nashville, Tennessee

Respectfully submitted,

---

CHARLES W. BURSON (BRP 7775)  
Attorney General & Reporter

---

DAVID M. HIMMELREICH (BRP 6672)  
Deputy Attorney General  
Special Litigation Division  
(615) 741-2471

---

ALBERT L. PARTEE, III  
(BPR 10278)  
Assistant Attorney General  
450 James Robertson Parkway  
Nashville, TN 37219-5025  
(615) 741-6430



NOTICE OF RICO LIEN

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B., a/k/a C.D. or E.F., and  
d/b/a XYZ, Inc., and ZZZ, N.V.,

Defendant.  
\_\_\_\_\_ /

NOTICE OF RICO LIEN

The Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL  
AFFAIRS, in the above-styled cause, by and through the Attorney  
General and the undersigned designated Assistant Attorney  
General, hereby gives notice that:

1. Plaintiff has filed the above-styled civil action on  
[date], in the Circuit Court of \_\_\_\_\_ County, Florida,  
seeking forfeiture of property and other relief in personam  
pursuant to the Florida RICO (Racketeer Influenced and Corrupt  
Organization) Act, Chapter 895, Florida Statutes.

2. The forfeiture action names as a Defendant A.B.,  
whose last known residence address [and business address] is  
[are]:

[addresses]

3. Said Defendant has been known to use the following  
aliases, names, or fictitious names [and alternative residence  
and business addresses]:

C.D.

E.F.

[addresses]

4. Said Defendant has been known to own or control the following corporations, partnerships or other entities [which have the following addresses]:

XYZ, Inc.

ZZZ, N.V.

[addresses]

5. This Notice is filed pursuant to the provisions of §895.07, Fla. Stat. (1985). The Notice creates, as of the date of filing, a lien in favor of the STATE OF FLORIDA upon the following property of the Defendant [name]:

(a) Any "real property," as defined in §895.02(9), Florida Statutes, situated in the county where this Notice is filed, owned on the date of filing, or thereafter owned, by the Defendant under his own name or any of the names listed in paragraphs 3 and 4 above; and

(b) Any "beneficial interest," as defined in §895.02(8), Florida Statutes, situated in the county where this Notice is filed, owned on the date of filing, or thereafter owned, by the Defendant under his own name or any of the names listed in paragraphs 3 and 4 above.

Respectfully submitted,  
[name of Attorney General]

---

Assistant Attorney General

[address]

NOTICE OF LIS PENDENS

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B., et al.,

Defendants.

\_\_\_\_\_

NOTICE OF LIS PENDENS

Notice is hereby given that on [date] the State of Florida, Department of Legal Affairs, instituted the above-styled proceeding under the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, Chapter 895, Fla. Stat. (1985), in the Circuit Court in and for \_\_\_\_\_ County, Florida.

The property involved in that suit includes that certain parcel or tract more particularly described as follows:

[legal description]

The suit seeks forfeiture of said property to the State of Florida, pursuant to Section 895.05(2), Fla. Stat. (1985).

Attorney General

\_\_\_\_\_  
Assistant Attorney General

DEPARTMENT OF LEGAL AFFAIRS  
RICO Section  
The Capitol  
Tallahassee, Florida 32301  
Phone: (904) 488-9105



FIRST JUDICIAL DISTRICT COURT

COUNTY OF SANTA FE

STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. SF85-448(CR)

WESLEY SCHAAL,  
STANLEY PEPPER,  
PAUL McCONNELL,  
DAVID DEL BELLO,

Defendants.

NOTICE OF LIS PENDENS

NOTICE IS HEREBY GIVEN of the pendency of the above entitled lawsuit in the above-entitled Court.

The names of the parties are as indicated above.

The object of the lawsuit, among other things, is the forfeiture to the plaintiff of all of defendant Wesley Schaal's right title and interest in and to certain real property in Santa Fe County, New Mexico, described in a notice of Lis Pendens filed in this matter on December 6, 1985. The claim for forfeiture is based on the Indictment returned in this case on December 4, 1985. In Count 1 of that Indictment, the Grand Jury charged that certain property was acquired, or interest was maintained in property in violation of Section 30-42-4-C NMSA 1978, and, upon a judicial determination supporting the charge

of the Grand Jury, the property would be subject to forfeiture pursuant to Section 30-42-4 NMSA 1978.

Since the filing of the Indictment, and with the consent of the State of New Mexico pursuant to a Stipulation and Order filed and recorded on December 12, 1985 in the above matter, the State of New Mexico asserts additional rights for the reasons set forth above to the following real property presently in the name of Western Realty Associates, a New York limited partnership:

Lot 1, La Tierra Nueva, an unapproved 10.4 acre tract, formerly Tierra Grande, the plat for which was filed, for record in the office of the Clerk of Santa Fe County, New Mexico on August 16, 1979, as document No. 444,242.

PAUL BARDACKE  
Attorney General



G.T.S. KHALSA  
Assistant Attorney General  
Post Office Drawer 1508  
Santa Fe, New Mexico 87504-1508  
(505) 827-6020

The foregoing instrument was acknowledged before me this day of December 20, 1985, by G.T.S. Khalsa.

  
Notary Public

My commission expires

March 11, 1987

## **TEMPORARY INJUNCTIONS AND OTHER PRELIMINARY RELIEF**

Although many states require that complaints requesting injunctive relief specify that fact in the caption of the pleading, a separate motion is often required for temporary injunctions or restraining orders. If the temporary injunctive relief is requested on an ex parte basis because notice of the motion cannot or will not be given to the opposing party, a factual basis for issuance of the injunction must be presented to the court.

In some states, all facts presented to the court on an ex parte motion must be in affidavit form and must be attached to the motion. This requirement is intended to facilitate appeals of such orders; since most states allow immediate direct appeals of injunctive relief, appellate courts can determine the propriety of the trial court's action based on the complaint, the motion, and the affidavits rather than having to wait for a transcript of the hearing.

Preliminary injunctive relief can be addressed to a variety of issues in a civil RICO case, but it is most often sought to preserve assets. Orders prohibiting dissipation of assets can be directed to both defendants and others who are in possession of, or who legally control, forfeitable assets. The court can also prohibit the destruction of documents related to the case, and can order seizures of assets.

Ancillary to preliminary injunctive relief is the appointment of receivers to manage and preserve assets and businesses. Requests to appoint receivers may be included in the motion for preliminary injunctive relief; often, however, the need to appoint a receiver is presented to the court by a separate motion. Although receivers are usually appointed under general RICO provisions, some states have special laws governing receivers and their responsibilities. If state receivership laws would somehow thwart or interfere with the needs of the civil RICO case, ask the court to appoint an "asset manager" or "property conservator" under RICO and design that individual's responsibilities.





**MOTION FOR PRELIMINARY RELIEF**

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B., et al.,

Defendants.

MOTION FOR TEMPORARY INJUNCTION  
AND OTHER PRELIMINARY RELIEF

Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL  
AFFAIRS, hereby requests the Court to issue its Order granting a  
Temporary Injunction and Other Preliminary Relief. Plaintiff  
would show:

1. This is an action for forfeiture of assets and other  
civil relief under the Florida RICO Act, Ch. 895, Fla. Stat.  
(1985). This Court is authorized to grant preliminary relief  
pursuant to the provisions of §895.05(3) and (5), Fla. Stat.  
(1985).

2. The attached Affidavit of P.Q. shows that the  
Defendant, A.B., violated the RICO Act, §895.03(3), Fla. Stat.  
(1985), by associating with an enterprise and participating in  
the enterprise through a pattern of racketeering activity.

3. The attached Affidavit of R.S. shows that the  
Defendant has acknowledged use or acquisition of the following  
assets in the course of the RICO Act violation:

- a. a 1985 BMW Automobile [VIN]
- b. various gold chains and precious  
stones

- c. bank accounts at MNO Bank of Florida
- d. bank account (bank unknown) at Nassau, Bahamas
- e. securities and assets of XYZ, Inc., a Florida corporation

The foregoing assets are subject to forfeiture under the RICO Act, §895.05(2), Fla. Stat. (1985).

4. The attached Affidavit of T.U., Special Agent of the Florida Department of Law Enforcement specializing in financial investigations, shows that A.B. had no known lawful employment, and that the estimated net receipts to A.B. from the RICO violation were \$5 million. Based on the foregoing, there is reason to believe that A.B. has other assets of an unknown nature which are derived from the RICO Act violation and are therefore subject to forfeiture.

5. Plaintiff will be irreparably injured, and will have no adequate remedy at law, unless the Court grants preliminary relief preserving Defendant's forfeitable assets.

6. Defendant should not be given prior notice of this proceeding because he would in all likelihood render his assets unavailable for forfeiture if notified of this proceeding.

WHEREFORE, Plaintiff requests the Court to order the following relief:

(1) Enjoin Defendant and his representatives and agents from disposing of, transferring, relocating, dissipating or otherwise altering the status of his assets and those of XYZ, Inc., without prior Court approval; providing, however, that Defendant may use assets other than those specifically identified above for normal daily living and corporate operating expenses.

(2) Direct Defendant and his representatives and agents to maintain all records of personal and corporate transactions,

and not to destroy, alter, relocate or otherwise render such records unavailable.

(3) Direct the MNO Bank of Florida to immediately cease disbursement from any and all bank accounts of Defendant.

(4) Authorize agents of Plaintiff, or of any law enforcement agency working within its jurisdiction, to seize and hold the personal property described above, pursuant to §895.05(3), Fla. Stat. (1985).

(5) Authorize Plaintiff to commence pretrial discovery directed toward locating Defendant's assets upon service of the order granting preliminary relief, pursuant to Rule 1.310(a), Fla. R. Civ. P.

(6) Authorize all of the foregoing without requiring a bond, pursuant to Rule 1.610(b), Fla. R. Civ. P.

Respectfully submitted,



ORDER FOR PRELIMINARY RELIEF

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B., et al.,

Defendants.

ORDER GRANTING TEMPORARY INJUNCTION  
AND OTHER PRELIMINARY RELIEF

This Cause came on for hearing upon Plaintiff's Motion for Temporary Injunction and other Preliminary Relief. Upon review of the affidavits submitted in support of this motion, the Court makes the following preliminary findings of fact:

1. The Defendant A.B. was associated with an enterprise, consisting of the individual Defendants named in the Complaint in this action, and he conducted or participated in this enterprise through the following criminal acts:

- (a) [First predicate crime and statute violated]
- (b) [Second predicate crime and statute violated]

The foregoing acts were interrelated and not isolated acts, so as to form a pattern of racketeering activity. Plaintiff has made a sufficient showing that Defendant violated the Florida RICO Act, §895.03(3), Fla. Stat. (1985).

2. There is sufficient evidence to support Plaintiff's contention that A.B. used or acquired the following assets in the course of the RICO Act violation, so as to render them subject to forfeiture to the State under §895.05(2), Fla. Stat. (1985):

- a. A 1985 BMW Automobile [VIN]
- b. Various gold chains and precious stones
- c. Bank account at MNO Bank of Florida
- d. Bank account (bank unknown) in Nassau, Bahamas
- e. Securities and assets of XYZ, Inc., a Florida corporation.

These facts establish that Plaintiff has a clear legal right to the relief sought.

3. There is sufficient evidence, based on the estimated net proceeds of the RICO violation and the absence of any apparent lawful employment, to support Plaintiff's contention that A.B. has other assets, of an unknown nature, which were derived from the RICO violation and are therefore subject to forfeiture.

4. Plaintiff would be irreparably injured, and would have no adequate remedy at law, if the Court does not grant preliminary relief preserving the Defendant's forfeitable assets.

5. This relief is granted without notice to Defendant because Defendant would in all likelihood render these assets unavailable for forfeiture if notified of this proceeding.

It is therefore ORDERED and ADJUDGED that:

1. Plaintiff's Motion for Preliminary Relief is GRANTED.

2. The Defendant A.B. and his agents, servants, employees and attorneys, as well as all other persons in active concert or participation with them who receive actual notice of this Order, are hereby enjoined from disposing of, transferring, relocating, dissipating or otherwise altering the status of his assets and those of XYZ, Inc., without prior approval of the Court pursuant to Rule 1.610, Fla.R.Civ.P., and §895.05(5), Fla. Stat. (1985). Defendant may, however, use assets other than those specifically named above to meet his own normal daily living expenses. He may also operate XYZ, Inc., and disburse

corporate accounts in order to meet the corporation's normal daily operating expenses.

3. The Defendant A.B. and the other persons identified in paragraph 2 above are further ordered to maintain all records of his transactions and those of XYZ, Inc., and not to destroy, alter, relocate or otherwise render such records unavailable.

4. The MNO Bank of Florida is hereby directed immediately to cease any disbursements from any and all accounts of the Defendant A.B. upon service of this Order.

5. Any authorized agent of the Plaintiff, or of a law enforcement agency within its jurisdiction, may seize the automobile described above, and may also seize any items of jewelry meeting the description above, which are in possession or constructive possession of the Defendant A.B. pursuant to §895.05(3), Fla. Stat. (1985). The seizing agency shall act as receiver of the seized items, and shall forthwith report to the Court the identity and condition of the seized items.

6. Plaintiff may commence pretrial discovery directed toward locating Defendant's other assets immediately following service of this order on Defendant, under Rule 1.310(a), Fla.R.Civ.P.

7. Because Plaintiff is a public agency proceeding in the public interest no bond shall be required.

8. This Order shall remain in force and effect until further order of this Court.

DONE and ORDERED in Chambers at Miami, Florida, at [time] on [date].

---

Circuit Judge





NOTED - 10/13/87  
OCT 13 5 01 PM '87

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 85CV7030, Courtroom 14

-----  
PLAINTIFF'S PLAN FOR SALE OF SEIZED VEHICLES AND PROPOSED RECEIVER  
-----

STATE OF COLORADO ex rel. DUANE WOODARD, Attorney General,

Plaintiff,

v.

ROBERT L. FRANKLIN a/k/a ROBERT L. FRANKLIN JR.,  
STEPHANIE J. O'CONNOR a/k/a STEPHANIE JANE O'CONNOR,  
individually and d/b/a A AND A DELICIOUS DISHES,  
A AND A DELICIOUS DISHES CATERING SERVICE,  
A AND A DELICIOUS DISHES CATERING SERVICE, INC.,  
AAA DELICIOUS DISHES, BAD GIRLS, BAD GIRLS, INC.,  
B.G.I., B.G.I ESCORTS, BEST BLONDES, BEST BLONDES IN TOWN,  
BLONDS PLAYMATES, BLONDES UNLIMITED, BLONDIES UNLIMITED,  
BLONDS UNLIMITED, BLONDES L.T.D., CHERRY PATCH, KINKETTES,  
PERFECT 10, RODEO BLONDES, and SANTA'S BLONDES;  
YENOM, INC. d/b/a CALIFORNIA NAILS, a Colorado corporation;  
DOUGLAS A. BOWMAN; and  
KATHLEEN P. BOWMAN,

Defendants.  
-----

Plaintiff by and through the Attorney General makes the following submission pursuant to this court's order appointing a receiver of September 10, 1987:

1. Plaintiff recommends Richard A. Waltz, Esq. as a proposed receiver. Counsel for plaintiff has discussed the matter with Mr. Waltz and he is willing to act in such capacity. A copy of his qualifications is attached hereto as attachment A. Mr. Waltz has requested that his compensation be at the rate of \$100 per hour.

2. Rule 66(b), C.R.C.P. provides that, before entering upon his duties, the receiver shall be sworn to perform them faithfully and shall file a bond with the clerk of this court in such sum as the court shall direct with one or more sureties approved by the court, to the effect that he will faithfully discharge his duties and will pay over and account for all money and property which may come into his hands and will obey the orders

of the court herein. Plaintiff estimates the value of the seized vehicles to be \$50,000 and would recommend that the bond be set in this amount.

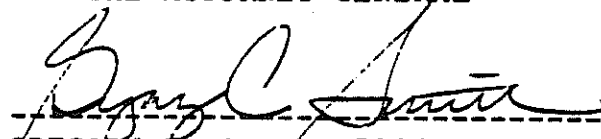
3. Plaintiff understands that the vehicles, in most cases, have not been driven since the date of seizure in January 1985. In light of this plaintiff anticipates that the vehicles will need to be serviced prior to being started. The Aurora Police Department (APD) has a service garage and can perform some of the necessary service and repairs for less than retail charges. Plaintiff requests that APD be compensated from the proceeds of the sale of the seized vehicles for any services it performs on the vehicles.

4. Plaintiff anticipates there will be additional expenses such as detailing the vehicles and the cost of the receiver's bond. Plaintiff requests that the court enter an order that any costs reasonably related to the sale of the vehicles be refunded to either APD or the receiver, whoever incurred the cost.

5. Additional elements of plaintiff's plan are set out in the proposed Order Appointing Receiver and Establishing the Receiver's Duties and Responsibilities filed simultaneously herewith.

6. Mr. Waltz is currently in trial on a case in Aspen, Colorado. The trial is expected to conclude on October 16, 1987. If Mr. Waltz is appointed by the court, plaintiff will have him file the oath and bond with the court within ten days.

FOR THE ATTORNEY GENERAL

  
-----  
GREGORY C. SMITH, 5924  
Deputy Attorney General  
Enforcement Section

Attorneys for Plaintiff

1525 Sherman Street, 3d Floor  
Denver, Colorado 80203  
Telephone: 866-5699  
AG Alpha No. LW SP EAAKJ  
AG File No. ESP1237/2

RICHARD A. WALTZ

1101 S. St. Paul  
Denver, Colorado 80210

(303) 778-9311

PROFESSIONAL OBJECTIVES

A successful and fulfilling law practice with the major emphasis on litigation. Associating with professionals who share these goals.

PERTINENT EXPERIENCE

1981 - 1987      Hall and Evans  
                    1200 - 17th Street, Denver, Colorado 80210

Litigation Partner/Associate whose practice primarily focused on the defense of complex litigation, personal injury, products liability, public entity and professional malpractice cases.

1976 - 1981      Office of the Attorney General of Ohio  
                    30 East Broad Street, Columbus, Ohio 43215

Chief State Prosecutor of Medicaid Fraud requiring the supervision of 40 professionals responsible for the prosecution of complex civil and criminal cases in the health care area. Among others, convicted the Chief State Auditor of Nursing Homes and the owner of a chain of homes of bribery, while obtaining \$500,000 restitution for the state.

Elected the 1980 President of the National Association of Medicaid Fraud Control Units acting as national spokesperson for more than 30 states in lobbying Congress for Medicaid legislation and improved regulations with various Federal agencies.

1974 - 1976      Office of the Attorney General of Ohio

Special Litigation Section -- Represented the Ohio National Guardsmen in civil litigation arising out of the shootings which occurred on the Kent State University campus in 1970.

RICHARD A. WALTZ

-2-

EDUCATION

Law School:

University of Toledo, College of Law, J.D., 1974  
Class Rank - 18th in Class of 127  
Research Editor, University of Toledo Law Review  
Graduate Assistant and Teaching Fellow, 1973

Undergraduate:

The Ohio State University, B.A., 1969

MILITARY EXPERIENCE

1969 - 1971      SP5, E-5; Honorable Discharge.

BAR ADMISSIONS

State of Ohio and all Ohio Federal Courts, 1974  
State of Colorado and Colorado Federal Courts, 1981

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within PLAINTIFF'S PLAN FOR SALE OF SEIZED VEHICLES AND PROPOSED RECEIVER and ORDER APPOINTING RECEIVER AND ESTABLISHING THE RECEIVER'S DUTIES AND RESPONSIBILITIES upon all parties herein by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado this 13th day of October 1987, addressed as follows:

Peter H. Ney  
1869 West Littleton Blvd.  
Littleton, CO 80120

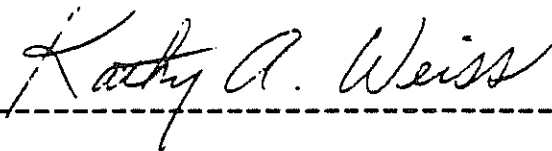
Norman S. Mueller  
1034 Logan St.  
Denver, CO 80203

Joan Beck  
Aurora Police Dept.  
15001 East Alameda Dr.  
Aurora, CO 80012

Gary Lozow  
1600 Pennsylvania  
Denver, CO 80203

Colo. Bureau of Investigation  
690 Kipling St.  
Denver, CO 80215  
ATTN: Jim Hardtke

Paul Prendergast, Esq.  
1244 So. Wadsworth Blvd.  
Lakewood, CO 80226

  
-----



14 OCT 21 '87

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 85CV7030, Courtroom 14

ORDER APPOINTING RECEIVER AND ESTABLISHING THE RECEIVER'S  
DUTIES AND RESPONSIBILITIES

STATE OF COLORADO ex rel. DUANE WOODARD, Attorney General,  
Plaintiff,

v.

ROBERT L. FRANKLIN a/k/a ROBERT L. FRANKLIN JR.,  
STEPHANIE J. O'CONNOR a/k/a STEPHANIE JANE O'CONNOR,  
individually and d/b/a A AND A DELICIOUS DISHES,  
A AND A DELICIOUS DISHES CATERING SERVICE,  
A AND A DELICIOUS DISHES CATERING SERVICE, INC.,  
AAA DELICIOUS DISHES, BAD GIRLS, BAD GIRLS, INC.,  
B.G.I., B.G.I. ESCORTS, BEST BLONDES, BEST BLONDES IN TOWN,  
BLONDS PLAYMATES, BLONDES UNLIMITED, BLONDIES UNLIMITED,  
BLONDS UNLIMITED, BLONDES L.T.D., CHERRY PATCH, KINKETTES,  
PERFECT 10, RODEO BLONDES, and SANTA'S BLONDES;  
YENOM, INC. d/b/a CALIFORNIA NAILS, a Colorado corporation;  
DOUGLAS A. BOWMAN; and  
KATHLEEN P. BOWMAN,

Defendants.

THIS MATTER came before the court on plaintiff's recommendation of proposed receiver and plan for the sale of certain seized vehicles, and the court having reviewed the file in this matter and having become familiar with the instant case makes the following findings, conclusions and order:

1. Plaintiff filed its motion for appointment of a receiver on July 2, 1987. The motion sought authorization of the court to sell ten vehicles that were seized from the defendants Franklin and O'Connor in January 1985. These vehicles are:

a. One 1979 Chevrolet Corvette automobile,  
VIN 1Z8789S440297.

OCT 2 1987

b. One 1978 Cadillac, Coup de Ville, automobile, VIN 6D47S8Q197702.

c. One 1955 GMC truck, VIN E248293200.

d. One 1979 Ford Bronco automobile, VIN U15HLEH0880.

e. One 1974 Chevrolet Corvette automobile, VIN 1Z37T45407253.

f. One 1977 1/2 Rolls Royce, Silver Shadow, automobile, VIN SRF31314.

g. One 1984 Ford Bronco automobile, VIN 1FMEU15G8ELA20987.

h. One 1953 Bentley automobile, VIN B-210UM.

i. One 1964 Mercedes Benz, 230 SL, automobile, VIN 1130 42-10-006895.

j. One 1977 Buick automobile, VIN 4X69K7H514037.

2. This court by its order of September 10, 1987 granted plaintiff's motion for appointment of a receiver and ordered plaintiff to submit to the court the name of a proposed receiver and plan for sale within 30 days.

3. The court is in receipt of plaintiff's recommendation of proposed receiver and plan for sale.

WHEREFORE, IT IS ORDERED as follows:

1. Plaintiff has recommended Richard A. Waltz, Esq. of the law firm of Goss and Waltz with offices located at 950 So. Cherry St., #1120, Denver, Colorado as a qualified and interested candidate for the receivership position. The court hereby finds that Mr. Waltz is qualified and hereby appoints him as receiver herein. The appointment shall be effective upon the receiver's taking of the oath and filing of the bond described below. The compensation for the receiver is set at \$100 per hour.

2. The receiver shall file a bond with the clerk of this court in the sum of \$50,000, with one or more sureties approved by the court, to the effect that he will faithfully discharge his



duties and will pay over and account for all money and property which may come into his hands and will obey the orders of the court herein.

3. The receiver shall file a statement with the court within 20 days which details a proposed plan for the sale of the vehicles. This plan shall be served on all parties hereto.

4. The parties are directed to file with the court any objections they may have to the receiver's plan within five days of service. Thereafter, the court will review the plan and issue an order governing the sale process.

5. The receiver is authorized to take possession and control of the aforementioned vehicles and to sell the vehicles in accordance with the orders of this court.

6. No sale of any of the seized vehicles shall occur without an order of the court authorizing the terms of the sale including the sale price. When the receiver has a reasonable offer on a vehicle, such offer shall be conveyed to the court together with a proposed order approving the sale. The offer shall be hand delivered to all parties in the case with proof of such delivery filed with the court. The parties shall have 48 hours within which to file objections, if any, to the sale.

7. If the court approves the sale, it will direct the State of Colorado through its Motor Vehicle Division to issue a title for the vehicle in the name of the receiver to permit the receiver to convey title to the prospective purchaser free of liens and encumbrances.

8. The receiver shall open an interest bearing account into which he shall deposit the proceeds from the sale of the vehicles. No withdrawals from the account shall be made except by order of the court.

9. The receiver shall maintain records of all time he expends in connection with the discharge of his duties as receiver. Copies of these records shall accompany all requests for compensation. The receiver's compensation, as ordered by the court, shall be paid only from the proceeds of the sale of the vehicles ("sale proceeds").

10. Plaintiff has indicated that the vehicles need to be serviced and cleaned prior to their sale. Plaintiff has further indicated that the Aurora Police Department (APD) can perform some of the servicing for less than the cost at retail. The

court authorizes APD to perform the services. Thereafter, APD is directed to submit its statement of costs for such services. If the court determines the costs to be reasonable, it will order that APD be reimbursed its costs from the sale proceeds.

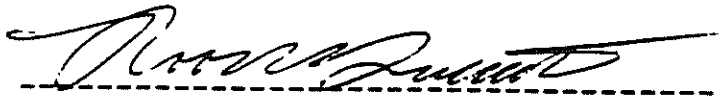
11. Any and all other reasonable costs related to the sale of the vehicles or the functioning of the receiver shall be submitted to the court for approval. If approved by the court, the court will direct that the costs be reimbursed from the sale proceeds.

12. The receiver shall be and hereby is authorized, in his discretion, to employ such agents, employees, servants, and accountants as may in his judgment be advisable or necessary in the conduct of his affairs.

13. Prior to the dismissal of the receivership, the receiver shall furnish to the court and the parties a final report and accounting of all receipts and expenditures.

DATED October \_\_\_\_, 1987.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Robert P. Fullerton", is written over a horizontal dashed line.

ROBERT P. FULLERTON  
District Judge

MAY 10 1988

MAY 10 1988

COPY  
CLERK OF SUPERIOR COURT

5764C;FFD87-404  
ROBERT K. CORBIN  
Attorney General  
PATRICK M. MURPHY, Chief Counsel  
Financial Fraud Division  
SUZANNE M. CHYNOWETH; 006835  
KATRIN M. NELSON; 006427  
FRANK L. MURRAY; 003443  
Assistant Attorneys General  
Attorney for State of Arizona  
Department of Law Building, Room 259  
1275 West Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 255-3702

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, ex rel. ROBERT K. ) Priority Case  
CORBIN, Attorney General; MARY C. ) A.R.S. § 13-2314(I)  
SHORT, Superintendent of Banks, )  
and the ARIZONA CORPORATION )  
COMMISSION, ) NO. CV 88 12008

Plaintiffs,

vs.

TIMOTHY L. SASAK, et al.,  
Defendants.

ORDER TO SHOW CAUSE

The Court having reviewed the State's Petition for  
Order to Show Cause as to Preliminary Injunction and  
Appointment of a Receiver, the State's verified Complaint, and  
the Affidavit of Leroy Johnson, and good cause appearing,

IT IS ORDERED that each of the following defendants:

TIMOTHY L. SASAK, individually and dba Avanti  
Associates 2722 and PAULA J. SASAK, his wife;

1 GEORGE DEMAS, individually and dba DEMAS  
2 FINANCIAL SERVICES, and CLAUDIA P. DEMAS, his  
3 wife;

4 RICHARD PAUL FRANKE and ROBERTA A. FRANKE, his  
5 wife;

6 NASHAT T. KHALAF and KHAWLA KHALAF, his wife;

7 MARC T. LaPLANTE and DEBORAH LaPLANTE, his wife;

8 ROGER D. PHILLIPS and SUSAN PHILLIPS, his wife;

9 GENEVIEVE L. SALLAS and PETER SALLAS, her husband;

10 STEVEN M. SILVERMAN and JANE DOE SILVERMAN, his  
11 wife;

12 ... T. ANDREW J. TIMLIN, JR. and JOYCE TIMLIN, his wife;

13 FRANCESCA HAYDEN WALKER; ROBERT LYLE WALKER;  
14 AVANTI ASSOCIATES FINANCIAL SERVICES, INC., an  
15 Arizona corporation;

16 AVANTI ASSOCIATES FIRST DEED OF TRUST FUND,  
17 LIMITED PARTNERSHIP;

18 AVANTI ASSOCIATES FIRST MORTGAGE FUND LIMITED  
19 PARTNERSHIP;

20 AVANTI ASSOCIATES FIRST MORTGAGE FUND 84 LIMITED  
21 PARTNERSHIP;

22 AVANTI ASSOCIATES FIRST MORTGAGE FUND 85 LIMITED  
23 PARTNERSHIP;

24 AVANTI ASSOCIATES FIRST MORTGAGE LIMITED  
25 PARTNERSHIP;

26 AVANTI ASSOCIATES FIRST TRUST DEED FUND LIMITED  
PARTNERSHIP;

AVANTI ASSOCIATES FIRST TRUST DEED LIMITED  
PARTNERSHIP;

AVANTI ASSOCIATES MANAGEMENT LIMITED PARTNERSHIP;

AVANTI FIRST MORTGAGE FUND LIMITED PARTNERSHIP;

AVANTI FIRST MORTGAGE LIMITED PARTNERSHIP;

1 AVANTI FIRST TRUST DEED FUND LIMITED PARTNERSHIP;  
2 AVANTI FIRST TRUST DEEDS LIMITED PARTNERSHIP;  
3 AVANTI MORTGAGE CORPORATION, an Arizona  
4 corporation;  
5 AVANTI ASSOCIATES 5112, an Arizona General  
6 Partnership;  
7 AMERISPEC PROPERTIES, INC., individually and dba  
8 Unique Classic Cars, a Nevada corporation;  
9 CASA GRANDE MOUNTAIN PARK DEVELOPMENT GROUP, an  
10 Arizona Limited Partnership;  
11 D.D.I., a Nevada corporation;  
12 FALCON CORPORATE CENTER PARTNERS, an Arizona  
13 General Partnership;  
14 RICHARD P. FRANKE & COMPANY, P.C., an Arizona  
15 corporation;  
16 FREEWAY VILLAGE PARTNERS, an Arizona General  
17 Partnership;  
18 ROLLING HILLS REALTY, INC., a Nevada corporation;  
19 SAL LAB, INC., an Arizona Corporation;  
20 SASAK & COMPANY, INC., aka SASAK, INC., an  
21 Arizona corporation;  
22 SOUTHWEST CINDER CORPORATION, an Arizona  
23 corporation  
24

25 be and appear personally before this Court in the Courtroom of  
26 the Honorable JOHN H. SEIDEL, Judge of the Superior  
Court, Division 17, Room 1101, SUPERIOR Court  
Building, 201 West Jefferson Street, Phoenix, Arizona, on  
the 19 day of MAY, 1988 at 9:30  
o'clock A.M., and then and there show cause, if any they  
have, why the Preliminary Injunction and Appointment of a

1 Receiver sought by the State in its verified Complaint should  
2 not be granted.

3 DONE IN OPEN COURT this 10 day of May,  
4 1988.

5 **JOHN M. SEIDEL**

6 **JUDGE OF THE SUPERIOR COURT**

6207C;FFD87-404  
ROBERT K. CORBIN  
Attorney General  
PATRICK M. MURPHY, Chief Counsel  
Financial Fraud Division  
SUZANNE M. CHYNOWETH; 006835  
KATRIN M. NELSON; 006933  
FRANK L. MURRAY; 003443  
Assistant Attorneys General  
Attorneys for Plaintiffs  
Department of Law Building, Room 259  
1275 West Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 255-3702

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, ex rel. ROBERT K. )	Priority Case
CORBIN, Attorney General; MARY C. )	A.R.S. § 13-2314(I)
SHORT, Superintendent of Banks, and )	
the ARIZONA CORPORATION COMMISSION, )	NO. CV88-12008
)	
Plaintiffs, )	AMENDED
)	ORDER APPOINTING
vs. )	RECEIVER
)	
TIMOTHY L. SASAK, et al., )	(Assigned to the Hon.
)	John H. Seidel
)	
Defendants. )	
)	

The State of Arizona having filed a complaint alleging violations of the Arizona Consumer Fraud Act (A.R.S. § 44-1521 et seq.) and the Arizona Anti-Racketeering Act (A.R.S. § 13-2301 et seq.) and the parties having agreed regarding the appointment of a receiver as to the entities described below, the court makes the following findings and enters the following orders:

. . .

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## 11

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1 Classic Cars; CASA GRANDE MOUNTAIN PARK DEVELOPMENT GROUP;  
2 FALCON CORPORATE CENTER PARTNERS; FREEWAY VILLAGE PARTNERS; SAL  
3 LAB, INC.; SASAK & COMPANY, INC., aka SASAK, INC.; SOUTHWEST  
4 CINDER CORPORATION. (hereafter "receivership entities"), and  
5 directing said receiver upon his qualification as such to:

6           1. Take exclusive custody, control and possession of  
7 all bank accounts, goods, chattels, causes of action, credits,  
8 monies, effects, books and records of account and other papers  
9 and property or interests owned or held by the receivership  
10 entities or placed under the control of the receiver by court  
11 order, including but not limited to, those properties attached  
12 as Exhibit A (hereafter "receivership properties") with full  
13 power to sue for, collect, receive and take possession of such  
14 receivership properties;

15           2. Conserve, hold and manage all receivership  
16 properties in order to prevent loss, damage and injury to  
17 creditors and others who have done business with receivership  
18 entities; to obtain an accounting thereof; and to adjust and  
19 protect the interests of such creditors and other persons doing  
20 business with receivership entities as approved by the Court;

21           3. Engage and employ, subject to approval of the  
22 Court, attorneys, accountants, appraisers and other persons to  
23 evaluate any receivership properties, as the receiver may deem  
24 necessary in the performance of his duties and responsibilities  
25 in discharging the authority conferred by this order;

26           4. Make such payments and disbursements from the

1 receivership properties and to incur such expenses as may be  
2 necessary and advisable in discharging his duties as receiver,  
3 and to present to this court from time to time an accounting of  
4 all such payments, disbursements and expenses;

5         5. Subject to approval by this Court, institute,  
6 prosecute, defend, compromise, intervene in, seek stays in, or  
7 become a party to, such suits, actions or proceedings at law or  
8 in equity as may in the receiver's opinion be necessary for the  
9 collection, recovery, protection, maintenance or preservation  
10 of the receivership properties;

11         6. Present to this court as soon as practicable his  
12 written report reflecting the existence and value of all  
13 receivership properties, the extent of any liabilities, both  
14 those claimed by others to exist and those which the receiver  
15 believes to be the legal obligations of receivership entities,  
16 and any further information the receiver believes may assist  
17 the court in the administration of this receivership; and

18         7. Upon reasonable notice to the receiver, make the  
19 books and records in the possession and control of the receiver  
20 available to investigators of agencies of federal, state or  
21 local governments or other parties to this lawsuit for their  
22 inspection and copying in a reasonable manner as deemed  
23 appropriate by the receiver.

24         IT IS FURTHER ORDERED that, except by leave of this  
25 court, during the pendency of the receivership ordered herein,  
26 the defendants and all customers, principals, investors,

1 creditors, stockholders, lessors, and other persons seeking to  
2 establish or enforce any claim, right or interest against or on  
3 behalf of receivership entities and all others acting for or on  
4 behalf of such persons including attorneys, trustees, agents,  
5 sheriffs, constables, marshalls and other officers and their  
6 deputies and their respective attorneys, servants, agents,  
7 employees, be and are hereby stayed from:

8 1. Commencing or prosecuting any suit or proceeding  
9 against receivership entities;

10 2. Commencing, prosecuting, continuing or enforcing  
11 any suit or proceeding in the name or on behalf of receivership  
12 entities;

13 3. Accelerating the due date of any obligation or  
14 claimed obligation, enforcing any lien upon, or taking or  
15 attempting to take possession of, or retaining possession of,  
16 any receivership properties, or attempting to foreclose,  
17 forfeit, alter or terminate any interests of receivership  
18 entities, in any property, whether such acts are part of a  
19 judicial proceeding or otherwise;

20 4. Using self-help or executing or issuing, or  
21 causing the execution or issuance of any court attachment,  
22 subpoena, replevin, execution or other process for the purpose  
23 of impounding or taking possession of or interfering with, or  
24 creating or enforcing a lien upon any receivership properties;  
25 and

26 5. Doing any act or thing whatsoever to interfere

1 with the taking control, possession or management by the  
2 receiver appointed herein of the receivership properties or to  
3 in any way interfere with the receiver, or to harass or  
4 interfere with said receiver, or to interfere in any manner  
5 with the exclusive jurisdiction of this court over the  
6 receivership properties; and

7           IT IS FURTHER ORDERED that nothing in the foregoing  
8 paragraphs shall prevent any person from maintaining an action  
9 against defendants herein or any other persons in connection  
10 with matters arising out of business transacted by receivership  
11 entities, providing that such person does not maintain or  
12 prosecute said action against receivership entities or the  
13 receiver appointed pursuant to this order, in violation of this  
14 order.

15           IT IS FURTHER ORDERED that the receiver named herein  
16 shall, as soon as is practicable, file with the Court a bond to  
17 be approved by the Court in the amount of \$200,000.00,  
18 conditioned that he will faithfully discharge the duties set  
19 forth herein and obey the orders of this Court.

20           IT IS FURTHER ORDERED that all defendants in the  
21 above-entitled action and their respective officers, directors,  
22 agents, servants, employees, attorneys, successors, accountants  
23 and assigns, and those persons in active concert or  
24 participation with them and each of them be and hereby are  
25 enjoined during the pendency of this action, from directly or  
26 indirectly:


1           1. Destroying, secreting, defacing, transferring or  
2 otherwise altering or disposing of any books, records,  
3 accounts, or any other papers or any kind of the receivership  
4 entities;

5           2. Transferring, receiving, altering, selling,  
6 encumbering, pledging, assigning, liquidating or otherwise  
7 disposing of any assets, funds or property owned, controlled or  
8 in the possession of or in which an interest is held or claimed  
9 by receivership entities or the receiver appointed herein  
10 unless otherwise ordered by the court;

11           3. Obstructing or interfering or refusing to  
12 cooperate with the receiver appointed pursuant to this order,  
13 or his duly authorized agents, in the exercise of their lawful  
14 authority under the orders of this Court.

15           IT IS FURTHER ORDERED that this Order supercedes the  
16 Order Appointing Receiver previously entered by the Court and  
17 dated May     , 1988.

18           The following parties agree to the contents contained  
19 herein:  
20

21   
22 \_\_\_\_\_  
23 MICHAEL R. SCHEURICH for Dan Drake on behalf of:

24 TIMOTHY L. SASAK

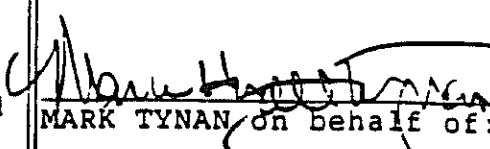
25 PAULA J. SASAK

26 TIMOTHY L. SASAK dba Avanti Associates 2722;


AVANTI ASSOCIATES MANAGEMENT LIMITED PARTNERSHIP;

SASAK AND COMPANY, INC, aka SASAK, INC., an Arizona Corporation;

AVANTI MORTGAGE CORPORATION, an Arizona Corporation

  
MARK TYNAN on behalf of:

AVANTI ASSOCIATES FIRST MORTGAGE FUND 84 LIMITED PARTNERSHIP;  
AVANTI ASSOCIATES FIRST MORTGAGE FUND 85 LIMITED PARTNERSHIP;  
AVANTI ASSOCIATES FIRST DEED OF TRUST FUND LIMITED PARTNERSHIP;  
AVANTI ASSOCIATES FIRST MORTGAGE FUND LIMITED PARTNERSHIP;  
AVANTI ASSOCIATES FIRST MORTGAGE LIMITED PARTNERSHIP;  
AVANTI FIRST MORTGAGE LIMITED PARTNERSHIP;  
AVANTI ASSOCIATES FIRST TRUST DEED FUND LIMITED PARTNERSHIP;  
AVANTI ASSOCIATES FIRST TRUST DEED LIMITED PARTNERSHIP;  
AVANTI FIRST MORTGAGE FUND LIMITED PARTNERSHIP;  
AVANTI FIRST TRUST DEED FUND LIMITED PARTNERSHIP;  
AVANTI FIRST TRUST DEEDS LIMITED PARTNERSHIP

  
MARK KENNEDY on behalf of:


RICHARD P. FRANKE  
ROBERTA A. FRANKE and  
RICHARD P. FRANKE & COMPANY, P.C.

  
TIMOTHY L. SASAK on behalf of:

AVANTI ASSOCIATES 5112; an Arizona General Partnership;  
FREEWAY VILLAGE PARTNERS, an Arizona General Partnership;  
FALCON CORPORATE CENTER PARTNERS, an Arizona General Partnership;  
CASA GRANDE MOUNTAIN PARK DEVELOPMENT GROUP, an Arizona Limited Partnership;

  
MICHAEL J. LAVELLE on behalf of:

STEVEN SILVERMAN and TOBY LYNN SILVERMAN

  
STEVEN SILVERMAN or ANDREW J. TIMLIN  
on behalf of:

AMERISPEC PROPERTIES, INC. individually and dba Unique Classic Cars, a revoked Nevada corporation;  
SOUTHWEST CINDER CORPORATION, a revoked Arizona Corporation

1  
2  
3 MARTIN D. LaPRADE on behalf of:

4 GENEVIEVE L. SALLAS  
5 PETER SALLAS  
6 SAL LAB, INC., an Arizona Corporation;  
7 AVANTI ASSOCIATES FINANCIAL SERVICES, INC., an Arizona  
8 Corporation

9  
10 Andrew J. Timlin  
11 ANDREW J. TIMLIN

12  
13 ROBERT K. CORBIN  
14 Attorney General  
15 PATRICK M. MURPHY, Chief Counsel  
16 Financial Fraud Division

17  
18 By Suzanne M. Chynoweth  
19 SUZANNE M. CHYNOWETH  
20 KATRIN M. NELSON  
21 FRANK L. MURRAY  
22 Assistant Attorney General  
23 Attorneys for Plaintiffs

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JOHN H. SEIDEL  
Judge of the Superior Court





1 [6212C]

2 EXHIBIT A

3 Real Property

4 Real property and improvements owned by CASA GRANDE  
5 MOUNTAIN PARK DEVELOPMENT GROUP:

- 6 (1) Parcel Numbers 511-73-001 through 511-73-008,  
7 legally described as:

8 Parcels 17 through 24 inclusive, as shown on  
9 Survey entitled SIERRA DE CASA GRANDE,  
10 Recorded in Book 1 of Surveys, Page 193,  
11 Records of Pinal County, Arizona and being a  
12 Portion of Section 26, Township 7 South, Range  
13 6 East of the Gila and Salt River Base and  
14 Meridian, Pinal County, Arizona.

15 EXCEPTING and RESERVING, however, unto the  
16 United States of America, all the coal and  
17 other minerals in the lands as set forth in  
18 the Patent of said land. (Affects West half  
19 of Parcels 17 through 20 only);

20 EXCEPT that certain well-site in the Southeast  
21 corner of Parcel 21 and further described as  
22 follows:

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BEGINNING at the Southeast corner of said Parcel 21;

THENCE North 89° 57' 55" West, a distance of 208.71 feet;

THENCE North 00° 30' 28" West, parallel with the East line of said Parcel 21, a distance of 208.71 feet;

THENCE South 89° 57' 55" East, parallel with the Southline of said parcel 21, a distance of 208.1 [sic] feet to a point on the East line of said parcel 21;

THENCE South 00° 30' 28" East, coincident with said East line of Parcel 21, a distance of 208.71 feet more or less to the Southeast corner of said Parcel 21, and the POINT OF BEGINNING.

Real property and improvements owned by ROLLING HILLS REALTY, INC., as and to an undivided one-half interest in the property:

- (1) Parcel Numbers 202-22-107A-6 and 202-22-125A-4, legally described as:

HO HO KAM HOMES, according to Book 11 of Maps, page 26, records of Pinal County, Arizona, EXCEPT Lots 1, 2, 3 and 4, HO HO KAM HOMES, according to Book 11 of Maps, page 26, records of Pinal County, Arizona. Except the South 320 feet thereof.

Real property and improvements owned by SOUTHWEST CINDER CORPORATION:

- (1) Parcel Number 511-73-009A-2, legally described as:

The East 1/2 of Parcel 25, as shown on survey entitled, "Results of Survey of Section 25 and portions of Section 26 and 27, Township 7 South, Range 6 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, SIERRA DE CASA GRANDE", and as more fully set forth in Book 1 of Surveys, at page 94.

1 EXCEPTING AND RESERVING, however, unto the  
2 UNITED STATES OF AMERICA, all the coal and  
3 other minerals in the lands as set forth in  
4 the patent of said land.

5 EXCEPT that certain well site in the Southeast  
6 corner of Tract 21 and further described as  
7 follows:

8 EXCEPT all that portion of Parcel 21, as shown  
9 on survey entitled, "Results of Survey of  
10 Section 25 and portions of Section 26,  
11 Township 7 South, Range 6 East of the Gila and  
12 Salt River Base and Meridian, Pinal County,  
13 Arizona, SIERRA DE CASA GRANGE", and as more  
14 fully set forth in Book 1 of Surveys, at Page  
15 94, more particularly described as follows:

16 BEGINNING at the Southeast corner of said  
17 Parcel 21;

18 THENCE North 89° 57 minutes 55 seconds West, a  
19 distance of 208.71 feet;

20 THENCE North 00° 30 minutes 28 seconds West,  
21 parallel with the East line of said Parcel 21,  
22 a distance of 208.71 feet;

23 THENCE South 89° 57 minutes 55 seconds East  
24 parallel with the South line of said Parcel  
25 21, a distance of 208.71 feet to a point in  
26 the East line of said Parcel 21;

THENCE South 00° 30 minutes 28 seconds East,  
coincident with said East line of Parcel 21, a  
distance of 208.71 feet more of [sic] less to  
the Southeast corner of said Parcel 21 and the  
point of beginning.

Real property and improvements owned by AVANTI  
ASSOCIATES 5112, an Arizona general partnership:

(1) Parcel Number 128-16-006A, legally described  
as:

South 307 feet of the East half of Tract  
Three, ORANGE HOMESITES, according to Book 22  
of Maps, page 32, records of Maricopa County,  
Arizona.

EXCEPT the South 7 feet as Deed to the  
City of Phoenix.

1 Real property and improvements in which AVANTI  
2 ASSOCIATES FIRST MORTGAGE FUND 85 LIMITED PARTNERSHIP may own  
3 or have an interest:

- 4 (1) 901 South Hohokam, Tempe, Arizona, Parcel  
5 Number 124-56-023G, legally described as:

6 Lot 11 and the South 10 feet of Lot 12,  
7 HOHOKAM INDUSTRIAL PARK, according to Book 149  
8 of Maps, page 25, records of Maricopa County,  
9 Arizona.

- 10 (2) 7520 East Lakeside Lane, Scottsdale, Arizona,  
11 Parcel Number 169-16-107, legally described as:

12 Lot 107, CLEARWATER HILLS, a subdivision  
13 recorded in book 64 of Maps, page 42, records  
14 of Maricopa County, Arizona

15 EXCEPT all coal and other minerals in said  
16 land as reserved in the record Patent;

17 TOGETHER with the right to use the private  
18 roadways shown on the plat of CLEARWATER HILLS  
19 #2, a subdivision recorded in Book 84 of Maps,  
20 page 25, records of Maricopa County, Arizona.

21 Real property and improvements owned by AVANTI  
22 ASSOCIATES FIRST TRUST DEED FUND LIMITED PARTNERSHIP:

- 23 (1) PARCEL 1: Number 511-26-010A-7, legally  
24 described as:

25 All that portion of the East half of the West  
26 half of the Southeast quarter of Section 8,  
Township 7 South, Range 6 East, Gila and Salt  
River Base and Meridian, Pinal County,  
Arizona, described as follows:

COMMENCING at the Southeast corner of said  
Section 8;

Thence South 89°47' West, along the South line  
of said Section 8, a distance of 1991.76  
feet;

Thence North 00°06' West, a distance of 2051.34  
feet to the TRUE POINT OF BEGINNING;

1 Thence North 00°06' West, a distance of 300.00  
2 feet to a point on the South line of U.S.  
Interstate Highway 8;  
3 Thence North 89°55' East, along said South  
line, a distance of 435.09 feet;  
4 Thence South 87°00' East, along said South  
line, a distance of 229.09 feet to a  
5 point on the West line of the East half  
of the Southeast quarter of Section 8;  
6 Thence South 00°06' East, along said West  
line, a distance of 286.30 feet;  
7 Thence South 89° 47' West, a distance of  
664.19 feet to the TRUE POINT OF  
BEGINNING;

8  
9 EXCEPTING THEREFROM the West 25 feet thereof.

10 PARCEL 2:

11 An easement for utilities over the East 10  
12 feet of the West half of the Southeast quarter  
of Section 8, Township 7 South, Range 6 East,  
Gila and Salt River Base and Meridian, Pinal  
County, Arizona;

13 EXCEPTING THEREFROM that portion thereof lying  
14 within Parcel 1 hereinabove described.

15 Real property and improvements owned by AVANTI  
16 ASSOCIATES FIRST MORTGAGE FUND 84 LIMITED PARTNERSHIP; AVANTI  
17 FIRST MORTGAGE LIMITED PARTNERSHIP; AVANTI ASSOCIATES FIRST  
18 MORTGAGE LIMITED PARTNERSHIP; AVANTI FIRST MORTGAGE FUND  
19 LIMITED PARTNERSHIP; AVANTI ASSOCIATES FIRST DEED OF TRUST FUND  
20 LIMITED PARTNERSHIP; AVANTI ASSOCIATES FIRST TRUST DEED FUND  
21 LIMITED PARTNERSHIP:

22 (1) Parcel Number 139-36-005-E, legally described  
23 as:

24 The West half of the West half of the South  
25 half of the South half of Section 14, Township  
15 South, Range 14 East, Gila and Salt River  
Base and Meridian, Pima County, Arizona;  
26 EXCEPT the South 30 feet.

1 Real properties and improvements owned by AVANTI  
2 MORTGAGE CORPORATION:

3 (1) Parcel Number 503-56-004A-9, legally described  
4 as:

5 PARCEL 1:

6 The South half of the Northwest quarter of the  
7 Southwest quarter of the Northwest quarter of  
8 Section 35, Township 6 South, Range 5 East,  
9 Gila and Salt River Base and Meridian, Pinal  
10 County, Arizona.

11 PARCEL 2:

12 The Northeast quarter of the Southwest quarter  
13 of the Northwest quarter of Section 35,  
14 Township 6 South, Range 5 East, Gila and Salt  
15 River Base and Meridian, Pinal County, Arizona.

16 PARCEL 3:

17 The North half of the Northwest quarter of the  
18 Southeast quarter of the Northwest quarter of  
19 Section 35, Township 6 South, Range 5 East,  
20 Gila and Salt River Base and Meridian, Pinal  
21 County, Arizona.

22 (2) Parcel Number 301-02-005, legally described as:

23 Lot 4, the Southeast quarter of the Southwest  
24 quarter, and the South half of the Southeast  
25 quarter of Section 30;

26 [I]n Township 12 South, Range 27 East of the  
Gila and Salt River Base and Meridian, Cochise  
County, Arizona;

EXCEPT 1/2 of the oil, coal, gas and mineral  
rights, but not any rights to sand, gravel,  
top soil, store or road building or construc-  
tion materials, as reserved in Deed recorded  
in Docket 736, page 570, Cochise County, Arizona.

Real properties and improvements which AVANTI  
ASSOCIATES FIRST MORTGAGE FUND 84 LIMITED PARTNERSHIP may own  
or have an interest in:

1 (1) Parcel Number 301-02-005A, legally described  
2 as:

3 The North half of the Northwest quarter of the  
4 Northeast quarter, and the North half of the  
5 North half of the Northwest quarter of Section  
6 33;

7 [I]n Township 12 South, Range 27 East of the  
8 Gila and Salt River Base and Meridian, Cochise  
9 County, Arizona;

10 EXCEPT 1/2 of the oil, coal, gas and mineral  
11 rights, but not any rights to sand, gravel,  
12 top soil, store or road building or construc-  
13 tion materials, as reserved in Deed recorded  
14 in Docket 736, page 570, Cochise County,  
15 Arizona.

16 (2) Parcel Number 301-02-003, legally described as:

17 THE SOUTHWEST QUARTER OF SECTION 25 AS FOLLOWS:

18 PARCEL 1: NE 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
19 PARCEL 2: NW 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
20 PARCEL 3: SE 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
21 PARCEL 4: SW 1/4 OF THE SW 1/4 CONTAINING 40 ACRES

22 Parcel Number 301-02-004:

23 THE SOUTH HALF OF SECTION 26 AS FOLLOWS:

24 PARCEL 5: NE 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
25 PARCEL 6: SE 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
26 PARCEL 7: NW 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
27 PARCEL 8: SW 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
28 PARCEL 9: E 1/2 OF THE SW 1/4 CONTAINING 40 ACRES  
29 PARCEL 10: NW 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
30 PARCEL 11: SW 1/4 OF THE SW 1/4 CONTAINING 40 ACRES

31 Parcel Number 301-02-005A:

32 THE NORTHWEST QUARTER OF SECTION 27 AS FOLLOWS:

33 PARCEL 12: SW 1/4 OF THE NW 1/4 CONTAINING 40 ACRES  
34 PARCEL 13: SE 1/4 OF THE NW 1/4 CONTAINING 40 ACRES  
35 PARCEL 14: NE 1/4 OF THE NW 1/4 CONTAINING 40 ACRES  
36 PARCEL 15: NW 1/4 OF THE NW 1/4 CONTAINING 40 ACRES

37 THE SOUTH HALF OF THE NORTHWEST QUARTER AND THE  
38 SOUTH HALF OF SECTION 28 AS FOLLOWS:

39 PARCEL 16: NE 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
40 PARCEL 17: NW 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
41 PARCEL 18: NE 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
42 PARCEL 19: NW 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
43 PARCEL 20: SW 1/4 OF THE NW 1/4 CONTAINING 40 ACRES

1 PARCEL 21: SE 1/4 OF THE NW 1/4 CONTAINING 40 ACRES  
2 PARCEL 22: SE 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
3 PARCEL 23: SW 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
4 PARCEL 24: SE 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
5 PARCEL 25: SW 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
6 PARCEL 26: THE NORTH HALF OF THE NORTHWEST QUARTER  
7 OF THE NORTHEAST QUARTER AND THE NORTH  
8 HALF OF THE NORTH HALF OF THE NORTHWEST  
9 QUARTER OF SECTION 33;

10 THE SOUTH HALF OF SECTION 29 AS FOLLOWS:

11 PARCEL 27: NE 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
12 PARCEL 28: SE 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
13 PARCEL 29: SW 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
14 PARCEL 30: NW 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
15 PARCEL 31: NE 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
16 PARCEL 32: NW 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
17 PARCEL 33: SE 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
18 PARCEL 34: SW 1/4 OF THE SW 1/4 CONTAINING 40 ACRES

19 Parcel Number 301-02-005:

20 THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION  
21 30 AS FOLLOWS:

22 PARCEL 35: SE 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
23 PARCEL 36: SW 1/4 OF THE SE 1/4 CONTAINING 40 ACRES  
24 PARCEL 37: SE 1/4 OF THE SW 1/4 CONTAINING 40 ACRES  
25 PARCEL 38: THAT PORTION OF THE NORTH HALF OF THE  
26 NORTH HALF OF THE NORTH HALF OF SECTION  
32, LYING NORTH OF THE SOUTHERN PACIFIC  
RAILROAD RIGHT OF WAY, WHICH RIGHT OF  
WAY IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 541.00 FEET SOUTH OF THE  
NORTHEAST CORNER OF SAID SECTION;  
THENCE WEST 1440.00 FEET;  
THENCE ON A CURVE SOUTHWESTERLY TO THE SOUTHWEST  
CORNER OF THE NORTHWEST QUARTER OF THE  
NORTHWEST QUARTER OF THE NORTHEAST QUARTER;  
THENCE ON A NORTHWESTERLY CURVE TO A POINT 340.00  
FEET SOUTH OF THE NORTHEAST CORNER OF THE  
NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF  
THE NORTHWEST QUARTER;  
THENCE NORTHWESTERLY TO A POINT 50.00 FEET SOUTH OF  
THE NORTHWEST CORNER OF SAID SECTION 32:

ALL IN TOWNSHIP 12 SOUTH, RANGE 27 EAST OF THE GILA  
AND SALT RIVER BASE AND MERIDIAN, COCHISE COUNTY,  
ARIZONA;

EXCEPT ALL MINERALS AS RESERVED IN PATENT FROM  
UNITED STATES OF AMERICAN (AFFECTS THE SOUTH HALF OF  
SECTION 26); AND



1 EXCEPT 1/2 OF ALL OIL AND MINERAL RIGHTS AS  
2 RESERVED IN DEED RECORDED IN DOCKET 256, PAGE 461,  
3 RECORDS OF COCHISE COUNTY, ARIZONA (AFFECTS THE  
4 SOUTHWEST QUARTER OF SECTION 25); AND

5 EXCEPT 1/2 OF THE OIL, COAL, GAS AND MINERAL  
6 RIGHTS, BUT NOT ANY RIGHTS TO SAND, GRAVEL, TOP  
7 SOIL, STORE OR ROAD BUILDING OR CONSTRUCTION  
8 MATERIALS, AS RESERVED IN DEED RECORDED IN DOCKET  
9 736, PAGE 570, COCHISE COUNTY, ARIZONA (AFFECTS ALL  
10 EXCEPT SECTIONS 25 AND 26).

11 (3) Parcel Number 112-25-095, legally described as:

12 Lot 12, Block 7 of CENTRAL PARK PLACE,  
13 according to the plat of record in the office  
14 of the County Recorder of Maricopa County,  
15 Arizona, recorded in Book 4 of Maps, page 41.

16 (4) Sixty-five percent (65%) interest in Parcel  
17 Number 176-10-001Q, legally described as:

18 PARCEL NO. 1:

19 All that certain parcel of land in the County  
20 of Maricopa, State of Arizona, being a portion  
21 of Section 26, Township 3 North, Range 6 East  
22 of the Gila and Salt River Base and Meridian,  
23 more particularly described as follows:

24 BEGINNING at the Southwest corner of Section  
25 26; thence North 30 degrees 58 minutes 26  
26 seconds East, 2359.84 feet to a point on a  
tangent curve, being concave to the Southwest  
and having a radius of 6997.49 feet; thence  
Northwesterly along said curve, through a  
central angle of 01 degrees 26 minutes 00  
seconds, an arc distance of 175.05 feet to a  
point on said curve, said point having a  
radial bearing of North 40 degrees 56 minutes  
59 seconds East, said point also being the  
TRUE POINT OF BEGINNING: thence continuing  
Northwesterly along said curve, through a  
central angle of 02 degrees 39 minutes 28  
seconds, an arc distance of 324.59 feet to a  
point on said curve, said point being on a  
curve being concave to the Northeast and  
having a radius of 225.00 feet; thence  
Easterly along said curve, through a central  
angle of 42 degrees 51 minutes 31 seconds, an  
arc distance of 168.31 feet; thence North 85

degrees 26 minutes, 00 seconds East, 111.13 feet to the beginning of a tangent curve, being concave to the Southwest and having a radius of 375.00 feet; thence continuing along said curve through a central angle of 19 degrees 34 minutes 54 seconds, an arc distance of 128.16 feet, a radial line at said point bears North 15 degrees 00 minutes 54 seconds East; thence South 42 degrees 50 minutes 00 seconds West, 213.44 feet to the TRUE POINT OF BEGINNING;

EXCEPT all minerals as reserved in Patent from the United States of America; and

EXCEPT all oil, gases and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizers of every name and description, together with all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in instrument recorded in Recording No. 84-469102, Official Records; and

EXCEPT all underground water in, under or flowing through said land and water rights appurtenant thereto, as reserved in instrument recorded in Recording No. 84-469102, Official Records.

Sixty-five percent (65%) interest in Parcel Number 176-10-001E, legally described as:

PARCEL NO. 2:

All that certain parcel of land in the County of Maricopa, State of Arizona, being a portion of Section 26, Township 3 North, Range 6 East of the Gila and Salt River Base and Meridian, more particularly described as follows:

BEGINNING at the Southwest corner of Section 26; thence North 30 degrees 58 minutes 26 seconds East, 2350.84 feet to the TRUE POINT OF BEGINNING, said point being on a tangent curve, being concave to the Southwest and having a radius of 6997.49 feet; thence Northwestly along said curve, through a central angle of 01 degrees 26 minutes 00

seconds, an arc distance of 175.05 feet to a point on said curve, said point having a radial bearing of North 40 degrees 58 minutes 59 seconds East; thence non-radial North 42 degrees 50 minutes 00 seconds East, 213.44 feet to a point on a non-tangent curve, said point having a radial bearing of North 15 degrees 00 minutes 54 seconds East, said curve being concave to the Southeast and having a radius of 375.00 feet; thence Northeasterly along said curve, through a central angle of 24 degrees 35 minutes 19 seconds, an arc distance of 160.93 feet to a point of compound curvature, said curve being concave to the Southwest and having a radius of 20.00 feet; thence Southwesterly along said curve, through a central angle of 93 degrees 13 minutes 47 seconds, an arc distance of 32.54 feet; thence South 42 degrees 60 minutes 00 seconds West, 232.65 feet to the TRUE POINT OF BEGINNING;

EXCEPT all minerals as reserved in Patent from the United States of America; and

EXCEPT all gas, coal and minerals whatsoever already found or which may hereafter be found in or under said land, as reserved in instrument recorded Docket 11948, Page 294; and

EXCEPT all underground water in, under or flowing through said land and water rights appurtenant thereto, as reserved in instrument recorded in Docket 11948, Page 294.

- (5) Parcel Numbers 104-59-001D, 104-59-001E and 104-59-001F, legally described as:

PARCEL NO. 1:

A portion of the Southeast quarter of Section 20, Township 1 North, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of the South half of the Southeast quarter of said Section 20, THENCE North 88 degrees 37 minutes 36 seconds West along the North line of the South half of the Southeast quarter of said Section 20, a distance of 1907.19 feet to the TRUE POINT OF BEGINNING: THENCE South 00

degrees 13 minutes 13 seconds West, a distance of 579.06 feet; THENCE North 88 degrees 37 minutes 36 seconds West a distance of 714.79 feet to a point on the North-South midsection line of said Section 20; THENCE North 00 degrees 03 minutes 03 seconds East, along said midsection line, a distance of 579.06 feet; THENCE South 88 degrees 37 minutes 36 seconds East along the North line of the South half of the Southeast quarter of said Section 20, a distance of 714.79 feet to the True Point of Beginning.

PARCEL NO. 2:

A portion of the Southeast quarter of Section 20, Township 1 North, Range 2 East of the Gila and Salt River Base and Meridian, more particularly described as follows:

COMMENCING at the Northeast corner of the South half of the Southeast quarter of said Section 20; THENCE North 88 degrees 37 minutes 36 seconds West, along the North line of the South half of the Southeast quarter of said Section 20; a distance of 1436.94 feet to the True Point of Beginning; THENCE South 00 degree 13 minutes 13 seconds West a distance of 579.06 feet; THENCE North 88 degrees 37 minutes 36 seconds West a distance of 470.25 feet; THENCE North 00 degrees 13 minutes 13 seconds East a distance of 579.06 feet to a point on the North line of the South half of the Southeast quarter of said Section 20; THENCE South 88 degrees 37 minutes 36 seconds, along the Northline of the South half of the Southeast quarter of said Section 20, a distance of 470.25 feet to the True Point of Beginning.

PARCEL NO. 3:

A portion of the Southeast quarter of Section 20, Township 1 North, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Northeast corner of the South half of the Southeast quarter of said Section 20; THENCE North 88 degrees 37 minutes

1 36 seconds West, along the North line of the  
2 South half of the Southeast quarter of said  
3 Section 20, a distance of 40.00 feet to the  
4 TRUE POINT OF BEGINNING; THENCE South 00  
5 degrees 13 minutes 57 seconds West, along a  
6 line that is parallel with and 40.00 feet West  
7 of the East line of the Southeast quarter of  
8 said Section 20, a distance of 590.83 feet;  
9 THENCE South 71 degrees 53 minutes 59 seconds  
10 West a distance of 1151.56 feet; THENCE North  
11 88 degrees 37 minutes 36 seconds West a  
12 distance of 62.89 feet; THENCE North 00  
13 degrees 13 minutes 57 seconds East a distance  
14 of 395.75 feet; THENCE North 88 degrees 37  
15 minutes 36 seconds West a distance of 240.59  
16 feet; THENCE North 00 degrees 13 minutes 13  
17 seconds East a distance of 579.06 feet to a  
18 point on the Northline of the South half of  
19 the Southeast quarter of said Section 20;  
20 THENCE South 88 degrees 37 minutes 36 seconds  
21 East, along the North line of the South half  
22 of the Southeast quarter of said Section 20, a  
23 distance of 1396.94 feet to the True Point of  
24 Beginning.

25 (6) Parcel Number 301-38-006, legally described as:

26 That certain mining claim or premise known as  
the HARENBERG NO. 1 PLACER CLAIM situated in  
the Unknown Mining District, being the  
Northwest quarter of the Northeast quarter of  
Section 18, Township 23 North, Range 8 East,  
Gila and Salt River Base and Meridian, as  
granted by Patent recorded in Docket 520, page  
387, records of Coconino County, Arizona;

EXCEPT any vein or lode of quartz or other  
rock in place bearing gold, silver, cinnabar,  
lead, tin, copper or other valuable deposits,  
claimed or known to exist within the above  
described premises on December 28, 1973 as  
reserved in Patent from United States of  
America.

Motor vehicles owned by:

AVANTI MORTGAGE CORPORATION:

- (1) 1975 Chevrolet, Vehicle Identification  
Number (VIN) CKY185F131054, License  
Plate Number (LPN) 3KB-996.

- (2) 1961 Jaguar, VIN J61S836915BW, LPN  
TLSCPA.
- (3) 1973 Mercedes, VIN 10702312004026, LPN  
BTM-789.
- (4) 1968 Chevrolet, VIN CS148Z172546, LPN  
3YF-156.

UNIQUE CLASSIC CARS:

- (1) 1966 Cadillac, VIN Z6107951, LPN  
3JF-946.
- (2) 1979 Chevrolet, VIN 1N69L9C129253, LPN  
VYA-595.
- (3) 1971 Motorhome (model type unknown),  
VIN S11251, LPN C32-172.
- (4) 1980 Honda, VIN SMH2163834, LPN  
EDH-066.

Arizona Alcoholic Beverage License Number 06050028.

Bank Accounts related to receivership entities  
including, but not limited to:

First Business Bank:

Account Number 11006045 (Avanti Associates  
First Mortgage Fund 84 Limited Partnership)

Account Number 16008971 (Avanti Associates  
First Mortgage Fund 84 Limited Partnership)

Account Number 11006096 (Avanti Associates  
2722)

Account Number 11006264 (Avanti Associates  
2950)

Account Number 11006141 (Avanti Associates  
Management Limited Partnership)

1	Account Number 16008816 (Avanti Associates
2	First Mortgage Limited Partnership)
3	Account Number 16008824 (Avanti Associates
4	First Mortgage Fund Limited Partnership)
5	Account Number 16009018 (Avanti First
6	Mortgage Limited Partnership)
7	Account Number 16009026 (Avanti First
8	Mortgage Fund Limited Partnership)
9	Account Number 16009034 (Avanti Associates
10	First Trust Deed Fund Limited Partnership)
11	Account Number 16009042 (Avanti First Trust
12	Deed Limited Partnership)
13	Account Number 16009050 (Avanti Associates
14	First Deed of Trust Fund Limited
15	Partnership)
16	Account Number 16009069 (Avanti Associates
17	First Trust Deed Limited Partnership)
18	Account Number 11006256 (Avanti Wholesale)
19	Account Number 11006088 (Avanti Mortgage
20	Corporation Trust Account)
21	Account Number 11006272 (Avanti Mortgage
22	Corporation Loan Control Account)
23	Account Number 11006061 (Avanti Mortgage
24	Corporation Print Division)
25	Account Number 11006053 (Avanti Mortgage
26	Corporation)
	Account Number 11006109 (Avanti Employee
	Trust)
	Account Number 11006889 (Casa Grande
	Mountain Park Development Group Limited
	Partnership)
	Account Number 11006125 (Sasak, Inc.)
	Account Number 11006133 (Falcon Corporate
	Center Partners)

1 Account Number 11006037 (Avanti Associates  
2 First Mortgage Fund 85 Limited Partnership)  
3 Account Number 16008808 (Avanti Associates  
4 First Mortgage Fund 85 Limited Partnership)  
5 North American Bank:  
6 Account Number 6042701010 (Avanti  
7 Associates First Mortgage Fund 84 Limited  
8 Partnership)  
9 Account Number 6033319012 (Falcon Corporate  
10 Center Partners)  
11 Account Number 6031919012 (Falcon Corporate  
12 Center Partners)  
13 Account Number 6023119018 (Falcon Corporate  
14 Center Partners)  
15 Account Number 6025801019 (Falcon Corporate  
16 Center Partners)  
17 Account Number 6041801019 (Avanti  
18 Associates First Mortgage Fund 85 Limited  
19 Partnership)  
20 Account Number 6028619013 (Avanti  
21 Associates First Mortgage Fund 85 Limited  
22 Partnership)  
23 Account Number 6033501015 (Avanti  
24 Associates First Mortgage Fund 84 Limited  
25 Partnership)  
26 Account Number 6021319016 (Avanti  
Associates First Mortgage Fund 84 Limited  
Partnership)  
Account Number 6019719012 (Avanti Mortgage  
Corporation Loan Control: Membre  
Construction)  
Account Number 6019801017 (Avanti Mortgage  
Corporation Loan Control: Membre  
Construction)  
Account Number 6020419015 (Avanti  
Associates First Mortgage Fund 85 Texas  
Limited Partnership)



1	Account Number 6013619010 (Avanti Associates 84 Limited Partnership)
2	
3	Account Number 6048501018 (Avanti Associates 84 Limited Partnership)
4	
5	Account Number 6017201011 (Avanti Associates 2722)
6	
7	Account Number 6018319011 (Avanti Associates 2722)
8	
9	Account Number 6017801019 (Avanti Associates First Trust Deed Limited Partnership)
10	
11	Account Number 6014319015 (Avanti Associates First Trust Deed Limited Partnership)
12	
13	Account Number 6022501018 (Avanti Mortgage Corporation: Printing Division)
14	
15	Account Number 6013319016 (Avanti Mortgage Corporation: Loan Control Account)
16	
17	Account Number 6014701014 (Avanti Mortgage Corporation Loan Control Account)
18	
19	Account Number 6006319015 (Avanti Associates First Mortgage Limited Partnership)
20	
21	Account Number 6007501017 (Avanti Associates First Mortgage Limited Partnership)
22	
23	Account Number 6006901010 (Avanti Associates First Mortgage Limited Partnership)
24	
25	Account Number 6005619010 (Avanti Associates First Mortgage Limited Partnership)
26	
	Account Number 6047601017 (Avanti Associates First Mortgage Fund 85 Limited Partnership: NAB Escrow Agent)
	Account Number 6016501016 (Avanti First Trust Deed Fund Limited Partnership)

1 Account Number 6011619012 (Avanti First  
2 Trust Deed Fund Limited Partnership)  
3 Account Number 6016401018 (Avanti First  
4 Trust Deeds Limited Partnership)  
5 Account Number 6011719010 (Avanti First  
6 Trust Deeds Limited Partnership)  
7 Account Number 6016019019 (Avanti  
8 Management Inc. Defined Benefit Pension  
9 Trust)  
10 Account Number 6012501010 (Avanti First  
11 Mortgage Fund Limited Partnership)  
12 Account Number 6013419014 (Avanti First  
13 Mortgage Fund Limited Partnership)  
14 Account Number 6013601017 (Avanti  
15 Associates First Mortgage Limited  
16 Partnership)  
17 Account Number 6010819019 (Avanti  
18 Associates First Mortgage Limited  
19 Partnership)  
20 Account Number 6015101015 (Avanti  
21 Associates First Trust Deed Fund Limited  
22 Partnership)  
23 Account Number 6013119010 (Avanti  
24 Associates First Trust Deed Fund, Limited  
25 Partnership)  
26 Account Number 6016601014 (Avanti  
Associates First Deed of Trust Fund,  
Limited Partnership)  
Account Number 6011419016 (Avanti  
Associates First Deed of Trust Fund Limited  
Partnership)  
Account Number 6016619017 (Avanti Mortgage  
Corp.: Larranaga Loan Control Account)  
Account Number 6042501014 (Avanti Mortgage  
Corp.: Larranaga Loan Control Account)  
Account Number 6010319019 (Avanti First  
Mortgage Limited Partnership)

1 Account Number 6009801019 (Avanti First  
2 Mortgage Limited Partnership)  
3 Account Number 6009119016 (Avanti Mortgage  
4 Corp. Trust Account)  
5 Account Number 6010501012 (Avanti Mortgage  
6 Corp. Trust Account)  
7 Account Number 6007519010 (Avanti Mortgage  
8 Corporation)  
9 Account Number 6014501018 (Sasak, Inc.)  
10 Account Number 6016201012 (Sasak, Inc.)  
11 Account Number 6012019013 (Sasak, Inc.)  
12 Account Number 6007001017 (Avanti Mortgage  
13 Corporation)  
14 Account Number 6047501019 (Avanti  
15 Associates)  
16 Account Number 0019319012 (Avanti Mortgage  
17 Corp.)  
18 First Business Bank:  
19 Account Number 11006221 (Amerispec  
20 Properties, Inc.)  
21 Account Number 11006248 (Amerispec  
22 Properties, Inc. dba Unique Classic Cars)  
23 North American Bank:  
24 Account Number 6029919016 (Avanti  
25 Associates Financial Services, Inc.)  
26 Account Number 6045201017 (Avanti  
Associates Financial Services, Inc.)  
First Business Bank:  
Account Number 11006432 (Sal-Lab, Inc.)  
Account Number 16009341 (Sal-Lab, Inc.)  
Account Number 16009464 (Sal-Lab, Inc.)

North American Bank:

Account Number 6009419010 (Sal-Lab, Inc.)

Account Number 6010701018 (Sal-Lab, Inc.)

Account Number 6030919013 (Sal-Lab, Inc.  
Defined Benefit Pension Plan)

Account Number 6045101019 (Sal-Lab, Inc.)

Account Number 6024819013 (Avanti  
Associates Financial Services, Inc.)

Account Number 6029919016 (Avanti  
Associates Financial Services, Inc.)

Account Number 6045201017 (Avanti  
Associates Financial Services, Inc.)

5763C;FFD87-404  
ROBERT K. CORBIN  
Attorney General  
PATRICK M. MURPHY, Chief Counsel  
Financial Fraud Division  
SUZANNE M. CHYNOWETH; 006835  
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Attorney for State of Arizona  
Department of Law Building, Room 259  
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Phoenix, Arizona 85007  
Telephone: (602) 255-3702

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, ex rel. ROBERT K. CORBIN, Attorney General; MARY C. SHORT, Superintendent of Banks, and the ARIZONA CORPORATION COMMISSION,	)	Priority Case
	)	A.R.S. § 13-2314(I)
	)	
	)	NO. CV 88 12008
Plaintiffs,	)	
vs.	)	PETITION FOR ORDER TO
	)	SHOW CAUSE AS TO
TIMOTHY L. SASAK, et al.,	)	PRELIMINARY INJUNCTION
	)	AND APPOINTMENT OF A
Defendants.	)	RECEIVER

Plaintiff, STATE OF ARIZONA, ex rel. ROBERT K. CORBIN, Attorney General, petitions the Court for entry of an Order directing the defendants to personally appear and show cause, if any they have, why the Preliminary Injunction and Appointment of a Receiver sought by the State in its Complaint should not be issued and ordered by the Court. This Petition is supported by the State's verified Complaint, and Appendices

1 thereto, and the Affidavit of Leroy Johnson, which are  
2 incorporated herein by reference.

3 DATED this 9<sup>th</sup> day of May, 1988.

4 ROBERT K. CORBIN  
Attorney General  
5 PATRICK M. MURPHY, Chief Counsel  
Financial Fraud Division

6  
7 By Suzanne M. Chynoweth  
8 SUZANNE M. CHYNOWETH  
KATRIN M. NELSON  
9 FRANK L. MURRAY  
Assistant Attorneys General  
10 Attorneys for Plaintiffs  
11  
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1 0515C/FFD87-009  
ROBERT K. CORBIN  
2 Attorney General  
PATRICK M. MURPHY, Chief Counsel  
3 Financial Fraud Division  
JOSEPH M. HENNELLY, JR.  
4 Assistant Attorney General  
Department of Law Building, Room 259  
5 1275 West Washington Street  
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6 Telephone: (602) 255-3702

7

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
9 IN AND FOR THE COUNTY OF MARICOPA

10

11 STATE OF ARIZONA, ex rel. ROBERT K. )	
CORBIN, Attorney General, )	NO. CV87-04711
12 )	
Plaintiff, )	RESPONSE TO RULE 34
13 )	REQUEST TO PRODUCE OF
vs. )	ROSALIE RAPTOSH
14 )	
SAMUEL J. COLACURCIO, et al., )	(Assigned to the Hon.
15 )	Michael J. O'Melia)
Defendants. )	
16 )	

17 Plaintiff State of Arizona has provided the documents  
18 described in Attachment A hereto in response to the Rule 34  
19 Request for Production to Daniel H. Bultman and Joseph G. Koretski  
20 of Defendant Rosalie Raptosh. The State objects, on work product  
21 grounds and governmental/investigative privilege grounds, to the  
22 production of any written statements, or other writings of  
23 investigators, employees, agents or attorneys of the Attorney  
24 General's Office except to the extent provided by Items numbered  
25 A-1 to A-33 to the attached. In addition, the State objects that  
26 the Request to Produce, as a whole, is overly broad, calls for

EXHIBIT E

1 information protected by governmental/investigative privilege,  
2 calls for information protected by work product privilege and  
3 calls for information protected by attorney/client privilege.  
4       The request is exceedingly broad. It includes all  
5 material on the 15 individuals and entities named in the request,  
6 even that protected by the above privileges. The State objects  
7 to this request on these grounds as well. Nor is the request  
8 limited to the allegations or time period of the Complaint; in  
9 fact the requests are not limited in time at all. Because this  
10 broad request covers everything on the numerous entities, it also  
11 includes material not reasonably calculated to lead to the  
12 discovery of admissible evidence and the State objects on this  
13 ground as well. The filing of the State's Complaint entitles the  
14 Defendants to discovery relating to the investigation that  
15 resulted in this Complaint; it does not entitle Defendants to  
16 information as to other investigations which may or may not be  
17 pending against them. Nor does it entitle the Defendants to  
18 Plaintiff's work product or information protected by attorney/  
19 client privilege.

20       Copies of items A1-A33 were provided this date. The  
21 remaining items are either available by making arrangements with  
22 this office or, where noted, are public records available to

23 . . .

24 . . .

25 . . .

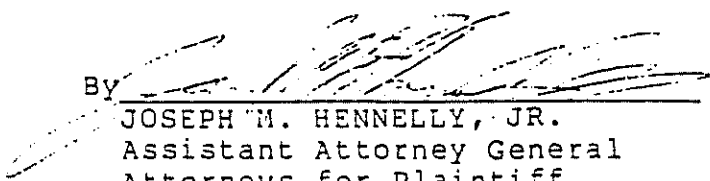
26 . . .



1 anyone. Discovery is still in progress; additional items will be  
2 supplemented in compliance with the discovery rules.

3 DATED this 1 day of April, 1987.

4 ROBERT K. CORBIN  
5 Attorney General  
6 PATRICK M. MURPHY, Chief Counsel  
7 Financial Fraud Division

8 By   
9 JOSEPH M. HENNELLY, JR.  
10 Assistant Attorney General  
11 Attorneys for Plaintiff

12 COPY of the foregoing  
13 hand-delivered this 1st  
14 day of April, 1987, to:

15 Edward F. Novak  
16 Lewis and Roca  
17 First Interstate Bank Plaza  
18 One Hundred West Washington Street  
19 Phoenix, Arizona 85003  
20 Attorneys for Defendants Rosalie Raptosh,  
21 Big Top Enterprises, Ltd., Raptosh  
22 Enterprises, Inc., Cheetah Enterprises,  
23 Inc., Dream Street, Inc.

24 COPY of the foregoing  
25 mailed this 1st day of  
26 April, 1987, to:

Tom Henze  
Henze, Ronan & Clark  
45 West Jefferson, 11th Floor  
Phoenix, Arizona 85003  
Attorneys for Defendant Samuel J. Colacurcio

Gordon E. Dudley  
Levy, Sherwood, Klein & Dudley, P.A.  
2400 Valley Bank Center  
Phoenix, Arizona 85073  
Attorneys for Defendants Ochiai and  
Western Consultants, Inc.

. . .

1 Michael W. Sillyman  
2 Wentworth, Lundin & Herf  
3 3500 Valley Bank Center  
4 Phoenix, Arizona 85073  
5 Attorneys for Claimants  
6 Antonio and Emma Iafrate

7 *James L. Hill*  
8 \_\_\_\_\_  
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10  
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ATTACHMENT A

A. Office of the Attorney General Special Investigations  
Division Reports:

1. Report dated September 5, 1985, by Agent Bultman, 1 p., parts of report have been excised based on governmental/investigative privilege.
2. Reported dated January 10, 1986 by Agent Bultman, 2 pp.
3. Reported dated January 13, 1986 by Agent Bultman, 1 p., one sentence excised based on governmental/investigative privilege.
4. Report dated March 6, 1986, by Agent Bultman, 2 pp.
5. Report dated March 24, 1986, by Agent Bultman, 1 p.
6. Report dated April 2, 1986, by Agent Bultman, 2 pp.
7. Report dated April 8, 1986, by Agent Bultman, 2 pp.
8. Report dated April 9, 1986, by Agent Bultman, 2 pp.
9. Report dated April 15, 1986, by Agent Bultman, 1 p.
10. Report dated April 16, 1986, by Agent Bultman, 2 pp.
11. Report dated April 17, 1986, by Agent Bultman, 1 p., 6 pp. attachment
12. Report dated April 25, 1986, by Agent Sanders, 2 pp., 1 p. attachment.
13. Report dated May 2, 1986, by Agent Bultman, 1 p.
14. Report dated May 15, 1986, by Agent Bultman, 2 pp.
15. Report dated June 3, 1986, by Agent Bultman, 2 pp., 3 pp. attachment.
16. Report dated June 5, 1986, by Agent Bultman, 2 pp., 6 pp. attachment.
17. Report dated June 9, 1986, by Agent Bultman, 4 pp.
18. Report dated June 11, 1986, by Agent Bultman, 1 p., 9 pp. attachment.

- 1 19. Report dated June 30, 1986, by Agent Bultman, 2 pp.
- 2 20. Report dated July 2, 1986, by Agent Bultman, 2 pp.
- 3 21. Report dated July 17, 1986, by Agent Bultman, 2 pp.
- 4 22. Report dated July 22, 1986, by Agent Bultman, 2 pp.
- 5 23. Report dated July 23, 1986, by Agent Bultman, 1 p.,  
6 18 pp. attachment.
- 7 24. Report dated September 3, 1986, by Agent Bultman, 2 pp.
- 8 25. Report dated September 16, 1986, by Agent Bultman, 2 pp.
- 9 26. Report dated September 19, 1986, by Agent Bultman, 1 p.
- 10 27. Report dated October 2, 1986, by Agent Bultman, 1 p.
- 11 28. Report dated November 4, 1986, by Agent Bultman, 2 pp.,  
12 9 pp. attachment.
- 13 29. Report dated November 18, 1986, by Agent Bultman, 2 pp.
- 14 30. Report dated December 12, 1986, by Agent Bultman, 2 pp.,  
15 4 pp. attachment.
- 16 31. Report dated December 16, 1986, by Agent Bultman, 2 pp.
- 17 32. Report dated January 29, 1987, by Agent Bultman, 2 pp.,  
18 parts of report have been excised based on governmental/  
19 investigative privilege.
- 20 33. Report dated February 2, 1987, by Agent Bultman, 2 pp.,  
21 parts of report have been withheld based on  
22 governmental/investigative privilege.

23 B. Tapes.

- 24 1. Tape and transcript related to Item A(1).
- 25 2. Tape and transcript related to Item A(2).
- 26 3. Tape and transcript related to Item A(3).
- 27 4. Tape and transcript related to Item A(4).
- 28 5. Tape and transcript related to Item A(5).

- 1 6. Tape and transcript related to Item A(6).
- 2 7. Tape and transcript related to Item A(7).
- 3 8. Tape and transcript related to Item A(8).
- 4 9. Tape and transcript related to Item A(9).
- 5 10. Tape related to Item A(10).
- 6 11. Tape and transcript realated to Item A(12); photographs.
- 7 12. Tape and transcript related to Item A(13).
- 8 13. Tape and transcript related to Item A(14).
- 9 14. Tape related to Item A(15).
- 10 15. Tape related to Item A(16).
- 11 16. Tape related to Item A(19).
- 12 17. Tape and transcript related to Item A(20).
- 13 18. Tape related to Item A(21).
- 14 19. Tape and transcript related to Item A(22).
- 15 20. Tape relted to Item A(24).
- 16 21. Tape related to Item A(25).
- 17 22. Tape related to Item A(26).
- 18 23. Tape and transcript related to Item A(27).
- 19 24. Tape and transcript related to Item A(28).
- 20 25. Tape and transcript related to Item A(29).
- 21 26. Tape related to Item A(30).
- 22 27. Tape related to Item A(31).

23 C. Telephone Tapes

- 24 1. Tape and transcript of conversation between S. Grohn and
- 25 Sam Colacurcio of September 3, 1985.
- 26

- 1 2. Tape and transcript of two conversations between  
2 S. Grohn and Sam Colacurcio of November 6, 1985.
- 3 3. Tape and transcript of two conversations between  
4 S. Grohn and Sam Colacurcio of January 5, 1986.
- 5 4. Tape and transcript of two conversations between  
6 S. Grohn and Sam Colacurcio of January 3, 1986.
- 7 5. Tape and transcript of conversations between S. Grohn  
8 and Sam Colacurcio January 8, 1986.
- 9 6. Tape and transcript of conversation between S. Grohn,  
10 Sam Colacurcio and "Allen" on January 8, 1986.
- 11 7. Tape and transcript of two conversations between  
12 S. Grohn, "Tom", "Ray" and Sam Colacurcio January 9,  
13 1986.
- 14 8. Tape and transcript of three conversations of  
15 January 10, 1986 between Marilyn Colacurcio, Sam  
16 Colacurcio and S. Grohn.
- 17 9. Tape and transcript of conversation between S. Grohn and  
18 Sam Colacurcio of February 1, 1986.
- 19 10. Tape and transcript of conversation between S. Grohn and  
20 Sam Colacurcio of February 1986.
- 21 11. Tape and transcript of conversation between S. Grohn and  
22 Sam Colacurcio of February 1986.
- 23 12. Tape and transcript of conversation between S. Grohn and  
24 Sam Colacurcio of February 19, 1986.
- 25 13. Tape and transcript of five conversations of March 3,  
26 1986.
14. Tape and transcript of a conversation of March 4, 1986  
involving S. Grohn and Sam Colacurcio.
15. Tape and transcript of a conversation of March 17, 1986  
involving S. Grohn and Sam Colacurcio.
16. Tape and transcript of a conversation of March 17, 1986  
involving S. Grohn and Sam Colacurcio.
17. Tape and transcript of a conversation of March 17, 1986  
involving S. Grohn and Sam Colacurcio.

- 1 18. Tape and transcript of a conversation of March 19, 1986  
2 involving S. Grohn and Sam Colacurcio.
- 3 19. Tape and transcript of a March 1986 telephone  
4 conversation between S. Grohn and Sam Colacurcio; 3 pp.
- 5 20. Tape and transcript of a March 1986 telephone  
6 conversation between S. Grohn and Sam Colacurcio; 5 pp.
- 7 21. Tape and transcript of a March 1986 telephone  
8 conversation between S. Grohn and Sam Colacurcio; 5 pp.
- 9 22. Tape and transcript of a March 1986 telephone  
10 conversation between S. Grohn and Sam Colacurcio; 12 pp.
- 11 23. Tape and transcript of a March 1986 telephone  
12 conversation between S. Grohn and Sam Colacurcio; 4 pp.
- 13 24. Tape and transcript of a March 1986 telephone  
14 conversation between S. Grohn and Sam Colacurcio; 7 pp.
- 15 25. Tape and transcript of a March 1986 telephone  
16 conversation between S. Grohn and Sam Colacurcio; 11 pp.
- 17 26. Tape and transcript of two conversations on March 20,  
18 1986 between S. Grohn and Sam Colacurcio.
- 19 27. Tape and transcript of telephone conversation of March  
20 1986 between S. Grohn and Sam Colacurcio, 6 pp.
- 21 28. Tape and transcript of telephone conversation of  
22 March 24, 1986 between S. Grohn and Sam Colacurcio, 10  
23 pp.
- 24 29. Tape and transcript of telephone conversation of  
25 March 27, 1986.
- 26 30. Tape and transcript of telephone conversation between  
March 27, 1986 and April 1, 1986, between S. Grohn and  
Samuel Colacurcio, 8 pp. transcript.
31. Tape and transcript of telephone conversation of  
April 1, 1986.
32. Tape and transcript of telephone conversation of  
April 2, 1986.
33. Tape and transcript of telephone conversation between  
April 2, 1986 and April 7, 1986, between S. Grohn,  
Samuel Colacurcio, and Marilyn Colacurcio, 7 pp.

- 1 34. Tape and transcript of April 7, 1986 telephone  
2 conversation of S. Grohn to Bourbon Street Circus,  
Phoenix.
- 3 35. Tape and transcript of April 7, 1986 telephone  
4 conversation between S. Grohn, Samuel Colacurcio and  
Marilyn Colacurcio.
- 5 36. Tape and transcript of April 8, 1986 telephone  
6 conversation between S. Grohn and Sam Colacurcio.
- 7 37. Tape and transcript of April 8, 1986 telephone  
8 conversation between S. Grohn and Sam Colacurcio.
- 9 38. Tape and transcript of April 8, 1986 telephone  
10 conversation between S. Grohn and Sam Colacurcio.
- 11 39. Tape and transcript of April 8, 1986 telephone  
12 conversation between S. Grohn and Sam Colacurcio.
- 13 40. Tape and transcript of April 14, 1986 telephone  
14 conversation between S. Grohn and Marilyn Colacurcio.
- 15 41. Tape and transcript of April 15, 1986 telephone  
16 conversation between S. Grohn and Sam Colacurcio.
- 17 42. Tape and transcript of April 15, 1986 telephone  
18 conversation between S. Grohn and Sam Colacurcio.
- 19 43. Tape and transcript of April 23, 1986 telephone  
20 conversation between S. Grohn and Sam Colacurcio.
- 21 44. Tape and transcript of April 23, 1986 telephone  
22 conversation between S. Grohn and Sam Colacurcio.
- 23 45. Tape and transcript of April 30, 1986 telephone  
24 conversation between S. Grohn and Sam Colacurcio.
- 25 46. Tape and transcript of May 1, 1986 telephone  
26 conversation between S. Grohn and Sam Colacurcio.
47. May 1986 telephone conversation between S. Grohn and Sam  
Colacurcio, 3 pp. transcript.
48. May 1986 telephone conversation between S. Grohn and Sam  
Colacurcio, 7 pp. transcript.
49. Tape and transcript of May 12, 1986 telephone  
conversation between S. Grohn and Sam Colacurcio.



- 1 50. Tape and transcript of May 1986 telephone conversation  
2 between S. Grohn and Sam Colacurcio, 3 pp. transcript.
- 3 51. Tape and transcript of May 13, 1986 telephone  
4 conversation between S. Grohn and Sam Colacurcio.
- 5 52. Tape and transcript of May 14, 1986 telephone  
6 conversation between S. Grohn and Sam Colacurcio.
- 7 53. Tape and transcript of May 1986 telephone conervation  
8 between S. Grohn and Sam Colacurcio.
- 9 54. Tape and transcript of May 1986 telephone conervation  
10 between S. Grohn and Sam Colacurcio.
- 11 55. Tape and transcript of May 28, 1986 telephone  
12 conversation between S. Grohn and Sam Colacurcio.
- 13 56. Tape and transcript of June 2, 1986 telephone  
14 conversation between S. Grohn and Sam Colacurcio.
- 15 57. Tape and transcript of June 9, 1986 telephone  
16 conversation between S. Grohn and Sam Colacurcio.
- 17 58. Tape and transcript of June 1986 telephone conversation  
18 between S. Grohn and Sam Colacurcio.
- 19 59. Tape and transcript of June 1986 telephone conversation  
20 between S. Grohn and Sam Colacurcio.
- 21 60. Tape and transcript of June 24, 1986 telephone  
22 conversation between S. Grohn and Sam Colacurcio.
- 23 61. Tape and transcript of July 1, 1986 telephone  
24 conversation between S. Grohn and Sam Colacurcio.
- 25 62. Tape and transcript of November 5, 1986 telephone  
26 conversation between Garry Shumann and Rosalie Raptosh.
63. Tape and transcript of December 19, 1986 telephone  
conversation between Garry Shumann and Rosalie Raptosh.
64. Tape and transcript of December 31, 1986 telephone call  
by Garry Shumann to Rosalie Raptosh.
65. Tape and transcript of January 2, 1987 telephone  
conversation between Garry Shumann and Rosalie Raptosh.
66. Tape of a July 7, 1986 telephone conversation between  
S. Grohn and Sam Colacurcio.

- 1 57. Tape of a July 1986 telephone conversation between
- 2 S. Grohn and Sam Colacurcio.
- 3 68. Tape of a July 9, 1986 telephone conversation between
- 4 S. Grohn and Sam Colacurcio.
- 5 69. Tape of a July 10, 1986 telephone conversation between
- 6 S. Grohn and Sam Colacurcio.
- 7 70. Tape of a July 10, 1986 telephone conversation between
- 8 S. Grohn and Sam Colacurcio.
- 9 71. Tape of a July 1986 telephone conversation between
- 10 S. Grohn and Sam Colacurcio.
- 11 72. Tape of a July 1986 telephone conversation between
- 12 S. Grohn and Sam Colacurcio.
- 13 73. Tape of a July 1986 telephone conversation between
- 14 S. Grohn and Sam Colacurcio.
- 15 74. Tape of a July 1986 telephone conversation between
- 16 S. Grohn and Sam Colacurcio.
- 17 75. Tape of a July 1986 telephone conversation between
- 18 S. Grohn and Sam Colacurcio.

19 D. Corporate Documents On:

- 20 1. Big Top Enterprises, Ltd.
- 21 2. Raptosh Enterprises, Ltd.
- 22 3. Cheetah Enterprises, Inc.
- 23 4. Dream Street, Inc.
- 24 5. Western Consultants, Inc.

25 All such documents are public records with the Corporation  
26 Commission and are available there.

27 E. Records From the Arizona Department of Liquor License and  
28 Control On:

- 29 1. Bourbon Street Circus, Phoenix.

- 1           2. Cheetah 1.
- 2           3. Dream Street.
- 3           4. Bourbon Street Circus, Tucson.

4 All such documents are public records with the Arizona Department  
5 of Liquor Licenses and Control and are available there. Non-  
6 public records kept in the Department files have previously been  
7 made available to this Defendant.

7   F.   Deeds

- 8           1. Deed of Trust, dated May 2, 1986, Trustor Rosalie  
9           Raptosh, Trustee Western Savings and Loan Association.
- 10           2. Deed of Release and Full Conveyance, dated April 22,  
11           1986, from Title Insurance Company of Minnesota to  
12           Rosalie Raptosh.
- 13           3. Deed of Trust dated October 14, 1986 between Rosalie  
14           Raptosh and Ticor Title Insurance Company of California.
- 15           4. Warranty Deed dated February 23, 1984 from J. Coleman to  
16           Rosalie Raptosh.
- 17           5. Deed of Trust dated October 5, 1983 between Rosalie  
18           Raptosh and Title Insurance Company of Minnesota.
- 19           6. Warranty Deed dated October 6, 1983 from A. Heweime1 and  
20           M. Sayegh to Rosalie Raptosh.
- 21           7. Special Warranty Deed dated March 17, 1986 from Title  
22           Insurance Company of Minnesota to Rosalie Raptosh.
- 23           8. Warranty Deed dated April 16, 1985 from G. Jenkins and  
24           F. Jenkins to Thomas Stricker.
- 25           9. Disclaimer Deed dated April 16, 1985 from Tatjana  
26           Stricker to Thomas Stricker.
10. Joint Tenancy Deed dated May 16, 1985 from J. Blythe to  
          David H. Ochiai and Patricia V. Ochiai.

24 All of the above are public records and may be obtained at the  
25 Maricopa County Recorder's Office.

26 0581C



## DISCOVERY

For experienced prosecutors, discovery in a civil RICO case provides an opportunity to extract, or at least attempt to extract, information from the defendants. Discovery also allows the government to obtain information from third parties through the civil deposition and subpoena duces tecum process.

As a practical matter, discovery in a civil RICO case may be of limited value. When seeking information from defendants who are the subject of pending criminal charges, fifth amendment claims will surface. Although the fifth amendment privilege is an inappropriate defense to many government requests for information, courts are reluctant to compel testimony.

There may also be legal reasons for not forcing defendants to provide information. Compelling testimony in the civil case may adversely affect pending criminal prosecutions by creating immunity arguments for defendants. Even where civil defendants are not facing criminal liability, some states have developed peculiar bodies of case law by applying fifth amendment principles to civil proceedings that are punitive in nature. It is therefore important to understand the parameters of the fifth amendment privilege from both federal constitutional and state law perspectives. Discovery can be fruitful, however, when information is sought from third parties or corporate entities that cannot invoke the fifth amendment. Although few civil RICO cases rely on discovery for major items of proof, important details may be corroborated or even uncovered during the discovery process.

One word of caution. Any time civil litigation is pursued, discovery can be sought by both parties. In states with limited criminal discovery, defendants will invoke the extensive discovery provisions of civil law to obtain information about the criminal case. It is difficult, if not impossible, to restrict discovery once the civil case is filed. Coordination with the prosecution is therefore essential to avoid unintentional or unwelcome interference with the criminal case.



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COPY

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

8 IN AND FOR THE COUNTY OF MARICOPA

9 IN THE MATTER OF:

10 JAIME JAVIER FIGUEROA-SOTO, MARIA )  
11 ELENA RIVERA de FIGUEROA, JOSE ) NO. CV88-34047  
12 ALFREDO CARRILLO, ALMA QUINONES )  
13 CARRILLO, MANUEL JESUS DUARTE, )  
14 JULIA D. DUARTE, AND DAVID ) NON-UNIFORM INTERROGATORIES  
15 VILLALOBOS ACOSTA; ONE RESIDENCE )  
16 LOCATED AT 10261 EAST JENAN DRIVE, )  
SCOTTSDALE, ARIZONA, ET AL.; )  
JOHN/JANE DOES 1-5; XYZ ENTERPRISES )  
1-5; and ABC CORPORATIONS 1-5; )  
\_\_\_\_\_ )

17 TO: CLAIMANT OF INTERESTS IN  
18 THE PROPERTY LISTED IN APPENDIX ONE

19 Under the authority of A.R.S. § 13-4311, the State hereby  
20 requests that the Claimant(s) answer(s) in writing and under  
21 oath, within twenty (20) days from the receipt hereof, the  
22 following interrogatories:

23 INSTRUCTIONS

24 1. All information is to be divulged which is in the  
25 possession, custody or control of each individual or corporate  
26 party, their attorneys, investigators, agents, employees or

1 other representatives, including all information reasonably  
2 available to them.

3 2. Where an individual interrogatory calls for an answer  
4 which involves more than one part or sub-part, each part of the  
5 answer should be set forth separately so that it is clearly  
6 understandable and responsive to the respective sub-part.

7 3. The terms "writing" or "written" are intended to  
8 include but not necessarily be limited to the following:  
9 handwriting, typewriting, printing, photographing, and every  
10 other means of recording upon any tangible thing any form of  
11 communications, including letters, words, pictures, sounds or  
12 symbols or combinations thereof; and it further includes any  
13 oral communication later reduced to a writing or confirmed by a  
14 letter.

15 4. "Document" shall be read to include every writing of  
16 every type and description, and every other instrument or  
17 device, by which, through or on which, information has been  
18 recorded and/or preserved, including, but not limited to,  
19 memoranda, notes, letters, written reprimands, hand written  
20 notes, logs, telephone records, computer cards, tapes and  
21 print-outs, employment applications, interview reports,  
22 personnel files and other data compilations and every other  
23 device or medium on which or through which information of any  
24 type is transmitted, recorded or preserved. The term "document"  
25 also means every copy of a document where such document is not  
26 an identical duplicate of the original.

5. "Person" shall refer to one or more individuals,  
governmental agencies, political subdivisions, labor unions,  
partnerships, associations, corporations, legal representatives,  
mutual companies, joint stock companies, trusts, unincorporated  
organizations, trustees, trustees in bankruptcy, receivers, or  
any other entity. The term "claimant" for the purposes of these  
answers means any person who has filed a claim, whether or not  
it is a sufficient claim. It includes all persons listed in  
Appendix B to the Complaint.

6. When an interrogatory requests that you identify a  
person, please state:

- a. The full name;
- b. The present or last known address;
- c. The present employer's name and address; and
- d. The occupational position or classification.

7. Unless otherwise directed, when an interrogatory asks  
that you identify a document or writing, please state:



1 etc.); a. Its nature (e.g., letter, memorandum, report,  
2 b. Its title, if any;  
3 c. The date it was prepared;  
4 d. The date it was sent;  
e. The date it was received;  
f. The identity, as defined above, of person(s) who:

(1) Prepared it;  
(2) Participated in any way in its preparation;

or

(3) Signed it;

7 g. A statement of its subject matter; and  
8 h. The identity, as defined above, of the person who  
has custody of it.

9 8. In the event that your answer to an interrogatory is  
10 "not applicable" or any similar phrase or answer, explain in  
detail why that interrogatory is not applicable.

11 9. In the event that your answer to any interrogatory is  
12 "don't know" or "unknown" or any similar phrase or answer,  
13 explain in detail all efforts made by the named party or his or  
her attorneys or representatives to obtain the answer to that  
interrogatory.

14 10. Where the terms "you" or "plaintiff", "claimant" or  
15 "defendant" are used, they are meant to include every individual  
party, and separate answers must be given for each person named  
16 as a claimant to whom these interrogatories are directed.

17 11. All terms used herein that are defined in Title 13,  
Arizona Revised Statutes, are meant as they are defined there.  
18 See, particularly, A.R.S. § 13-105, § 13-2301, § 13-2314,  
§ 13-3401 and § 13-4301.

19 12. Space has been provided on the form of interrogatories  
20 for your answer. In the event the space is not sufficient for  
your answer to any question, please attach a separate sheet of  
21 paper with the additional information. Complete all copies,  
file the original with the Clerk of Court, and serve a copy upon  
22 each party. Each party must personally verify the answers to  
these interrogatories and attach such verification to his or her  
23 answers.

24 13. For the purposes of these interrogatories it is not  
the intention of the Plaintiff to replace your Fifth Amendment  
25 privilege with any order to produce, testify or give answers  
pursuant to A.R.S. § 41-1014.

1 14. These interrogatories should be deemed continuing in  
2 nature, and Plaintiff requests that the defendant update his or  
3 her answers to interrogatories periodically to reflect any  
4 information obtained after the interrogatories are initially  
5 answered to include all information up to, and including, the  
6 date of each hearing and the trial in this action, in accordance  
7 with Rule 26 of the Arizona Rules of Civil Procedure, and during  
8 the pendency of each hearing and the trial in this action.

9 15. Where an interrogatory requests that you or your  
10 attorney provide information concerning what a witness may  
11 testify about, that interrogatory is intended to elicit a  
12 summary of any and all information that any witness may have  
13 provided to you regardless of whether they may so testify at  
14 trial.

15 16. "Appendix One" refers to Appendix One to the Complaint  
16 in this action.

#### 17 INTERROGATORIES

18 1. (a) State your full name.

19 (b) State any and all other names which you have ever  
20 used or by which you have been known, or which you have used to  
21 take title to property.

22 (c) State any name under which you have had a driver's  
23 license, the date and state of its issuance and its number.

1        2.    State each and every address which you have had in the  
2 last ten years, including your present address, and the dates of  
3 your residence at each.

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10        3.    State the date and place of your birth.

11  
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14        4.    (a)   Which of the following is your present marital  
15 status:   single, married, separated, widowed or divorced.   If you  
16 have ever been married, answer the following:

17  
18  
19        (b)   State the name and last known address of your  
20 spouse and every former spouse, and the state of the marriage.

21  
22  
23  
24        (c)   State the date and place of each such marriage.

1 (d) As to previous marriages, please give the date,  
2 place and manner of each termination and terms of property  
3 settlement, if any.

4  
5  
6  
7 (e) State the name, age and address of each of your  
8 children.

9  
10  
11  
12 5. State your height in feet and inches.

13  
14 6. State your weight in pounds.

15  
16 7. State the color of your eyes.

17  
18 8. State the color of your hair.

19  
20 9. State your Social Security number.

21  
22 10. (a) Have you ever been a party to a civil lawsuit? If  
23 so, for each such lawsuit, state:

24  
25 (b) What were the allegations made against each  
26 defendant and what were the defenses of each defendant?

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(c) What were the allegations made against you and what were your defenses?

(d) What was the outcome of each lawsuit? (e.g., verdict for plaintiff for \$\_\_\_\_\_; verdict for defendant; settlement for \$\_\_\_\_\_; abatement ordered by court; settlement reached prior to trial; dismissed; etc.?)

(e) When, where and in what court was each lawsuit commenced?

(f) State the names of all parties in each lawsuit and whether each party was a plaintiff or defendant:

1 11. (a) Have you ever been convicted of a felony? If so,  
2 for each conviction state:

3  
4 (b) What was the original charge brought against you  
5 and the date of the charge?

6  
7  
8  
9  
10 (c) What was the charge of which you were convicted?

11  
12  
13 (d) Did you plead guilty of the charge, or were you  
14 convicted after trial?

15  
16  
17 (e) What law enforcement agencies were involved in the  
18 investigation of the charges?

19  
20  
21 (f) What was the name and address of the court where  
22 the proceedings took place?

1        12. (a) Have you ever been accused of committing a felony  
2 for which you were not convicted? If so, for each arrest or  
3 complaint state:

4  
5            (b) What was the original charge brought against you  
6 and the date of the charge?

7  
8  
9            (c) Were you convicted of a lesser offense?

10  
11  
12           (d) Were you acquitted, were charges dismissed, or did  
13 you plead guilty to a lesser offense?

14  
15  
16           (e) What was the name and address of the court where  
17 the proceedings took place?

18  
19  
20        13. (a) Have you ever served in the Armed Forces of the  
21 United States? If so, state:

22  
23           (b) The branch of service.

24  
25  
26

1 (c) Your serial number.

2

3

4 (d) The date of commencement and termination of  
5 service.

6

7

8 (e) The highest rank attained.

9

10

11 (f) The type of discharge received.

12

13

14 (g) While in the Armed Forces, were you ever brought  
15 up on charges for either judicial or non-judicial punishment?

16

17

18 (h) If the answer to (g) is yes, state the nature,  
19 date and place of the charges.

20

21

22

23 14. (a) Have you ever been convicted of a misdemeanor? If  
24 so, state for each conviction:

25

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(b) What was the original charge brought against you?

(c) What was the charge of which you were convicted?

(d) Did you plead guilty of the charge, or were you convicted after trial?

(e) What was the name and address of the court where the proceedings took place?

15. (a) Are you aware of the existence of any document written or recorded statement made by any party to this lawsuit or witness to any activity alleged in this lawsuit? If so, state:

(b) The name of each person making each statement.

(c) The date of each statement.

1           (d) The name, employer, occupation and last known  
2 address of the person or persons taking or recording the  
3 statement.

4  
5  
6  
7           (e) The name and the last known address of the person  
8 now in possession of each original recorded or written statement.

9  
10  
11  
12           (f) What, if any, is your relationship to each person  
13 making each statement?

14  
15  
16  
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21           (g) If you are willing to do so without receiving a  
22 formal Request for Production of Documents, please attach a copy  
23 of each such written or recorded statement to your answer to  
24 these Interrogatories served upon the attorney for the State.

25  
26

1        16. (a) Do you have possession or control of any  
2 documents, including copies of federal or state income tax  
3 returns, which reflect any source of payment for any of the  
4 property described in Appendix One hereto dated within the last  
5 ten (10) years? If the answer is no state the name and address  
6 and occupation of the person who has such records and the  
7 identity of such document. If the answer is yes:

8  
9  
10  
11        (b) Describe each such document, and the period of  
12 time to which it relates.  
13  
14  
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20  
21        (c) If the document is not dated, describe how its  
22 date of creation and the period of time to which it relates may  
23 be determined.  
24  
25  
26

1           (d) State the name and address of the persons who have  
2 possession or control of each document, record, memorandum or tax  
3 return.

4  
5  
6  
7  
8  
9  
10  
11           (e) If you are willing to do so without receiving a  
12 formal Request for Production of Documents, please attach a copy  
13 of each such tax return, record, or memoranda to your answer to  
14 these Interrogatories served upon the attorney for the State.  
15

16           17. With respect to any interest you claim in any of the  
17 property interests described in Appendix One to the Complaint,  
18 state the item number as described in Appendix One and:  
19

20           (a) The interest you claim in the property;  
21  
22  
23  
24  
25  
26

1 (b) The date(s) you acquired such interest;  
2  
3

4  
5 (c) From whom you acquired it;  
6  
7

8 (d) The nature of the transaction by which you  
9 acquired it;  
10  
11

12  
13 (e) All of the consideration on each side of the  
14 transaction by which you acquired it;  
15  
16

17  
18 (f) The method or methods of payment used to  
19 acquire the property to include checks, money orders,  
20 cash, property exchange or any other method;  
21  
22

23  
24 (g) The approximate fair market value of the  
25 interest you claim;  
26

1  
2  
3  
4 (h) The names of anyone else who was present at  
5 the transaction by which you acquired the interest, or  
6 any portion of the transaction;  
7  
8  
9

10 (i) The identity of any physical writing,  
11 evidence, document or thing that exists reflecting the  
12 transactions or created as a part of the transaction;  
13  
14  
15

16 (j) The identity of any and all other person(s)  
17 who are owners or interest holders in the property;  
18  
19  
20

21 (k) State whether an escrow was established. If  
22 so, name the escrow agent, agreement number, and date  
23 and place.  
24  
25  
26

1 (l) State the names of all financial institutions  
2 who participated in lending monies to finance the  
3 acquisition of the property.  
4

5  
6 (m) State the name of all nominees used to place  
7 title to any of the property.  
8  
9

10  
11 (n) State whether your spouse, if any, has any  
12 interest in the property.  
13  
14

15 (o) If there are any other persons who are owners  
16 or interest holders in the property state the  
17 information requested in 17(a) 1-8 above with respect  
18 to each such person's interest in the property.  
19  
20

21  
22 18. State the number (and letter, if applicable) of each  
23 part or subpart of Plaintiff's Complaint which you deny, and  
24 beneath each part or subpart state each and every fact, document,  
25  
26

1 item, point of law, and all other grounds or evidentiary matter  
2 of any kind upon which you base that denial.

3  
4  
5 19. (a) State a complete description of every document  
6 (title, date, signatures, etc.) and its location which supports  
7 any denial listed in Interrogatory 18 above and indicate the  
8 denial to which it applies.  
9

10  
11  
12 (b) If you are willing to do so without receiving a  
13 formal Request for Production of Documents, please attach a copy  
14 of each such document to these Interrogatories served upon the  
15 attorney for the State.  
16

17 20. State the name, address, official title and other  
18 identification of each person who has knowledge of the facts upon  
19 which you base any of the denials listed in Interrogatory 18  
20 above or whose testimony would support any of the denials, and  
21 indicate the denial(s) to which the person's knowledge or  
22 testimony applies.  
23  
24  
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26



1           21. (a) State the names, addresses, official titles and  
2 other identification of all witnesses, including expert  
3 witnesses, who it is contemplated will be called by you at the  
4 forfeiture hearing on the civil forfeiture and the substance of  
5 what each may testify about.

6  
7  
8  
9  
10           (b) State the identity of each document or item which  
11 it is contemplated will be offered as evidence by you at the  
12 hearing on the civil forfeiture.

13  
14  
15  
16  
17           (c) As to each document or item identify the location  
18 and person in control or possession.

19  
20  
21  
22           22. Have you had any financial dealings or financial  
23 relationship or transaction whatever with any of the defendants  
24 or claimants in this action during the last ten (10) years? If  
25  
26

1 so, state for each such dealing, relationship or transaction with  
2 each such person:

3  
4 (a) The nature of the dealing, relationship or  
5 transaction.

6  
7  
8 (b) The date or dates it occurred.

9  
10  
11  
12 (c) The amounts of money involved, if any.

13  
14  
15  
16 (d) The legal description and address of the real  
17 estate involved, if any.

18  
19  
20  
21 (e) The name and account or escrow number of each  
22 title company, professional advisor, financial service  
23 provider or financial institution involved.  
24  
25  
26

1 (f) Identify all documents created relating to  
2 the dealing, transaction or relationship.  
3  
4

5 (g) If you are willing to do so without receiving  
6 a formal Request for Production of Documents, please  
7 attach a copy of each such document to your answer to  
8 these Interrogatories served upon the attorney for the  
9 State, if not, identify the custodian of each document.  
10  
11

12 (h) Identify each real estate broker or sales  
13 person, attorney and escrow officer involved in or  
14 knowledgeable about the dealing, transaction or  
15 relationship.  
16  
17

18 (i) Identify each additional person, whether  
19 claimant or non-claimant, who was involved in or  
20 knowledgeable about the dealing, transaction or  
21 relationship.  
22  
23  
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26

1 (j) Identify each corporation, partnership,  
2 trust, association, or other organization created by or  
3 involved with the dealing, transaction or relationship.  
4

5  
6  
7  
8 (k) State how much you gained as a result of the  
9 dealing, transactions or relationship.  
10

11  
12  
13  
14 (l) State how much each other claimant or person  
15 gained as a result of each dealing, transaction or  
16 relationship.  
17

18  
19  
20 23. (a) Have you seen anything, participated in any act or  
21 heard any statement that would tend to show or refute that  
22 between approximately October 1, 1978, and the date of the  
23 Complaint, in Maricopa County, Arizona, Jaime Javier  
24 Figueroa-Soto, Maria Elena de Figueroa, Jose Alfredo Carrillo,  
25 Alma Quinones Carrillo, Manuel Jesus Duarte, Julia D. Duarte, and  
26

1 David Villalobos Acosta and others, with the intent to promote or  
2 aid in the commission of the offenses of money laundering;  
3 importation, transportation, transfer and sale of marijuana; or  
4 obstruction of justice, agreed with each other and others that at  
5 least one of them would engage in conduct constituting those  
6 offenses and that, in furtherance of those offenses, overt acts  
7 were committed?  
8  
9

10 (b) Have you seen anything, participated in any act or  
11 heard any statement that would tend to show or refute that  
12 between October 1, 1978 and the date of the Complaint, members of  
13 the Figueroa-Soto Enterprise have imported, transported,  
14 transferred and sold marijuana in Maricopa County and elsewhere  
15 in a total minimum amount of about 253,975 pounds, valued at  
16 about \$500/pound, a wholesale price used by the Figueroa-Soto  
17 Enterprise to charge its own distributors, for a total value of  
18 about \$126,987,500.00?  
19  
20

21 (c) Have you seen anything, participated in any act or  
22 heard any statement that would tend to show or refute that in  
23 August, 1981, Manuel J. Duarte imported or possessed for sale  
24 1,300 pounds of marijuana in the state of Arizona?  
25  
26

1 (d) Have you seen anything, participated in any act or  
2 heard any statement that would tend to show or refute that during  
3 a four-month period in 1983, the Figueroa-Soto Enterprise used a  
4 stash house located at Old Spanish Trail and Irvington Road as a  
5 trans-shipment point for imported marijuana at a rate of more  
6 than one tractor-trailer load per day, each tractor-trailer  
7 having a capacity of 3 1/2 to 5 tons of marijuana, valued at  
8 about \$500/pound, or \$1 million/ton?  
9

10 (e) Have you seen anything, participated in any act or  
11 heard any statement that would tend to show or refute that  
12 between June 15, 1983 and March 23, 1984, the members of the  
13 Figueroa-Soto Enterprise, including Jaime Javier Figueroa-Soto,  
14 Manuel J. Duarte and David V. Acosta among others, sold  
15 approximately 208,942 pounds of marijuana for transportation to  
16 and through Maricopa County, among other places, valued at about  
17 \$500/pound for a total value of \$104,471,000.00?  
18

19 (f) Have you seen anything, participated in any act or  
20 heard any statement that would tend to show or refute that  
21 between June 15, 1983 and March 23, 1984, the Figueroa-Soto  
22 Enterprise collected approximately \$41,096,546.00 from the sale  
23 of marijuana for transportation to and through Maricopa County,  
24 among other places, and invested the balance due in the marijuana  
25  
26

1 distribution businesses of the enterprise's distributors,  
2 including Manuel J. Duarte and David V. Acosta, by extending  
3 credit for their purchases of marijuana from the Figueroa-Soto  
4 Enterprise?

5  
6  
7 (g) Have you seen anything, participated in any act or  
8 heard any statement that would tend to show or refute that on or  
9 about March 23, 1984, the members of the Figueroa-Soto Enterprise  
10 transported and possessed for sale 40,000 pounds, or 20 tons, of  
11 marijuana valued at about \$500/pound, or \$1 million/ton, for a  
12 total value of inventory on hand of \$20,000,000.00?

13  
14  
15 (h) Have you seen anything, participated in any act or  
16 heard any statement that would tend to show or refute that in  
17 January, 1987, members of the Figueroa-Soto Enterprise, including  
18 Jose Carrillo and Jaime Javier Figueroa-Soto, sold 1,015 pounds  
19 of marijuana and possessed for sale an additional 2,718 pounds of  
20 marijuana, for a total of 3,733 pounds, for delivery in part to  
21 Reno, Nevada?

22  
23  
24 (i) Have you seen anything, participated in any act or  
25 heard any statement that would tend to show or refute that  
26 between October 1, 1978 and the date of the Complaint, members of

1 the Figueroa-Soto Enterprise have attempted by means of bribery,  
2 misrepresentation, intimidate or force or threats of force to  
3 obstruct, delay or prevent the communication of information or  
4 testimony relating to the Figueroa-Soto Enterprise to peace  
5 officers, magistrates, prosecutors or grand juries, or have  
6 knowingly injured people in their persons and property on account  
7 of their giving or other's giving such information to peace  
8 officers, magistrates, prosecutors or grand juries?  
9  
10

11 (j) Have you seen anything, participated in any act or  
12 heard any statement that would tend to show or refute that  
13 between March 23, 1984 and March 1, 1985, Manuel J. Duarte and  
14 Jaime Javier Figueroa-Soto, on behalf of the Figueroa-Soto  
15 Enterprise, presented about \$100,000 in cash gifts to five  
16 arrested enterprise employees, with the intent to purchase their  
17 silence about the illegal conduct and participants of the  
18 Figueroa-Soto Enterprise, by paying their Tucson attorneys on  
19 their behalf?  
20  
21

22 (k) Have you seen anything, participated in any act or  
23 heard any statement that would tend to show or refute that  
24 between August 7, 1985 and the date of this Complaint, members of  
25 the Figueroa-Soto Enterprise acquired or maintained an interest  
26 in, transferred, transported, received or concealed the existence



1 or nature of the proceeds of the sale of marijuana by investment  
2 in real estate and other property in Maricopa County and  
3 elsewhere.  
4

5 (1) Have you seen anything, participated in any act or  
6 heard any statement that would tend to show or refute that  
7 between February, 1985 and May, 1987, members of the  
8 Figueroa-Soto Enterprise, including Jaime Javier Figueroa-Soto,  
9 Maria Elena Rivera de Figueroa, Jose Carrillo or Alma Carrillo,  
10 maintained interests in, transferred or received the proceeds of  
11 the racketeering conduct of the Figueroa-Soto Enterprise in an  
12 account at Valley National Bank titled in the name "Rojo"?  
13  
14

15 (m) Have you seen anything, participated in any act or  
16 heard any statement that would tend to show or refute that  
17 between May, 1986 and May, 1987, the members of the Figueroa-Soto  
18 Enterprise, including Jaime Javier Figueroa-Soto, Maria Elena  
19 Rivera de Figueroa, Jose Carrillo and Alma Carrillo maintained,  
20 received and transferred in excess of \$35,000,000 in the proceeds  
21 of racketeering deposited during that time period into the "Rojo"  
22 account for the purpose of purchasing real and personal property  
23 in Maricopa County and elsewhere?  
24  
25  
26

1 (n) Have you seen anything, participated in any act or  
2 heard any statement that would tend to show or refute that in  
3 August, 1987, the proceeds of the Figueroa-Soto Enterprise were  
4 transferred to purchase a residence at 9208 South Kachina, Tempe,  
5 Arizona, by Jose Alfredo Carrillo and Alma Rosa Carrillo?  
6  
7

8 (o) Have you seen anything, participated in any act or  
9 heard any statement that would tend to show or refute that in  
10 February, 1987, the proceeds of the Figueroa-Soto Enterprise were  
11 transferred to purchase a residence at 3288 Potero Drive,  
12 Nogales, Arizona, by Jose Alfredo Carrillo and Alma Rosa Carrillo?  
13  
14

15 (p) Have you seen anything, participated in any act or  
16 heard any statement that would tend to show or refute that in  
17 May, 1987, the proceeds of the Figueroa-Soto Enterprise were  
18 transferred to purchase a residence at 10261 Jenan Drive,  
19 Scottsdale, Arizona, by Jaime Javier Figueroa-Soto and Maria  
20 Elena Rivera de Figueroa?  
21  
22

23 (q) Have you seen anything, participated in any act or  
24 heard any statement that would tend to show or refute that in  
25 August, 1987, the proceeds of the Figueroa-Soto Enterprise were  
26

1 transferred to purchase a 1987 Rolls Royce convertible in  
2 Scottsdale, Arizona, by Jaime Javier Figueroa-Soto?

3  
4  
5 (r) Have you seen anything, participated in any act or  
6 heard any statement that would tend to show or refute that in  
7 November, 1987, the proceeds of the Figueroa-Soto Enterprise were  
8 transferred to purchase two tractor-trailers for use in  
9 transporting marijuana to and from Phoenix, Arizona, by Jaime  
10 Javier Figueroa-Soto and Jose Carrillo?

11  
12  
13 (s) Have you seen anything, participated in any act or  
14 heard any statement that would tend to show or refute that  
15 between August 7, 1985, and the date of the Complaint, members of  
16 the Figueroa-Soto Enterprise acquired or maintained an interest  
17 in, transferred, transported, received or concealed the nature of  
18 the proceeds of the sale of marijuana by investment in cattle in  
19 Maricopa County and elsewhere?

20  
21  
22 (t) Have you seen anything, participated in any act or  
23 heard any statement that would tend to show or refute that  
24 between August 7, 1985 and the date of the Complaint, members of  
25 the Figueroa-Soto Enterprise acquired or maintained an interest  
26 in, transferred, transported, received or concealed the existence

1 or nature of the proceeds of the sale of marijuana by making  
2 purchases of property, both real and personal, in Maricopa County  
3 and elsewhere, in the names of nominees and fictitious names as  
4 "straw owners"?

5  
6  
7 (u) Have you seen anything, participated in any act or  
8 heard any statement that would tend to show or refute that  
9 between December, 1987 and May, 1988, from Maricopa County,  
10 Arizona, Jaime Javier Figueroa-Soto maintained an interest in the  
11 proceeds of racketeering in two accounts at Frost National Bank,  
12 San Antonio, Texas, in amounts not less than \$522,335.76 and  
13 \$568,495.54, respectively?

14  
15  
16 (v) Have you seen anything, participated in any act or  
17 heard any statement that would tend to show or refute that  
18 between June, 1987 and May, 1988 from Maricopa County, Arizona,  
19 Jaime Javier Figueroa-Soto maintained an interest in the proceeds  
20 of racketeering in accounts at Home Federal Savings and Loan in  
21 San Diego, California, in a total amount not less than  
22 \$675,761.58?

1           (w) Have you seen anything, participated in any act or  
2 heard any statement that would tend to show or refute that  
3 between August 7, 1985, and the date of the Complaint, members of  
4 the Figueroa-Soto Enterprise acquired or maintained an interest  
5 in, transferred, transported, received or concealed the existence  
6 or nature of the proceeds of the sale of marijuana by  
7 transporting cash to Mexico and investing it there in, by way of  
8 illustration, four ranches, a movie theater, a discotheque, a  
9 trucking company, a construction company, an animal hide tanning  
10 company, a hotel, three beef retail outlets, an automobile  
11 dealership, and numerous residences and rental properties?

12  
13  
14           (x) If your answer to any of sub-parts (a)-(w) is yes,  
15 state for each such occurrence in 23(a)-(w) above, the sub-part's  
16 letter and:

17  
18                   (1) what you saw, participated in or heard;

19  
20  
21  
22                   (2) when it occurred;

23  
24  
25  
26                   (3) where it occurred; and

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(4) the identity of anyone else who was present at that place and time or who may have seen the thing, participated in the act or heard the statement.

(5) the identity of any document relating to such thing, act or statement.

24. (a) Have you had any personal or telephone conversation or other contact with any claimant in this lawsuit or with any person named in the Complaint since you first became aware of the State's investigation of any of the acts alleged in the Complaint? If so, for each such contact state:

(b) With whom;

1 (c) The nature of the conversation or contact;  
2  
3

4 (d) The date and time it occurred;  
5  
6  
7

8 (e) Where it occurred, or if by phone, where each  
9 speaker was located;  
10  
11  
12

13 (f) The content and purpose of the contact; and  
14  
15  
16

17 (g) The name(s) of anyone who was present at that  
18 place and time who may have heard or participated in the  
19 conversation or other contact.  
20  
21  
22

23 25. (a) Have you been employed by or associated with any  
24 person engaged in the importation, transfer, sale, or  
25 transportation of marijuana, since October 1, 1978? If so, state:  
26

1  
2  
3 (b) The identity of each such person;  
4  
5

6  
7 (c) The date, place and circumstances you met each  
8 such person;  
9

10  
11 (d) The nature of your employment or association with  
12 each such person; and  
13

14  
15  
16 (e) The nature of each such person's involvement in  
17 the importation, transfer, sale or transportation of  
18 marijuana.  
19

20  
21  
22 26. (a) Have you imported, transferred, sold or  
23 transported any marijuana since October 1, 1978? If so, state  
24 for each such event:  
25  
26



1

2

3

4

(b) The approximate date and place it occurred;

5

6

7

8

(c) The amount of marijuana involved in pounds;

9

10

11

12

(d) The identity of any person(s) present;

13

14

15

16

(e) The source of the marijuana; and

17

18

19

20

(f) The source of funds or property you used to obtain  
the marijuana.

21

22

23

24

25

(g) The amount of money you obtained for the marijuana;

26

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2  
3  
4 (h) How you applied the funds obtained for the  
5 marijuana.  
6  
7  
8

9 27. (a) Have you possessed, acquired, transported or  
10 transferred any money or thing of value that you had reason to  
11 know was proceeds of dealing in marijuana since October 1, 1978?  
12 If so, state for each such occasion:  
13  
14  
15

16 (b) The approximate date and place it occurred;  
17  
18  
19

20 (c) The identity of each person from whom you received  
21 the money or thing of value;  
22  
23  
24  
25  
26

1 (d) The identity of each person to whom you  
2 transported or transferred the money or thing of value;  
3  
4

5 (e) The amount of money or the value of all property  
6 involved;  
7  
8  
9

10 (f) The current location of the money or property or  
11 their whereabouts at the time you were last aware of their  
12 whereabouts;  
13  
14  
15

16 (g) The name and account or escrow number of each  
17 title company, professional advisor, financial service  
18 provider or financial institution involved;  
19  
20  
21

22 (h) Identify all documents created relating to the  
23 transaction;  
24  
25  
26

1 (i) Identify each person who was involved in or  
2 knowledgeable about the transaction; and  
3  
4

5 (j) If you are willing to do so without receiving a  
6 formal Request for Production of Documents, please attach a  
7 copy of each such document to your answer to these  
8 Interrogatories served upon the attorney for the State.  
9  
10  
11

12 28. State the names and addresses of each accountant or tax  
13 advisor you have utilized to prepare financial statements or tax  
14 returns.  
15  
16  
17

18 29. (a). With respect to any transaction relating to any  
19 property interest described in Appendix One of which you have any  
20 knowledge, whether or not you claim an interest in it, state, for  
21 each such transaction:  
22

23 1. The date and place of the transaction.  
24  
25  
26

1                   2. The nature of the transaction.

2

3

4

5                   3. All of the consideration on each side of the  
6 transaction;

7

8

9

10                  4. The approximate fair market value of the  
11 property at the time;

12

13

14

15                  5. The names of anyone who was present at the  
16 transaction;

17

18

19                  6. The identity of any physical writing,  
20 evidence, document or thing that exists reflecting the  
21 transaction or created as a part of the transaction;

22

23

24

25                  7. The identity of all other person(s) who are  
26 owners or interest holders in the property;

1  
2  
3  
4 8. Whether an escrow was established. If so,  
5 name the escrow agent, agreement number, and date and  
6 place;

7  
8  
9  
10 9. The names of all financial institutions who  
11 participated in lending monies to finance the  
12 acquisition of the property;

13  
14  
15  
16 10. The name of all nominees used to place title  
17 to any of the property;

18  
19  
20  
21 11. If there are any persons other than those  
22 involved in the transaction who were owners or interest  
23 holders in the property at the time of the transaction,  
24 state, with respect to each such person, their interest  
25 at that time;  
26

1  
2  
3  
4 30. (a) Do you have any social or familial relationship  
5 with any claimant or defendant in this action? If so, state for  
6 each such person:  
7

8  
9 (b) Your relationship to them.  
10

11  
12 (c) The duration of the relationship.  
13  
14  
15  
16

17 31. (a) Have you or any member of your family ever  
18 received any money or other benefit directly or indirectly from  
19 Jaime Javier Figueroa-Soto, from a Valley National Bank account  
20 titled "ROJO" or from any account at Frost National Bank in San  
21 Antonio, Texas? If so, state for each such benefit:  
22

23 1. The source of the benefit;  
24  
25  
26

1                   2. The person receiving the benefit;  
2  
3

4  
5                   3. The benefit received, including the amount or  
6 fair market value;  
7

8  
9                   4. The date of the receipt;  
10  
11

12  
13                   5. The nature of the transaction;  
14  
15

16  
17                   6. The date of the transaction;  
18  
19

20  
21                   7. The reason for the transaction;  
22  
23  
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26



1 8. The use to which the benefit was put;  
2  
3  
4

5 9. All consideration given for the benefit, if  
6 any;  
7  
8  
9

10 10. The present location of the money, benefit or  
11 property received;  
12  
13  
14

15 32. (a) Have you in the past ten (10) years had any  
16 interest in, or been employed by, any business dealing with  
17 raising, buying, selling, or providing land or supplies for  
18 either cattle or produce? If so, state for each such business:

19 (b) The type and name of the business;  
20  
21  
22

23 (c) Your interest or relationship to the business;  
24  
25  
26

1 (d) The dates during which you had the interest or  
2 employment.

3  
4  
5  
6 33. (a) Do you currently own, operate or control any  
7 business enterprise of any kind? If so, state for each such  
8 business:

9  
10 (b) All of the names it has done business under.

11  
12  
13  
14 (c) All of the locations it has done business in, and  
15 the dates during which it did business at that location;

16  
17  
18  
19 (d) The nature of your interest in and relationship to  
20 the business;

21  
22  
23  
24 (e) The date you acquired your interest in the  
25 business;

1  
2  
3 (f) The source of all funds used to acquire your  
4 interest in the business;

5  
6  
7  
8 (g) All capital expenditures or contributions you have  
9 made with regard to the business and the dates they were made;

10  
11  
12 (h) The source of all funds used to make capital  
13 expenditures or contributions to the business;

14  
15  
16  
17 (i) The current market value of the business.

18  
19  
20 34. (a) Have you purchased, leased or paid rent on any  
21 apartments or residences, whether for your own use or for the use  
22 of any other person, in the last ten (10) years? If so, state  
23 for each apartment or residence:

24  
25 (b) Its address;

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(c) The dates you purchased, leased or paid rent;

(d) The identities of all persons who lived there during the period you paid rent;

(e) Whether the premises were the subject of a search warrant, and, if so:

1. The date the warrant was served;

2. The agency that served the warrant;

3. What, if anything was seized;

35. Identify each airplane pilot's license you have held in the past ten (10) years.

1  
2  
3  
4 36. (a) Identify each motor vehicle you have purchased,  
5 leased or had regular access to during the past ten (10) years.  
6  
7  
8

9  
10 (b). As to each motor vehicle purchased or leased,  
11 state the dates and method of payment.  
12  
13  
14

15  
16 37. (a) Have you ever purchased, leased, rented, possessed  
17 or taken title to property or personal identification in a name  
18 other than your own? If so, state for each such item of property  
19 or identification:  
20

21 (b) The identity and description of the item;  
22  
23  
24

25 (c) The name used;  
26

1  
2  
3  
4 (d) The identity of all persons present or having  
5 knowledge of the event;  
6  
7

8  
9 (e) The identity of each document relating to the  
10 property or identification.  
11  
12

13  
14 38. (a) Have you owned, leased or had regular access to  
15 any phone, long distance service, mobile phone, pager or postal  
16 box in the past ten (10) years? If so, state for each such  
17 service device:  
18

19 (b) The type of service or device;  
20  
21

22 (c) Its supplier's business name and address.  
23  
24  
25  
26

1 (d) The dates during which you owned, leased or had  
2 regular access to the service or device;

3  
4  
5 (e) The numbers, access codes, and account billing  
6 identification by which the service or device was accessed;  
7

8  
9  
10 (f) The identity of all documents relating to your use  
11 of the service or device;  
12

13  
14  
15 39. State your adjusted gross income as it appeared on your  
16 federal income tax filings for yourself, yourself and your  
17 spouse, and for any business for which you filed for each of the  
18 years 1987, 1986, 1985, 1984, 1983, 1982, 1981, 1980, 1979 and  
19 1978.  
20

21  
22  
23 40. (a) Have you ever participated in any transaction  
24 involving, or the transportation of, cash in an amount greater  
25 than \$10,000? If so, state for each such act of transaction or  
26 transportation:

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(b) The date it occurred;

(c) The location or locations it took place in;

(d) The identities of all persons involved in or with  
knowledge of the act;

(e) Identify each document relating the act;

(f) The purpose of the transaction or transportation.

41. (a) Have in the past ten (10) years given any person  
property of a fair market value of over \$10,000? If so, state  
for each such gift:



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(b) The property involved and its value;

(c) The identity of the recipient;

(d) The date and location of the gift;

(e) The present location of the property involved;

(f) The identity of all documents relating to the gift.

42. Identify each firearm owned, possessed or controlled by  
you in the past ten (10) years.

1           43. (a) Have you ever had an arrest warrant issued for  
2 your arrest? If so, state for each such warrant:

3  
4           (b) The country and political subdivision issuing the  
5 warrant;  
6

7  
8  
9           (c) The date of its issuance;  
10

11  
12  
13           (d) The disposition of the warrant;  
14

15  
16  
17           (e) The charges involved in the warrant.  
18  
19  
20

21           44. Have you have any financial dealings or financial  
22 relationship or transaction whatever with Sergio Padilla, Ramon  
23 G. Cota, Humberto Ochoa-Bustamonte, Claudia Hartman, Raphael  
24 "Ray" Rodriguez, a business known as Rene Produce, or any police  
25  
26

1 or government official of any country? If so, state for each  
2 such dealing, relationship or transaction:  
3  
4

5  
6 1. The nature of the dealing, relationship or  
7 transaction;  
8  
9

10 2. The date or dates it occurred;  
11  
12

13  
14 3. The amounts of money involved, if any;  
15  
16

17  
18 4. The legal description and address of the real  
19 estate involved, if any;  
20  
21

22  
23 5. The name and account or escrow number of each  
24 title company, professional advisor, financial service  
25 provider or financial institution involved;  
26

1  
2  
3  
4 6. Identify all documents created relating to  
5 the dealing, transaction or relationship;  
6  
7

8  
9 7. If you are willing to do so without receiving  
10 a formal Request for Production of Documents, please  
11 attach a copy of each such document to your answer to  
12 these Interrogatories served upon the attorney for the  
13 State, if not, name the custodian of each document;  
14

15  
16 8. Identify each real estate broker or sales  
17 person, attorney and escrow officer involved in or  
18 knowledgeable about the dealing, transaction or  
19 relationship;  
20

21  
22  
23 9. Identify each additional person, whether  
24 claimant or non-claimant, who was involved in or  
25 knowledgeable about the dealing, transaction or  
26 relationship;

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10. Identify each corporation, partnership, trust, association, or other organization created by or involved with the dealing, transaction or relationship;

11. State how much you gained as a result of the dealing, transactions or relationship;

12. State how much each other claimant or person gained as a result of each dealing, transaction or relationship.

45. (a) Have you ever been present at 10261 East Jenan Drive, Scottsdale, Arizona; 9208 South Kachina, Tempe, Arizona;

1 3506 West Tyson, Chandler, Arizona; 3625 East Calle Alarcon,  
2 Tucson, Arizona; 5320 North Via Sempre Verde, Tucson, Arizona;  
3 3288 Potero Drive, Nogales, Arizona; 2917 North Calle Ladera,  
4 Tucson, Arizona; 5542 South Oak Ridge, Tucson, Arizona; 3050  
5 Calle de Dalias, Tucson, Arizona; 942 South 5th Avenue, Tucson,  
6 Arizona; 3312 East Arroyo Chico, Tucson, Arizona; 4420-4422 South  
7 6th Avenue, Tucson, Arizona; 244 W. Irvington (American Foreign  
8 Car Specialist), Tucson, Arizona; 233 West Bilby, Tucson,  
9 Arizona; 733 West Nevada, Tucson, Arizona; 2636 Calle Chihuahua,  
10 Nogales, Arizona; 11481 East Speedway, Tucson, Arizona; 521 South  
11 Placita Quince, Tucson, Arizona; 1000 North Calle Cardon, Tucson,  
12 Arizona; or 3942 East Calle Chica, Tucson, Arizona? If so, state  
13 for each location:  
14  
15  
16

17 1. The nature of your relationship to the  
18 location;  
19  
20

21 2. The purpose of the visit or visits;  
22  
23  
24  
25  
26

1                   3. If the location was owned or occupied by a  
2 friend or relative of yours, and, if so, by whom and  
3 your relationship to them;  
4

5  
6                   (b) If you have been at any of the locations described  
7 in (a) above, and if the location is not your home or business or  
8 the home or business of a person identified in (a)3. above, state  
9 for each visit to each location:  
10

11  
12                   1. The date of each visit to each location;  
13  
14

15  
16                   2. The reason for your presence at that place on  
17 that occasion;  
18  
19

20  
21                   3. Identify each other person present at that  
22 place on that occasion.  
23  
24  
25  
26

1           46. (a) Have you met with any police or government  
2 official in the past ten (10) years? If so, state for each such  
3 meeting:

4  
5           (b) The country and political subdivision the official  
6 represented;

7  
8  
9  
10           (c) The identity of each official;

11  
12  
13  
14           (d) The date, and place of each meeting;

15  
16  
17  
18           (e) The identities of each other person present or  
19 having knowledge of the meeting;

20  
21  
22  
23           (f) The purpose of the meeting;



1 (g) The identities of each document relating to the  
2 meeting, discussed or presented at the meeting.

3  
4  
5 47. Complete the answers to each part of the Statement of  
6 Personal Financial Condition, attached as Appendix Two hereto and  
7 incorporated hereby.  
8

9  
10 48. Complete the Authorization to Release Arizona Tax  
11 Information, attached as Appendix Three hereto and incorporated  
12 hereby.  
13

14  
15 49. Complete the Authorization to Release Federal Tax  
16 Information, attached as Appendix Four hereto and incorporated  
17 hereby.  
18

19  
20  
21  
22 . . .

23 . . .


24 . . .

25  
26

1 50. Complete the Consent Directive, attached as Appendix  
2 Five hereto and incorporated hereby.

3  
4 DATED this 30<sup>th</sup> day of December, 1988.

5  
6 ROBERT K. CORBIN  
Attorney General

7  
8 By   
9 CAMERON H. HOLMES  
Assistant Attorney General  
10 Attorneys for the STATE

11 ORIGINAL and ONE COPY  
12 mailed this 30<sup>th</sup> day of  
December, 1988, to:

13 DENNIS R. MURPHY  
14 HIRSH, SHERICK & MURPHY, P.C.  
15 Transamerica Building  
177 North Church Avenue  
15 Suite 877  
Tucson, Arizona 85701  
16 Attorneys for MANUEL J.  
and JULIA D. DUARTE

17  
18 JAIME JAVIER FIGUEROA-SOTO  
19 EVANGELINA F. ESPINOZA  
20 GUILLERMO ARTURO FIGUEROA-RIVERA  
21 MARIA ELENA GUADALUPE FIGUEROA-RIVERA  
22 MARIA ELENA RIVERA YESCAS de FIGUEROA  
23 KARINA MILITZA FIGUEROA-RIVERA  
24 FERNANDO REYES AGUADO  
25 JESUS ENRIQUE RIVERA YESCAS  
26 PEDRO HERNANDEZ-RUIZ  
MARIA TERESA SEPULVEDA SOTELO  
JAIME ARMANDO FIGUEROA-RIVERA  
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LISTED ABOVE

1 FLORA CARRILLO ESPINOZA  
JOSE ALFREDO CARRILLO  
2 FRANCISCA ALICIA VILLALVA CARRILLO  
MARICELA ESPINOZA  
3 JESUS MONSERATO CARRILLO  
BLANCA ESTELA ORDUNO-GONZALEZ  
4 MARCO A. QUINONES-COTA  
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5 SOCORRO LOPEZ  
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13  
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16 Attorney for ASSOCIATES  
COMMERCIAL CORPORATION  
17  
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19 CLAIMANT  
  
20 FLEET MORTGAGE CORP.  
c/o JED SONSTROEM  
21 P.O. Box 800  
Milwaukee, Wisconsin 53201  
22 Attorney for FLEET MORTGAGE  
23  
24  
25  
26

*Carol Ferguson*

VERIFICATION

STATE OF ARIZONA       )  
                              )  
COUNTY OF MARICOPA    )       ss.

The responses heretofore provided are true and complete  
to the best of my knowledge or belief.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
CLAIMANT

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

## **MOTIONS FOR SUMMARY JUDGMENT, SETTLEMENTS, AND FINAL ORDERS**

Although government motions for summary judgment will rarely resolve an entire civil RICO case, such motions can be used to narrow the issues or the field of defendants. Where state statutes estop convicted RICO defendants from denying the same factual predicates in the civil RICO case, a motion for summary judgment can establish the defendant's liability and relieve the government of the burden of proving those facts in the civil case.

Where owners or interested persons fail to advance their claims against property subject to forfeiture, summary judgment can be used to resolve the forfeitures of those items. In both in rem and in personam forfeitures, a claimant or a defendant's failure to respond after notice or service can also be addressed by a request that the court award a default judgment to the government.

Settlements are another way to resolve civil RICO litigation. The opportunity in civil cases for creative negotiation regarding the terms of the settlement can provide for interesting resolutions of complex problems. For example, the government can agree to release certain properties back to the defendants in exchange for forfeiture of others. The terms of corporate dissolutions or reorganizations can be listed in minute detail, including granting the government continuing rights to enter and inspect operations to ensure that illegal activities are not taking place. Even where the RICO act does not specifically address an issue, the defendant's agreement to some term in a settlement will usually create a binding contract that is enforceable by the court.

The only sensitive area involved in settlement of RICO cases is that of combined civil and criminal negotiations. If prosecuting agencies agree to jointly settle a criminal defendant's charges and a civil RICO forfeiture, a lenient sentence may appear to have been bought by a criminal eager to avoid serious punishment. Because the remedial goal of forfeiture is not always fully understood, where the government appears to have more interest in forfeiture than in criminal punishment, accusations of "cash register justice" may result.

Forfeitures and plea negotiations should therefore be handled separately. If the defendant initiates discussions about settlement of his civil and criminal RICO liabilities, a pleading or letter confirming that the defendant wished to settle both matters and did so without coercion from the government should be placed in both court files.



9215c/FFD86-230  
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PATRICK M. MURPHY, Chief Counsel  
Financial Fraud Division  
CAMERON H. HOLMES  
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Phoenix, Arizona 85007  
Attorneys for PLAINTIFF  
  
Telephone: (602) 255-3702

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, ex rel. ROBERT K.  
CORBIN, Attorney General,

Plaintiff,

vs.

ONE RANCH, TOGETHER WITH ALL OF ITS  
REAL PROPERTY, HORSES, CATTLE, CROPS,  
BALED HAY, VEHICLES, IMPLEMENTS,  
TRAILORS, EQUIPMENT, LEASES, AND  
RECEIVABLES, LOCATED AT STAR ROUTE  
BOX 637, TONOPAH, ARIZONA, AND  
DESCRIBED AS THE SW 1/4 OF THE NW 1/4  
OF SECTION 19, T1N, R5W, GILA AND  
SALT RIVER BASE AND MERIDIAN, ALSO  
KNOWN AS PARCEL 504-33-0071; ALL  
INTERESTS IN HAZELTON AND SON, A  
PARTNERSHIP; ONE LOT CASH IN THE  
AMOUNT OF \$15,150 IN U.S. CURRENCY;  
ONE FIRST INTERSTATE BANK OF ARIZONA  
CASHIER'S CHECK NO. T8453213 IN THE  
AMOUNT OF \$9,500.00 PAYABLE TO GEORGE  
HAZELTON AND DATED JULY 8, 1986,

Defendants.

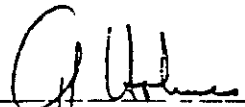
NO. C-587193

STATE'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
RE ANY INTEREST OF  
GEORGE HAZELTON, JR. OR  
MARLA HAZELTON

1 The State of Arizona, ex rel., Robert K. Corbin,  
2 Attorney General, by Cameron H. Holmes, Assistant Attorney  
3 General, moves this Court for an order of forfeiture recognizing  
4 the State's clear title to any interest of George Hazelton, Jr.  
5 or Marla Hazelton in any of the defendant property, pursuant to  
6 A.R.S. § 13-4311, A.R.S. § 13-4314 and Rule 56, Arizona Rules of  
7 Civil Procedure, the accompanying Memorandum of Points and  
8 Authorities and supporting documents.

9 Respectfully submitted this 31<sup>st</sup> day of December, 1986.

10 ROBERT K. CORBIN  
11 Attorney General  
12 PATRICK M. MURPHY, Chief Counsel  
13 Financial Fraud Division

14 By   
15 CAMERON H. HOLMES  
16 Assistant Attorney General  
17 Attorneys for Plaintiff

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 A.R.S. § 13-2314(F) provides:

20 In addition to or in lieu of an action  
21 under this section the state may file an  
22 action pursuant to chapter 39 of this title  
23 for forfeiture, to the extent not already  
24 ordered paid pursuant to this section, of:

25 1. Any interest acquired or maintained  
26 by a person in violation of section 13-2312.

2. Any interest in, security of, claims  
against or property, office, title, license or  
contractual right of any kind affording a  
source of influence over any enterprise or  
other property which a person has acquired or  
maintained an interest in or control of,  
conducted or participated in the conduct of in  
violation of section 13-2312.



1           3. All proceeds traceable to an offense  
2 included in the definition of racketeering in  
3 section 13-2301, subsection D, paragraph 4 and  
4 all monies, negotiable instruments,  
5 securities, property and other things of value  
6 used or intended to be used to facilitate the  
7 commission of the offense.

8           Pursuant to A.R.S. § 13-2314(F) the State has filed an  
9 amended in rem complaint alleging the forfeiture of the captioned  
10 property. Notice was provided pursuant to law by personal  
11 service upon George Hazelton, Jr. and Marla Jean Hazelton. Each  
12 have filed documents in this action through counsel.

13           No claim has been filed on behalf of George Hazelton,  
14 Jr. or Marla Hazelton. The time for filing a verified claim  
15 pursuant to A.R.S. § 13-4311(E) expired thirty days after notice.

16           A.R.S. § 13-4304 provides that "All property, including  
17 all interests in property, described in a statute providing for  
18 its forfeiture is subject to forfeiture," and makes four  
19 exceptions. Proof of any of these exceptions may be made only by  
20 a claimant. A.R.S. § 13-4311(H) and (I).

21           The only issue of fact remaining is whether probable  
22 cause exists to believe that the captioned property is subject to  
23 forfeiture on any of the grounds alleged in the amended  
24 complaint.

25           I. Facts.

26           As is more specifically set forth in the Statement of  
Facts filed contemporaneously herewith, the Hazelton Ranch was  
the location of a large marijuana cultivation, processing and  
packaging enterprise. A huge quantity of marijuana was being

1 grown near the Ranch headquarters behind a wall of straw over  
2 100 yards long, 50 yards wide and 15 feet high. The marijuana  
3 was irrigated by a drip irrigation system. The wall and field  
4 behind it were located immediately behind the corrals where the  
5 cattle and horses are kept at the Ranch headquarters. The shed  
6 or barn on the Ranch headquarters, which is located near the  
7 large marijuana field and the house on the Ranch, was equipped  
8 and operating as a marijuana processing and packaging plant. A  
9 fan was blowing on numerous marijuana plants to dry them out,  
10 and equipment was present in the shed for processing,  
11 dehumidifying, screening and packing the processed marijuana  
12 (scales, plastic bags and a plastic bag heat sealer). About 27  
13 pounds of very valuable marijuana seeds were also found at the  
14 Ranch. The marijuana, exclusive of the seeds, was worth  
15 millions of dollars and had a potential value of well over 10  
16 Million Dollars. This vast illicit operation was concealed  
17 from suspicion behind the operation of the Hazelton Ranch.

18 II. The Burden Of Proof.

19 A.R.S. § 13-4311(H) provides:

20 The state has the initial burden of  
21 showing the existence of probable cause for  
22 seizure for forfeiture of the property. On  
23 such a showing by the state, the claimant  
24 has the burden of showing by a preponderance  
of the evidence that the claimant's interest  
in the property is not subject to forfeiture  
under this title.

25 This is the same burden and order of proof that is provided in  
26 the traditional and most prevalent federal civil in rem

1 forfeiture statutes, such as 21 U.S.C. § 881. In the context  
2 of a Motion for Summary Judgment, the question before this  
3 Court is whether probable cause has been shown. United States  
4 v. One 56-Foot Yacht Named Tahuna, 702 F.2d 1276 (9th Cir.  
5 1983). The showing of probable cause, like the showing of  
6 probable cause at a preliminary hearing, or at a Grand Jury, or  
7 for an arrest or a search, may be made by hearsay evidence.  
8 Id. at 1282-83 ("information relied on by the government is  
9 adequate and sufficiently reliable to warrant the belief by a  
10 reasonable person").

11 If one or more claimants have properly asserted an  
12 interest in the property that is the object of a motion for  
13 partial summary judgment, they may show by a preponderance of  
14 the evidence either that the elements alleged as the basis for  
15 forfeiture are not present, i.e., the acts did not occur or did  
16 not involve the property in such a way as to subject it to  
17 forfeiture, or that their interest in the property is exempted  
18 from forfeiture pursuant to one of the four exemptions set out  
19 in A.R.S. § 13-4304. In this case no timely claim to any  
20 interest in the defendant property has been made by George  
21 Hazelton, Jr. or Marla Hazelton.

22 III. All Captioned Property Interests Are Forfeit Under A.R.S.

23 § 13-2314(F).

24 A.R.S. § 13-2314(F) provides several bases for forfeiture.  
25 This Motion is based upon three of them. First, the State  
26 contends that some of the defendant property represents:

1 Any interest in . . . any enterprise . . . which  
2 a person has . . . conducted or participated in  
the conduct of in violation of section 13-2312.

3 A.R.S. § 13-2314(F)(2). That is, they are assets of the Hazelton  
4 Enterprise, an enterprise conducted through racketeering. The  
5 elements of this basis for racketeering forfeiture are:

- 6 1. The existence of an enterprise;
- 7 2. The conduct of that enterprise through racketeering;
- 8 3. The existence of property interests in such enterprise.

9 An "enterprise," for the purpose of A.R.S. § 13-2312 and  
10 § 13-2314(F), is defined in A.R.S. § 13-2301(D)(2) as:

11 2. "Enterprise" means any corporation,  
12 partnership, association, labor union, or  
13 other legal entity or any group of persons  
associated in fact although not a legal entity.

14 The State's amended complaint alleges a group of persons  
15 associated in fact compose the subject enterprise. One of the  
16 persons alleged is George Hazelton, Jr. Amended Complaint  
17 paragraphs 17-20, p. 8.

18 The Hazelton Enterprise was conducted through  
19 racketeering. The term "racketeering" is defined in A.R.S.  
20 § 13-2301(D)(4):

21 4. "Racketeering" means any act,  
22 including any preparatory or completed  
23 offense, committed for financial gain, which  
24 is chargeable or indictable under the laws of  
25 the state in which the act occurred and, if  
26 the act occurred in a state other than this  
state, would be chargeable or indictable under  
the laws of this state had the act occurred in  
this state and punishable by imprisonment for  
more than one year, regardless of whether such  
act is charged or indicted, involving:

1 . . . . .  
2 (k) Dealing in narcotic drugs, marijuana  
3 or dangerous drugs.

4 George Hazelton, Jr. was a member of the Hazelton  
5 Enterprise.

6 Second, the State contends that some of the defendant  
7 property represents:

8 . . . negotiable instruments . . . property  
9 and other things of value used or intended to  
10 be used to facilitate the commission of [a  
11 racketeering offense].

12 A.R.S. § 13-2314(F)(3). The elements of this basis for  
13 racketeering forfeiture are:

- 14 1. the occurrence of an act or acts of racketeering;
- 15 2. the use or intent to use property to facilitate the  
16 commission of such act or acts.

17 The acts of racketeering alleged herein are A.R.S.  
18 § 13-2301(D)(4)(K), Trafficking in marijuana.

19 The acts of racketeering were accomplished by the use of  
20 the Hazelton Ranch as a cover for the marijuana cultivation and  
21 processing for sale operation. Therefore, any horses, cattle,  
22 crops, baled hay, vehicles, implements, trailers, equipment,  
23 leases receivables or other property used or intended for use  
24 to conceal, cultivate, or process the marijuana or to maintain  
25 the necessary disguise as a cattle/horse breeding ranch are  
26 subject to forfeiture.

Third, the state contends that some of the defendant  
property represents:

1 . . . proceeds traceable to an offense included in  
2 the definition of racketeering in section 12-2301,  
3 subsection A, paragraph 4 . . .

4 A.R.S. § 13-2314(F)(3). The offense is the trafficking in  
5 marijuana, § 13-2301(D)(4)(k).

6 The elements of this basis for racketeering forfeiture are:

- 7 1. the occurrence of an act or acts of racketeering;
- 8 2. proceeds resulting from such act.

9 The term "proceeds" is defined in A.R.S. § 13-2314(O)(3):

10 3. "Proceeds" includes any interest in  
11 property of any kind acquired through or caused by  
12 an act or omission, or derived from the act or  
13 omission, directly or indirectly, and any fruits of  
14 this interest, in whatever form.

15 The term "acquire" is defined in A.R.S. § 13-2314(O)(1) and the  
16 meaning of "caused by" is from A.R.S. § 13-203(A)(1), a "but for"  
17 test.

#### 18 IV. Limitations On Scope Of Order Sought.

19 The State seeks an order of limited scope in this Motion for  
20 Partial Summary Judgment. Issues that it does not raise are:

21 1. the exemption of the interest claimed by Claimant Valley  
22 National Bank of Arizona from forfeiture pursuant to A.R.S.  
23 § 13-4304(3), as stipulated to in the order of this Court dated  
24 September 17, 1986.

25 2. The exemption of the interest claimed by Claimant  
26 Arizona Livestock Production Credit Association from forfeiture  
pursuant to A.R.S. § 13-4304(3), as stipulated to in the order of  
this Court dated September 8, 1986.

1           3. The exemption of the interest claimed by Claimant  
2 Arizona Farmer's Production Credit Association from forfeiture  
3 pursuant to A.R.S. § 13-4304(3).

4           4. The priorities of the various claimants among  
5 themselves as to the defendant property in this action.

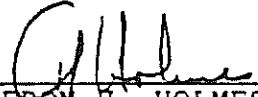
6           5. The exact extent to which all or any item of  
7 defendant property is in fact the property of George Hazelton,  
8 Jr. or Marla Hazelton.

9           The State simply seeks to establish by this Motion and  
10 its resulting Order that the State has clear title to any  
11 property of George Hazelton, Jr. and Marla Hazelton that is  
12 defendant property herein, if any. It will leave for later  
13 discovery and later motions the issue of what particular  
14 property comes within that description, if any.

15           For all of the above reasons, and based on the facts  
16 established in the attached affidavit, the Motion for Partial  
17 Summary Judgment should be granted.

18           RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of December, 1986.

19                               ROBERT K. CORBIN  
20                               Attorney General  
21                               PATRICK M. MURPHY, Chief Counsel  
                              Financial Fraud Division

22                               By   
23                               CAMERON H. HOLMES  
24                               Assistant Attorney General  
                              Attorneys for PLAINTIFF

25           . . .

26           . . .

1 COPY of the foregoing  
2 mailed this 31<sup>st</sup> day  
3 of December, 1986, to:

4 ARIZONA FARMERS PRODUCTION  
5 CREDIT ASSOCIATION  
6 c/o Michael Mulchay  
7 EVANS, KITCHEL & JENCKES, P.C.  
8 2600 North Central  
9 Phoenix, Arizona 85004-3099

10 ARIZONA LIVESTOCK PRODUCTION  
11 CREDIT ASSOCIATION  
12 c/o Michael Milroy  
13 SNELL & WILMER  
14 3100 Valley Bank Center  
15 Phoenix, Arizona 85073

16 TIM ANTON  
17 c/o Frank Ross  
18 505 Plaza Circle  
19 P.O. Box 597  
20 Litchfield Park, Arizona 85340-0597

21 NANCY TATUM  
22 c/o Frank Ross  
23 505 Plaza Circle  
24 P.O. Box 597  
25 Litchfield Park, Arizona 85340-0597

26 SADDLE MOUNTAIN RANCHES  
c/o Janet B. Hutchinson  
ROBBINS & GREEN  
3300 North Central  
Suite 1800  
Phoenix, Arizona 85012

DRUSILLA HAZELTON  
c/o Michael Wilkinson  
11 West Jefferson  
Suite 502  
Phoenix, Arizona 85003

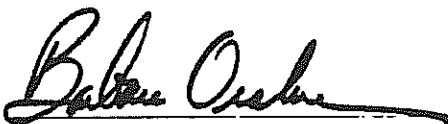
VALLEY NATIONAL BANK  
c/o Dawn Stoll Zeitlin  
GUST, ROSENFELD, DIVELBESS & HENDERSON  
3300 Valley Bank Center  
201 North Central Avenue  
Phoenix, Arizona 85073

. . .



1 COPY of the foregoing ~~hand delivered~~ <sup>mailed</sup> this <sup>31st</sup>  
2 day of December, 1985, to  
non-claimants:

3 MARLA JEAN HAZELTON  
4 GEORGE P. HAZELTON, JR.  
5 c/o Martin Lieberman  
6 THOMAS A. THINNES, P.A.  
1005 North Second Street  
Phoenix, Arizona 85004

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9217c/FFD86-230  
ROBERT K. CORBIN  
Attorney General  
PATRICK M. MURPHY, Chief Counsel  
Financial Fraud Division  
CAMERON H. HOLMES  
Assistant Attorney General  
Department of Law Building, Room 259  
1275 West Washington Street  
Phoenix, Arizona 85007  
Attorneys for PLAINTIFF  
  
Telephone: (602) 255-3702

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

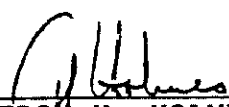
STATE OF ARIZONA, ex rel. ROBERT K. CORBIN, Attorney General,	)	
	)	
Plaintiff,	)	NO. C-587193
	)	
vs.	)	
	)	PLAINTIFF'S STATEMENT
ONE RANCH, TOGETHER WITH ALL OF ITS	)	OF FACTS IN SUPPORT
REAL PROPERTY, HORSES, CATTLE, CROPS,	)	OF MOTION FOR PARTIAL
BALED HAY, VEHICLES, IMPLEMENTS,	)	SUMMARY JUDGMENT RE
TRAILORS, EQUIPMENT, LEASES, AND	)	ANY INTEREST OF
RECEIVABLES, LOCATED AT STAR ROUTE	)	GEORGE HAZELTON, JR. OR
BOX 637, TONOPAH, ARIZONA, AND	)	MARLA HAZELTON
DESCRIBED AS THE SW 1/4 OF THE NW 1/4	)	
OF SECTION 19, T1N, R5W, GILA AND	)	
SALT RIVER BASE AND MERIDIAN, ALSO	)	
KNOWN AS PARCEL 504-33-0071; ALL	)	
INTERESTS IN HAZELTON AND SON, A	)	
PARTNERSHIP; ONE LOT CASH IN THE	)	
AMOUNT OF \$15,150 IN U.S. CURRENCY;	)	
ONE FIRST INTERSTATE BANK OF ARIZONA	)	
CASHIER'S CHECK NO. T8453213 IN THE	)	
AMOUNT OF \$9,500.00 PAYABLE TO GEORGE	)	
HAZELTON AND DATED JULY 8, 1986,	)	
	)	
Defendants.	)	

. . .

1 Plaintiff, State of Arizona, ex rel., Robert K. Corbin,  
2 pursuant to Rule IV(f), Uniform Rules of Practice of the Superior  
3 Court, hereby submits its Statement of Facts, setting forth the  
4 specific facts relied upon in support of its Motion for Partial  
5 Summary Judgment Re Any Interest of George Hazelton, Jr. or Marla  
6 Hazelton.

7 RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of December, 1986.

8 ROBERT K. CORBIN  
9 Attorney General  
10 PATRICK M. MURPHY, Chief Counsel  
11 Financial Fraud Division

12 By   
13 CAMERON H. HOLMES  
14 Assistant Attorney General  
15 Attorneys for Plaintiff

16 1. On July 20, 1986, Ronald B. Cox, a narcotics  
17 investigator with the Arizona Department of Public Safety,  
18 participated as a marijuana spotter in a Department of Public  
19 Safety flight which was attempting to locate marijuana  
20 cultivation operations. Cox observed a field approximately 100  
21 yards long and somewhat less than 50 yards wide in which was  
22 growing a large quantity of plants which in Cox' expert opinion  
23 he believed were marijuana. The field of marijuana was  
24 surrounded by a wall of bales of hay and straw. Affidavit of  
25 Ronald B. Cox, dated December 9, 1986 (hereinafter "Cox  
26 Affidavit").

2. A seizure warrant was obtained on July 21, 1986 to  
seize the Hazelton Ranch related defendant property herein. The  
warrant was executed on July 22, 1986. Cox Affidavit.

1           3.    The Hazelton Ranch is located approximately .5 of a  
2 mile north of Broadway Road on 355th Avenue on the east side.  
3 Cox Affidavit.

4           4.    The following items are some of the items found at  
5 the Hazelton Ranch:

6               (A) House - approximately ten to fifteen pounds of  
7 marijuana seeds;

8               (B) Shed -

- 9                   1. approximately 184 marijuana plants,  
10                   2. approximately 15 pounds of processed  
11 marijuana and marijuana debris,  
12                   3. approximately 22 pounds of marijuana seeds,  
13                   4. numerous items comprising a complete  
14 marijuana drying, processing and packaging operation  
15 including three scales, heat-sealer with plastic bags,  
16 butane heater, dehumidifier, and fan. Cox Affidavit;

17               (C) Small garden north of the House -  
18 approximately twenty-one marijuana plants, Cox Affidavit;

19               (D) Large field behind the House - approximately  
20 10,514 marijuana plants. Cox Affidavit.

21           5.    The large marijuana field was irrigated by a drip  
22 system which was connected to a well near the house. Cox  
23 Affidavit.

24           6.    The large marijuana field which contained over  
25 10,500 marijuana plants was located approximately 100 yards from  
26 the Hazelton house. This large field was surrounded by a fifteen

1 foot high wall of stacked bales of hay and straw; this field and  
2 wall were approximately six feet from the cattle trough and  
3 cattle pens on the Ranch. Cox Affidavit.

4 7. The defendant property herein was either in use on  
5 the Hazelton Ranch at the time of the seizure for forfeiture or  
6 represented Hazelton Enterprise assets or proceeds of  
7 racketeering held elsewhere. Cox Affidavit.

8 8. Notice of Pending Forfeiture was personally served  
9 on George Hazelton, Jr. and Marla Hazelton on July 25, 1986.  
10 Notice of Pending Forfeiture was published as required by law at  
11 about the time of filing of the Complaint. Affidavit of Service  
12 by James D. Baize and Court File.

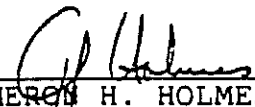
13 9. More than thirty days have elapsed since the Notice  
14 of Pending Forfeiture was provided. Court File.

15 10. No claim has been filed by George Hazelton, Jr. or  
16 Marla Hazelton. Court File.

17 RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of December, 1986.

18 ROBERT K. CORBIN  
19 Attorney General  
20 PATRICK M. MURPHY, Chief Counsel  
21 Financial Fraud Division

22 By

  
23 CAMERON H. HOLMES  
24 Assistant Attorney General  
25 Attorneys for PLAINTIFF  
26

1 COPY of the foregoing  
2 mailed this 31<sup>st</sup> day  
3 of December, 1986, to:

4 ARIZONA FARMERS PRODUCTION  
5 CREDIT ASSOCIATION  
6 c/o Michael Mulchay  
7 EVANS, KITCHEL & JENCKES, P.C.  
8 2600 North Central  
9 Phoenix, Arizona 85004-3099

10 ARIZONA LIVESTOCK PRODUCTION  
11 CREDIT ASSOCIATION  
12 c/o Michael Milroy  
13 SNELL & WILMER  
14 3100 Valley Bank Center  
15 Phoenix, Arizona 85073

16 TIM ANTON  
17 c/o Frank Ross  
18 505 Plaza Circle  
19 P.O. Box 597  
20 Litchfield Park, Arizona 85340-0597

21 NANCY TATUM  
22 c/o Frank Ross  
23 505 Plaza Circle  
24 P.O. Box 597  
25 Litchfield Park, Arizona 85340-0597

26 SADDLE MOUNTAIN RANCHES  
c/o Janet B. Hutchinson  
ROBBINS & GREEN  
3300 North Central, Suite 1800  
Phoenix, Arizona 85012

DRUSILLA HAZELTON  
c/o Michael Wilkinson  
11 West Jefferson, Suite 502  
Phoenix, Arizona 85003

VALLEY NATIONAL BANK  
c/o Dawn Stoll Zeitlin  
GUST, ROSENFELD, DIVELBESS & HENDERSON  
3300 Valley Bank Center  
201 North Central Avenue  
Phoenix, Arizona 85073

1 COPY of the foregoing  
2 ~~has been~~ mailed this 31<sup>st</sup> day  
3 of December, 1986,  
4 to non-claimants:

5 MARLA JEAN HAZELTON  
6 GEORGE P. HAZELTON, JR.  
7 c/o Martin Lieberman  
8 THOMAS A. THINNES, P.A.  
9 1005 North Second Street  
10 Phoenix, Arizona 85004  
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AFFIDAVIT OF AGENT RONALD COX

County of Maricopa     )  
                              ) ss.                   C-587193  
State of Arizona        )

Affiant Ronald B. Cox, a Peace Officer employed by the Arizona Department of Public Safety, makes the following affidavit on his personal knowledge, being competent to testify to the matters stated herein:

1. On July 20, 1986 at 0930 hours, your affiant, Ronald B. Cox, flying as a spotter in a Cessna 206 at an altitude of approximately 1000 feet above the ground, observed what in my opinion were growing marijuana plants on the Hazelton Ranch as described in the Complaint in this action. The plants appeared to be in various stages of maturity. Your affiant, Ronald B. Cox, a Peace Officer employed by the Arizona Department of Public Safety, has received special training and experience in the field of narcotics investigation as follows:

- a. Seventeen (17) years experience as a police officer in the state of Arizona.
- b. Assigned as a narcotics investigator since July, 1976.
- c. Training in the DPS academy in the identification of marijuana in all forms.
- d. Two (2) week DEA school on drug identification, including marijuana in all forms.

e. Eighty (80) hour school in 1981 sponsored by the California Department of Justice and Drug Enforcement Administration in Weaverville, California entitled Sinsemilla Marijuana Eradication Program. This included taking an active part in the Northern California Sinsemilla Strike Force, instruction in the identification of growing marijuana plants utilizing aircraft at altitudes of one thousand (1000) feet and higher, training in the techniques used by marijuana growers. At least ten (10) hours were spent flying and spotting marijuana gardens from aircraft. During this period, over one hundred (100) marijuana gardens were spotted and verified as being marijuana by fellow Agent/Pilot Ken Sul of DEA and Chuck Sanborn, Trinity County Sheriff's Office Deputy, who is qualified in California as an expert witness in the detection of growing marijuana plants utilizing aircraft.

f. While attending this school, on seven (7) occasions, Officer Cox was shown aerial photos of suspected marijuana gardens. On all seven (7) occasions search warrants were issued and served and growing marijuana plants were seized. Officer Cox personally participated in three (3) of these search warrants.

g. In July, 1983, Officer Cox had occasion to fly in Northern California with California Department of Justice Pilot Stu Till. Agent Till has detected over five thousand (5,000) marijuana gardens from aircraft in the course

of his career and has testified as an expert witness in California on numerous occasions. During this flight, over one hundred (100) marijuana gardens were located and verified by Agent Till. These sightings were done from elevations of one thousand five hundred (1,500) feet and higher.

h. As a narcotics officer from the Arizona Department of Public Safety, Officer Cox has observed marijuana plants in various stages of cultivation while assisting other officers in the serving of at least one hundred (100) search warrants.

i. Since completion of the Sinsemilla Eradication School in California in 1981, Officer Cox has been responsible for the seizure of over thirty (30) marijuana gardens, all of which were located by Officer Cox utilizing aircraft.

j. Since completing the eradication school in 1981, Officer Cox has personally been responsible for the conducting of the Marijuana Eradication Program in Arizona. Officer Cox has personal knowledge of every major marijuana growing operation seized in the state of Arizona since 1981. Due to the size of this growing operation and the proximity to the ranch house, in my opinion it would be impossible for anyone living on the premises to not have knowledge of the presence of the marijuana.

k. In March, 1984, Officer Cox testified in Yavapai County Superior Court as an expert witness in identifying growing marijuana plants from aircraft.

2. I have been a narcotics investigator in the Arizona Department of Public Safety since July, 1976, and I am currently assigned to the Special Enforcement Unit of the Phoenix Narcotics Section.

3. After developing the information in paragraph 1 above, I had occasion to search the Hazelton Ranch, Star Route Box 637, Tonopah, AZ, described as the SW 1/4 of the NW 1/4 of section 19, T1N, R5W, Gila and Salt River Base and Meridian, located .6 mile north of Broadway Road on 355th Avenue on the east side, in Maricopa County, AZ, on July 22, 1986.

4. The ranch includes a small, poorly maintained block house, a block shed or barn, and a set of horse corrals and adjoining cattle/horse feed lot with cement manger.

5. Immediately next to the feed lot was a rectangle of baled hay and straw, approximately 100 yards long and somewhat less than 50 yards wide. The rectangle runs parallel to the cement manger and within a few feet of it. It is constructed of a wall of bales, two bales wide and about 15 feet high. The bales were buttressed by lumber framing from within to prevent collapse.

6. The field contained approximately 10,514 marijuana plants, arranged in neat rows, in various stages of maturity ranging to 10 to 12 feet in height. It was irrigated by a drip irrigation system connected to the well supplying the house. The plants were removed for destruction, and representative samples of each batch were forwarded to the DPS laboratory for analysis.

7. Exhibits A-1, A-2 and A-3, attached, are three aerial photographs of the Hazelton Ranch and the marijuana field and accurately depict their condition on July 20 and 22, 1986.

8. The block shed was equipped and operating as a processing and packaging plant for marijuana. The shed contained wooden racks with screen bottoms on which marijuana plants were spread, a dehumidifier, a butane heater, a fan blowing on the marijuana, four scales, a plastic bag sealer with plastic bags for packaging the marijuana, and plastic bag containing the finished product marijuana. Over 180 marijuana plants were seized in the shed, along with over 15 pounds of marijuana and debris and 22 pounds of marijuana seeds.

9. Exhibit B is a photograph of the interior of the drying shed as it appeared on July 22, 1986.

10. The ranch house contained:

a. a zippered suitcase containing 20 plastic bags totalling several pounds of fertile marijuana seeds (found later by Attorney General's Agent Bill Sanders);

b. three wallets, one containing the personal identification of George Hazelton, Jr., one that of Edward H. Brogdon , and the third that of Shane Swindle;

c. loan application and renewal papers relating to a Hazelton and Son loan renewal of a loan from Arizona Livestock Credit Association dated July 1, 1986 (Exhibit C is a copy of the application);

- d. weapons; and
- e. cash.

11. Additional marijuana plants were located in a garden plot immediately north of the drying shed. It appeared from the pitted condition of the garden that numerous other plants had been removed from the garden recently.

12. On July 24, 1986, the marijuana cut from the fields at the Hazelton Ranch was weighed and burned at the Hazelton Ranch in the presence of counsel for the Hazeltons, Craig Mehrens, who at that time represented George Hazelton, Jr., Gary Cross, Edward Brogdon and Shane Swindle. The total weight of the marijuana destroyed was 5,640 pounds, representing only that which had not been separately impounded as evidence or as representative samples of the growing marijuana.

13. Each of the undestroyed batches or representative samples of marijuana referred to above as marijuana or marijuana seeds was submitted to the DPS crime lab for analysis. Analysis has been done by a certified criminalist and the substances confirmed to be marijuana or marijuana seeds.

14. From my extensive experience with marijuana, I know the marijuana at the Hazelton Ranch to have been high quality sinsemilla marijuana. Sinsemilla means "without seeds", and refers to a cultivation technique by which the male plants are removed from the plantation by culling the male plants out causing the female plants to remain unfertilized, which in turn causes them to create large buds with a high concentration of THC, the active compound creating the desired effect on the

human body. The market value for this quality sinsemilla at the time was between \$1,500 and \$1,800 per pound, wholesale. This price is for the dried buds. A mature plant produces from 1 to 3 pounds of dried buds. The total of over 10,700 plants would therefore have produced between 10,700 and 32,100 pounds of dried buds, worth from \$16,050,000 to \$48,150,000 at the low wholesale price of \$1,500 per pound. In addition to the buds, the leaves and small stems are sold as regular leafy marijuana. The 5,640 pounds of marijuana vegetable material that was weighed and destroyed would therefore have a value in addition to the above. A total of over 27 pounds of seeds were also seized from the ranch. Sinsemilla seeds are worth from \$1 to \$100 for each seed, depending on the quality of the strain and market factors. There are over 44,000 seeds per pound.

15. The defendant property seized on July 22 was either in use on the Hazelton Ranch at the time of the seizure or represented Hazelton Ranch assets held elsewhere.

16. The loan application documents indicate that the partners in Hazelton and Son are the estate of George Hazelton, Sr., by Drusilla Hazelton, personal representative, George Hazelton, Jr., Drusilla Hazelton, and Marla Jean Hazelton. The documents indicate that the Arizona Livestock Production Credit Association received a security interest to secure this loan to Hazelton and Son in, among other things:

All farm products, equipment, inventory, accounts, documents, chattel paper and general intangibles now owned or herein-after acquired, including but not limited to all livestock now owned or hereafter acquired, wherever located, including all natural increases thereof and additions, replacements and substitutions hereto; all supplies including hay, grain and other feeds wherever located.

Substantial property meeting this description was found and seized at the Hazelton Ranch.

17. On July 22, 1986, Shane Swindle was arrested at the Hazelton Ranch. After being advised of his Miranda rights, he stated that he, George Hazelton, Jr., Edward Brogdon and Gary Cross had operated the Hazelton Ranch from late 1985 through July 22, 1986, had cultivated the marijuana for sale, and had continued to operate the ranch as a cover for the marijuana operation. He said that while working for Hazelton at another ranch he had discovered a marijuana plot, and had told Hazelton that he knew what Hazelton was growing. He said that Hazelton invited him to become a part of the operation, and he then joined Hazelton, Brogdon and Cross in producing two small crops, one at the other location and one at the Hazelton Ranch. He said that Hazelton, Brogdon and Cross did in fact divide up the proceeds of the second crop. He said that they planned to obtain \$5 million from one buyer relating to the current crop, and that Swindle was to get \$1 million and the other \$4 million was to be divided among Hazelton, Brogdon and Cross. Swindle said that people had been stealing marijuana from the Hazelton Ranch for some time, and that the operators had been



forced to guard the ranch at night to reduce the theft loss. He said that they had built the trailer home into the hay wall for this purpose. I believe Shane Swindle's statements in the above matters to be reliable because Shane Swindle was in fact present, because he had detailed knowledge of the ranch, its operation and the other participants, because telephone toll records relating to the participants' phones confirm their connection, as do numerous other witnesses to their association with each other and other details, and because Swindle agreed to plead guilty to a criminal charge as a result of his own involvement, which he did not conceal, so the statements were against his penal interest in that regard and in that they tended to lead directly to other witnesses against Swindle.

DATED this 9<sup>th</sup> day of December, 1986.

Ronald Cox  
RONALD COX

SUBSCRIBED AND SWORN to before me this 9<sup>th</sup> day of December, 1986.

Matthew J. Luck  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

8973c



Photographic Exhibits A-1, A-2, A-3, and B have not been included.



100,000.00

אברהם חלוק

## ANALYSIS

July 1, 1986

19\_

This Note is executed, delivered, and accepted, not in payment of, but for the purpose of renewing the unpaid balances in its described Note(s).

[illegible]

This note is secured by personal property lien(s) as future advance under a Deed of Trust dated 8-25-84, recorded 12-7-84, File 84 527805; Deed of Trust dated 3-7-84, recorded 3-14-84, File 84 105580, both Official Records of Maricopa County, State of Arizona.

INDIVIDUALLY:

Drusilla Hazelton  
Estate of George Pierce Hazelton, Sr.,  
Deceased, Maricopa County, Arizona Probate  
#134521, by Drusilla Hazelton, Personal  
Representative.

Drusilla Hazelton, A. Widow,  
George Hazelton, Jr.  
Marla Jean Hazelton

## HAMILTON AND SON, A Partnership

By: Marella Hartman  
Estate of George Pierce Hazelton  
Deceased, Maricopa County, Arizona  
#134821, by Drusilla Hazelton, Pers  
Representative, & Partner

By: Wanda L. Hazelton  
 ✓ Drusilla Hazelton, A Widow, A Pa  
 By: George Hazelton, Jr.  
 ✓ George Hazelton, Jr., A Partner.  
 By: Marla Jean Hazelton  
 ✓ Marla Jean Hazelton, A Partner

INDORSEMENT — The within note is hereby indorsed by the payee named in the body of said note as if the name of the payee were actually the indorsement.

PAY TO THE ORDER OF FEDERAL INTERMEDIATE CREDIT BANK OF SACRAMENTO, Sacramento, California

The space provided below is for accounting purposes only and is not part of the executed document.

תוצאות:

Amount of Note	100,000.00
----------------	------------

Less Equity Portion	10,500.00
---------------------	-----------

Less Water Retention \_\_\_\_\_

Disbursement Commitment	\$ 25,100.00
-------------------------	--------------

D471		
07	11	

TRANSACTION CODE	DATE CODE	TOTAL AMOUNT	CHECK NO.	CHECK DATE	PAYEE NAME	ACCOUNT TYPE
708						
709						

EXHIBIT C

710						
711						

THIS SECURITY AGREEMENT is made this 20th day of July 1980, and between Arizona Livestock Production Credit Association (Lender) and the following:  
Hazelton and Son, A Partnership; Estate of George Pierce Hazelton, 1  
Maricopa County, Arizona Probate #134821, by Drusilla Hazelton, Personal Representative;  
Drusilla Hazelton; George Hazelton, Jr., and Marla Jean Hazelton

1. The indebtedness "indebtedness" shall mean any and all loans, advances, obligations, covenants and duties owing to Lender by Debtor of any kind or of contingent, due or to become due whether now existing or hereafter arising, whether or not evidenced by any note, guaranty, non-recourse guaranty or agreement or writing, including, without limitation, all interest, charges, fees, attorneys' fees, expenses and any other sum chargeable by Lender to Debtor or any other agreement.

2. Security. As security for all indebtedness of Debtor to Lender, Debtor grants to Lender a security interest in all of the following property in which the Debtor or subsequently acquires any rights (the "Collateral"):

2.1 All crops and/or timber growing or to be grown on, all timber now or hereafter standing on and all crops and/or timber that have been harvested that certain real property situated in the County of Maricopa State of Arizona more particularly described as:

2.2 All livestock and/or poultry, all additions, replacements, natural increases and subsequent purchases by bill of sale draft or otherwise including (The specific listing of Collateral is optional. It is the intention of Lender and Debtor that the security interest granted herein include all livestock and/or hereafter acquired without limitation and the specific description or listing of Collateral or the failure to specifically describe or list some or all of the Collateral to limit or restrict the security interest granted herein.)

(Debtor's brand registration numbers) 4765, 8000

NUMBER	KIND OR CLASS	BREED OR DESCRIPTION	AGE	BRAND OR OTHER IDENTIFICATION
55	COWS			
200	Heifers & Steers			
50	Calves Hfr & Str			
10	Bulls			
INCLUDES ALL INCREASES NATURAL OR OTHERWISE				
ALL GOODS				
SAID LIVESTOCK MAY BE MORE PARTICULARLY DESCRIBED IN BILL OF SALE IN POSSESSION OF SE				

2.3 All machinery, equipment, farm equipment and fixtures now owned or hereafter acquired, including but not limited to (The specific listing of Collateral is optional. It is the intention of Lender and Debtor that the security interest granted herein include all machinery, equipment and fixtures now owned or hereafter acquired without limitation and the specific description or listing of Collateral or the failure to specifically describe or list some or all of the Collateral to limit or restrict the security interest granted herein.)

Exhibit 6  
10/21/00 1.11

To 1-3-7

Arizona Livestock PRODUCTION CREDIT ASSOCIATION

Application for Range Livestock

Name: Hazleton and Son RFD 17230 N. 15th Ave PHOENIX, ARIZONA 85923  
 (Ranch) (Home) (Ranch, Acre, and Etc.) (City or Town) (County) (State) (Zip)

Location of home place: \_\_\_\_\_  
 The following information is submitted for the purpose of obtaining credit:

Age \_\_\_\_\_ Ages of boys \_\_\_\_\_ Ages of girls \_\_\_\_\_ I have lived in above County since \_\_\_\_\_  
 On present home place since \_\_\_\_\_; previously in \_\_\_\_\_ County. I am a citizen of \_\_\_\_\_  
 Credit obtained past season: \$ \_\_\_\_\_ from \_\_\_\_\_  
 Have you ever filed a petition in bankruptcy? \_\_\_\_\_ When? \_\_\_\_\_ Where? \_\_\_\_\_ When discharged? \_\_\_\_\_  
 I learned about Production Credit from \_\_\_\_\_

INFORMATION REGARDING APPLICANT'S EXPERIENCE:

TYPE	YEARS	TYPE	YEARS	TYPE	YEARS	Other Agricultural Experience
Range Cattle		Dairy		Tree Crops		
Feeder Cattle		Hogs		Citrus		
Range Sheep		Turkeys		Field Crops		
Feeder Sheep		Chickens		Vines		

I request a loan for the following purposes:

To buy	head	@ \$	APPROX. DATE	NUMBER	SOURCE OF LIQUIDATION	AMOUNT
Need 200 head			9-5-79	200	Wool @ 310	17,000
Id 100 head			4-21-80	100	Wool @ 310	5,400
M 100			5-31-80	100	Wool @ 310	7,000
Operating Buckets Attached				10	Bulls - 672	6,720
B Stock 100 head				10		10,000
Fee						315
TOTAL LOAN REQUESTED						107,000

The following is my plan of loan liquidation:

NUMBER	KIND	BREED	VALUE PER NO.	TOTAL VALUATION
200	Cows	200	200	40,000
100	Heifers	100	100	10,000
100	Calves, Weaners	100	100	10,000
100	Calves, Suckers	100	100	10,000
100	Steers, 1's	100	100	10,000
100	Steers, 2 & up	100	100	10,000
100	Bulls	100	100	10,000
	TOTAL CATTLE			100,000

NUMBER	KIND	BREED	VALUE PER NO.	TOTAL VALUATION
100	Ewes, 1's	100	100	10,000
100	Ewes, 2's	100	100	10,000
100	Ewes, 3's	100	100	10,000
100	Ewes, 4's	100	100	10,000
100	Ewes, 5 & up	100	100	10,000
100	Lambs	100	100	10,000
100	Bucks	100	100	10,000
	TOTAL SHEEP			100,000
	TOTAL OTHER LIVESTOCK			
	VALUE OF OWNED LIVESTOCK			

Will all livestock be branded? \_\_\_\_\_  
 Are brands in good standing? \_\_\_\_\_  
 Brand Certificate Numbers are: 1000 1000  
 Brands are registered to: 1000 1000  
 BRANDS AND LOCATIONS: \_\_\_\_\_  
 CAR MARKS: \_\_\_\_\_

PARCEL NUMBER	PERMISSION	GRASSING	LANDLORD AND ADDRESS	ANNUAL CASH RENTALS	LEASE
				TOTAL	PAID TO DATE

Net amount of other income: \$ \_\_\_\_\_ per annum from \_\_\_\_\_

Exhibit 3  
 10/21/86 JMN

342556 MAR 14  
Secretary of State, County Recorder

Second copy of recorded original to  
Arizona Livestock Production Credit Association  
Texas Exchange Building  
5025 4251 East Washington Street, Room 600  
Phoenix, Arizona 85034 Suite 115

By ROSE HAZELTON  
ARIZONA UNIFORM COMMERCIAL CODE  
FINANCING STATEMENT - Form UCC-1

This financing statement is presented for filing in accordance with the Arizona Uniform Commercial Code

1. No of additional sheets presented

2. Debtor(s): (last, first, middle and address)  
HAZELTON AND SON, A Partnership, Composed of: Estate  
of George Pierce Hazelton Sr., Deceased, Maricopa  
County, Arizona Probate #134821, by Drusilla Hazel-  
ton, Personal Representative, A Partner;  
HAZELTON, Drusilla, A Widow, A Partner;  
HAZELTON, George Jr., A Partner; and  
HAZELTON, Marla Jean, A Partner, husband & wife;

3. Secured Party(ies) and Address  
Arizona Livestock Production Credit Association  
Texas Exchange Building  
5025 4251 East Washington Street, Room 600  
Phoenix, Arizona 85034

4. XX  
17230 N. 15th Avenue  
Phoenix, Arizona 85023

5. Proceeds of collateral are also covered XX

☒ If checked, products of collateral are also covered.

6. This Financing Statement covers the following types (or items) of property:

All farm products, equipment, inventory, accounts, documents, chattel paper and general in  
now owned or hereafter acquired, including but not limited to all livestock now owned or h  
acquired, wherever located, including all natural increases thereof and additions, replace  
substitutions thereto; all supplies including hay, grain and other feeds wherever located.

7. If the collateral is crops, the crops are growing or to be grown on the following described real estate

8. If the collateral is lot goods which are or are to become fixtures, lot lumber to be cut, or lot minerals or the like (including oil and gas), or acc  
from the sale thereof at the wellhead or minehead to which the security interest attaches upon extraction, the legal description of the real estate

And, this Financing Statement is to be recorded in the office where a mortgage on such real estate would be recorded. If the Debtor does not ha  
of record, the name of a record owner is:

9. This Financing Statement is signed by the Secured Party instead of the debtor to perfect or continue perfection of a security interest in:

- ☐ collateral already subject to a security interest in another jurisdiction when it was brought into this state.
- ☐ proceeds of collateral because of a change in type or use.
- ☐ collateral as to which the filing has lapsed or will lapse
- ☐ collateral acquired after a change of name, identity, or corporate structure of the Debtor

HAZELTON AND SON, A Partnership INDIVIDUALLY & AS PARTNERS:

Estate of George Pierce Hazelton Sr., Deceased, Maricopa  
County, Arizona Probate #134821, by Drusilla Hazelton, Personal  
Representative Drusilla Hazelton

Dated February 7, 1984

Drusilla Hazelton

(Use  
whichever  
is  
applicable)

ARIZONA LIVESTOCK PRODUCTION CREDIT

By: George Hazelton Jr. & Marla Jean Hazelton

George Hazelton Jr. & Marla Jean Hazelton  
Standard Form UCC-1 Approved By The Secretary Of State Of Arizona 1/76

See reverse side for instructions

FILING COPY



with the 30-day period and official seal the day, and year first above written.

Secretary of State of Arizona

Arizona Livestock Production Credit Association  
 5025 4551 East Washington Street, Room 6 Suite 115  
 Phoenix, Arizona 85034

By

# ARIZONA UNIFORM COMMERCIAL CODE FINANCING STATEMENT — Form UCC-1

This Financing Statement is presented for filing in accordance with the Arizona Uniform Commercial Code

1. No of additional sheets presented

2. Debtor's first name first and address

HAZELTON AND SON, A Partnership, Composed of: Estate of George Pierce Hazelton Sr., Deceased, Maricopa County, Arizona Probate #134821, by Drusilla Hazelton, Personal Representative, A Partner; HAZELTON, Drusilla, A Widow, A Partner; HAZELTON, George Jr., A Partner; and HAZELTON, Marla Jean, A Partner, husband & wife;

3. Secured Party(ies) first and address

Arizona Livestock Production Credit Association  
 5025 4551 East Washington Street, Room 6 Suite 115  
 Phoenix, Arizona 85034

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

17230 N. 15th Avenue  
 Phoenix, Arizona 85023

5. Proceeds of collateral are also covered XXX

XXX If checked, proceeds of collateral are also covered

6. This Financing Statement covers the following types of items of property:

all farm products, equipment, inventory, accounts, documents, chattel paper and general intangibles now owned or hereafter acquired, including but not limited to all livestock now owned or hereafter acquired, wherever located, including all natural increases thereof and additions, replacements, substitutions thereto, all supplies including hay, grain and other feeds wherever located.

7. If the collateral is crops, the crops are growing or to be grown on the following described real estate:

8. If the collateral is (a) goods which are or are to become fixtures, (b) timber to be cut, or (c) minerals or the like (including oil and gas), or accounts from the sale thereof at the wellhead or minehead to which the security interest attaches upon extraction, the legal description of the real estate of

And, this Financing Statement is to be recorded in the office where a mortgage on such real estate would be recorded. If the Debtor does not have of record, the name of a record owner is

9. This Financing Statement is signed by the Secured Party instead of the debtor to perfect or continue the security interest in:

- ☐ collateral already subject to a security interest in another jurisdiction when it was brought into this jurisdiction
- ☐ proceeds of collateral because of a change in type or use.
- ☐ collateral as to which the filing has lapsed or will lapse.
- ☐ collateral acquired after a change of name, identity, or corporate structure of the Debtor.

RECORDED IN OFFICIAL RECORD  
 OF MARICOPA COUNTY, ARIZONA

MAR 14 1984 - 1000

BILL HENRY, COUNTY RECORDER  
 FEE \$10.00 P.S.

HAZELTON AND SON, A Partnership INDIVIDUALLY & AS PARTNERS:

Estate of George Pierce Hazelton Sr., Deceased, Maricopa County, Arizona Probate #134821, by Drusilla Hazelton, Personal Representative

Dated February 7, 1984

Drusilla Hazelton

George Hazelton Jr. and Marla Jean Hazelton

Standard Form UCC-1 Approved By The Secretary Of State Of Arizona 1/76

(Type  
 whichever  
 is  
 applicable)

ARIZONA LIVESTOCK PRODUCTION CREDIT ASSOCIATION

By: [Signature]

Exhibit 5  
 10/31/84 SMM

FILING COPY

See reverse side for instructions

24 All of the following described Collateral:

IMPORTANT:

SEE REVERSE SIDE FOR DESCRIPTION OF ADDITIONAL COLLATERAL AND FOR ADDITIONAL TERMS AND CONDITIONS ARE PART OF THIS AGREEMENT

THE UNDERSIGNED AGREE TO ALL THE TERMS AND CONDITIONS SET FORTH ABOVE AND ON THE REVERSE SIDE

IN WITNESS WHEREOF, Debtor has executed this Security Agreement.

INDIVIDUALLY:

Drusilla Hazelton  
Estate of George Pierce Hazelton, Sr.,  
Deceased, Maricopa County, Arizona Probate  
#114821, by Drusilla Hazelton, Personal  
Representative.

Drusilla Hazelton  
Drusilla Hazelton, A Widow  
George Hazelton, Jr.  
George Hazelton, Jr.  
Maria Jean Hazelton  
Maria Jean Hazelton

HAZELTON AND SON, A Partnership

By: Drusilla Hazelton  
Estate of George Pierce Hazelton, S  
Deceased, Maricopa County, Arizona Prob  
#114821, by Drusilla Hazelton, Personal  
Representative, A Partner

By: Drusilla Hazelton  
Drusilla Hazelton, A Widow, A Partner  
By: George Hazelton, Jr.  
George Hazelton, Jr., A Partner  
By: Maria Jean Hazelton  
Maria Jean Hazelton, A Partner

STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
SPECIAL INVESTIGATIONS DIVISION

AFFIDAVIT OF SERVICE

\*\*\*\*\*

STATE OF ARIZONA )

: ss.

C 587193

County of Maricopa )

I James D. Baize, being first duly sworn, deposes and says that the attached complaint and notice of pending forfeiture was duly served on Drusilla Hazelton by certified Mail by delivering a true and correct copy of same to Drusilla Hazelton at her last known address and which was accepted by Drusilla Hazelton at Star Route Box 637, Tonopah, Arizona. 85354.

Delivery having been made on the 26th day of July, 1986.

  
Affiant

Subscribed and sworn to before me this 19<sup>th</sup> day of August, 1986.

  
Notary Public

My commission expires:

Sept. 28, 1986



STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
SPECIAL INVESTIGATIONS DIVISION

AFFIDAVIT OF SERVICE

\*\*\*\*\*

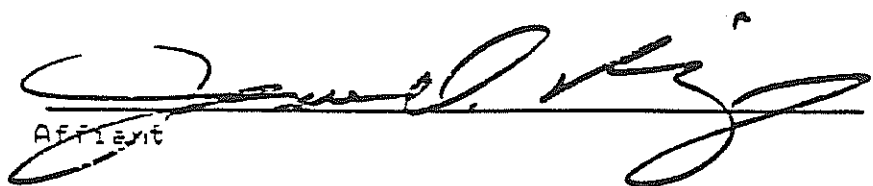
STATE OF ARIZONA )

: ss.

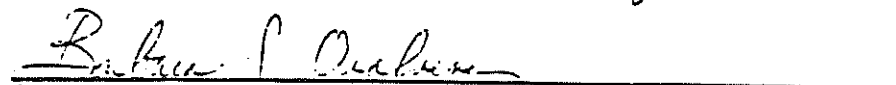
C 587193

County of Maricopa )

I James D. Baize, being first duly sworn, deposes and says that the attached complaint and notice of pending forfeiture was duly served on George Pierce Hazelton Jr. and Marla Jean Hazelton by delivering a true and correct copy of same to the above by certified mail, article numbers P 559 112 657 and P 559 112 658, attached, and which were accepted by Marla Hazelton at their last known address of 17230 N. 15th Avenue, Phoenix, Arizona, 85023. Delivery having been made on the 25th day of July, 1986.

  
Affiant

Subscribed and sworn to before me this 19<sup>th</sup> day of August, 1986.

  
Notary Public

My commission expires:

Sept. 25, 1986



9218c;FFD86-230  
ROBERT K. CORBIN  
Attorney General  
PATRICK M. MURPHY, Chief Counsel  
Financial Fraud Division  
CAMERON H. HOLMES  
Assistant Attorney General  
Department of Law Building, Room 259  
1275 West Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 255-3702

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, ex rel. ROBERT K.  
CORBIN, Attorney General,

Plaintiff,

vs.

ONE RANCH, TOGETHER WITH ALL OF ITS  
REAL PROPERTY, HORSES, CATTLE, CROPS,  
BALED HAY, VEHICLES, IMPLEMENTS,  
TRAILORS, EQUIPMENT, LEASES, AND  
RECEIVABLES, LOCATED AT STAR ROUTE  
BOX 637, TONOPAH, ARIZONA, AND  
DESCRIBED AS THE SW 1/4 OF THE NW 1/4  
OF SECTION 19, T1N, R5W, GILA AND  
SALT RIVER BASE AND MERIDIAN, ALSO  
KNOWN AS PARCEL 504-33-0071; ALL  
INTERESTS IN HAZELTON AND SON, A  
PARTNERSHIP; ONE LOT CASH IN THE  
AMOUNT OF \$15,150 IN U.S. CURRENCY;  
ONE FIRST INTERSTATE BANK OF ARIZONA  
CASHIER'S CHECK NO. T8453213 IN THE  
AMOUNT OF \$9,500.00 PAYABLE TO GEORGE  
HAZELTON AND DATED JULY 8, 1986,

Defendants.

NO. C-587193

ORDER OF PARTIAL  
SUMMARY JUDGMENT  
RE ANY INTEREST OF  
GEORGE HAZELTON, JR OR  
MARLA HAZELTON  
(ASSIGNED TO HON.  
WILLIAM P. SARGEANT, III)

1           The State of Arizona having submitted a Motion for  
2 Partial Summary Judgment relating to any interest of George  
3 Hazelton, Jr. or Marla Hazelton in any of the defendant  
4 property, supported by affidavits, seeking title to any such  
5 interests pursuant to A.R.S. § 13-4311, A.R.S. § 13-4314 and  
6 Rule 56, Arizona Rules of Civil Procedure, and the Court having  
7 found that no genuine issue of material fact remains, in that  
8 probable cause for forfeiture has been shown by affidavit and  
9 no claimant has demonstrated the existence of a genuine issue  
10 of material fact as to any exception to forfeiture relating to  
11 the particular interest involved in the motion;

12           IT IS ORDERED the State of Arizona has clear title to  
13 any and all property, including any interests in property, of  
14 George Hazelton, Jr. and Marla Hazelton, providing, however,  
15 that:

16           1. This Order relates only to property that is  
17 defendant property in this action at this time;

18           2. This Order does not affect:

19           a. the exemption of the interest claimed by  
20 Claimant Valley National Bank of Arizona from forfeiture  
21 pursuant to A.R.S. § 13-4304(3), as stipulated to in the order  
22 of this Court dated September 17, 1986.

23           b. The exemption of the interest claimed by  
24 Claimant Arizona Livestock Production Credit Association from  
25 forfeiture pursuant to A.R.S. § 13-4304(3), as stipulated to in  
26 the order of this Court dated September 8, 1986.



c. The exemption of the interest claimed by Claimant Arizona Farmer's Production Credit Association from forfeiture pursuant to A.R.S. § 13-4304(3).

Ed. The priorities of the various claimants among themselves as to the defendant property in this action.

3e. The status of the real property, as claimed by Claimant Drusilla Hazelton.

3. This Order does not determine the extent to which all or any item of defendant property is in fact the property of George Hazelton, Jr. or Marla Hazelton, if any.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1987.

HON. WILLIAM P. SARGEANT, III  
Judge of the Superior Court



SETTLEMENT AGREEMENT

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B., et al.,

Defendants.

\_\_\_\_\_ /

SETTLEMENT AGREEMENT

The Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS and the Defendant A.B. hereby stipulate to the settlement of this action upon the terms and conditions described below:

1. Defendant A.B. waives all defenses concerning the following assets, and consents to the entry of a Final Judgment of Forfeiture for said assets:

[legal description]

2. Defendant A.B. agrees to waive any claim of testimonial privilege, and to testify truthfully in any pretrial, trial, or post-trial proceedings in the action State v. C.D., et al., Case No. \_\_\_\_ (Fla. \_\_\_\_ Cir.). Defendant agrees to keep Special Agent E.F. of the Florida Department of Law Enforcement informed of his residence address at all times during the pendency of that action.

3. Defendant A.B. will deliver to Plaintiff's counsel physical possession of the personal property described above, and title to said property in a form satisfactory to Plaintiff's counsel, upon execution of this Agreement by all parties.

4. Plaintiff agrees that the temporary injunction previously entered in this action shall be dissolved as to Defendant A.B., and that Notices of Lis Pendens against the following property shall be released upon execution of this Agreement by all parties:

[legal description]

5. Plaintiff agrees that all remaining causes of action against Defendant A.B. stated in the Complaint in this action shall be dismissed with prejudice. Plaintiff further agrees to release Defendant from any further civil liability under the Florida RICO Act arising from events alleged in the Complaint. Plaintiff shall deliver releases in recordable form required under this Agreement to Defendant's counsel upon execution of this Agreement by all parties.

6. This Settlement Agreement is entered in compromise of disputed claims. Nothing set forth herein shall be construed as an admission by Defendant A.B. of any facts alleged in the Complaint, or a waiver of any defenses he may assert in any other action based on the facts alleged in the Complaint.

7. Each party shall bear its own costs.

8. An agreed form of Final Judgment of Forfeiture is attached hereto, and may be presented to the Court ex parte by Plaintiff's counsel after notice to Defendant's counsel.

IN WITNESS WHEREOF, the parties have set their hands and seals this [date].

ATTORNEY GENERAL OF FLORIDA

\_\_\_\_\_  
A.B.

\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL  
COUNSEL FOR PLAINTIFF

\_\_\_\_\_  
COUNSEL FOR DEFENDANT

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B., et al.,

Defendants.

---

ORDER OF DISTRIBUTION

This Cause came on for hearing pursuant to Plaintiff's Motion for Order of Distribution. The Court has jurisdiction to distribute the funds in question pursuant to §895.09(1), Fla. Stat. (1985). The Court having considered the affidavits accompanying the motion and finding there is no contested issue of fact, makes the following findings of fact and conclusions of law:

1. There is the sum of \$320,500 in the Court Registry to be distributed in this cause.
2. The Clerk of Court is entitled to \$3,210 pursuant to §895.09(1)(a), Fla. Stat. (1985).
3. The Board of Trustees of the Internal Improvement Trust Fund is entitled to \$15,000 pursuant to §895.09(1)(c), Fla. Stat. (1985).
4. The Plaintiff is entitled to twenty percent of the remainder, or \$60,458, pursuant to §895.09(1)(d), Fla. Stat. (1985).

5. The Florida Department of Law Enforcement is entitled to \$25,500 as compensable investigative expenses pursuant to §895.09(1)(e), Fla. Stat. (1985).

6. There being no other compensable claims, the remainder is to be divided into equal shares of \$108,166 each, and distributed to the State of Florida General Revenue Fund and the Dade County General Fund, pursuant to §895.09(2), Fla. Stat. (1985).

The Clerk is directed to distribute the funds by check in accordance with the foregoing Order.

DONE and ORDERED this [date] at [location of Court].

\_\_\_\_\_  
Circuit Judge

**FINAL JUDGMENT OF FORFEITURE**

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B.

Defendant.

\_\_\_\_\_ /

**FINAL JUDGMENT**

This Cause came on for hearing on Plaintiff's Motion for Final Judgment. The Court having considered the evidence presented at the trial in this matter on [date] and the arguments of counsel, makes the following findings of fact and conclusions of law:

1. The Court has jurisdiction over the parties and the subject matter of this action pursuant to §895.05(5), Fla. Stat. (1985).

2. The Defendant A.B. was associated with an enterprise, i.e., a group of individuals associated in fact although not a legal entity; and he participated in that enterprise through a pattern of racketeering activity, as follows:

(a) [First predicate crime and specific statute violated]

(b) [Second predicate crime and specific statute violated]

The foregoing constitutes a violation of the Florida RICO Act, §895.03(3), Fla. Stat. (1985).

3. Defendant A.B. used the real estate described below as a [describe use] in the course of the RICO Act violation:

[legal description]

4. Defendant A.B. acquired the real estate described below with funds derived from or realized through the RICO Act violation.

[legal description]

5. The real property described in paragraphs 3 and 4 above is forfeitable to the State under §895.05(2)(a), Fla. Stat. (1985).

6. On [date] during the pendency of this litigation, A.B. caused funds in the amount of [amount] to be withdrawn from his bank account at [name and location of bank]. The funds in this account were derived from or realized through the RICO Act violation. Plaintiff incurred expenses in the amount of [amount] as investigative costs and attorney's fees to investigate and prove this withdrawal.

7. Plaintiff is entitled to judgment for the amount of [amount], representing the value of the funds in the bank account, plus [amount] for investigative costs and attorney's fees, for a total amount of [amount], pursuant to §895.05(2)(b), Fla. Stat. (1985).

It is thereupon ORDERED and ADJUDGED that:

(1) All right, title and interest to the following property is hereby forfeited to the Board of Trustees of the Internal Improvement Trust Fund:

[legal descriptions]

The Board of Trustees and its authorized agents shall be entitled to immediate possession of the premises.

(2) Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, shall recover from Defendant the sum of [amount] with interest from the date hereof, for which let execution issue.



(3) The Court shall retain jurisdiction for the purpose of distributing any cash proceeds arising from the disposition of forfeited property pursuant to the provisions of §895.09, Fla. Stat. (1985).

DONE and ORDERED this [date] at [location of Court].

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CIRCUIT JUDGE



## **JURY INSTRUCTIONS**

In civil RICO cases, jury instructions will not only explain the elements of RICO and the violations alleged against the defendants, but will describe the theory of forfeiture being pursued by the government. It is important to communicate those concepts in a way that will make sense to a jury, using simplified statements of statutory language whenever possible. Unfortunately, some courts will insist on delivering the statutory language verbatim, which can be very confusing.

In addition to statutory elements, any interpretational case law should be written into the jury instructions. Thus, special requirements for "patterns" or "enterprises" that have been articulated by the courts should be considered when drafting instructions. Any unusual issues, such as permissible inferences the jury may make from a defendant's claim of a fifth amendment privilege, should also be addressed in an instruction.



CIVIL JURY INSTRUCTIONS AND VERDICT FORM

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B., and C.D.,

Defendants.

\_\_\_\_\_ /

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

Plaintiff submits the following proposed jury  
instructions, numbered 1 through 9, pursuant to Rule 1.470(b),  
Fla. R. Civ. P.

Plaintiff also submits a proposed verdict form.

Respectfully submitted,

1. INTRODUCTORY INSTRUCTION

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdicts. It is your duty as jurors to consider and weigh the evidence, to decide the disputed issues of fact, and to apply the law to the facts as you find them from the evidence.<sup>1</sup>

This civil action was instituted pursuant to the Racketeer Influenced and Corrupt Organization Act, and seeks forfeiture to the State of Florida of [general description of assets].

From time to time in these instructions, I will refer to this Act as the RICO Act, or refer to a violation of the Act as racketeering or as a RICO Act violation.

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<sup>1</sup>Standard Jury Instruction 2.1.

## 2. BELIEVABILITY OF WITNESSES

As jurors, you are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

In determining the believability of any witnesses and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.<sup>2</sup>

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<sup>2</sup>Standard Jury Instruction 2.2.

### 3. ISSUES

It is not in dispute in this action that the Defendant A.B. violated the RICO Act. The State of Florida has proved this in a separate proceeding. The verdict form has been marked for you in this respect.<sup>3</sup>

The disputed issues which you must decide are:

- (1) Whether the [describe asset] was used in the course of or intended for use in the course of a violation of the RICO Act.
- (2) Whether the [describe asset] was derived from or realized through a violation of the RICO Act.

In conjunction with this decision, you must also decide whether the Defendant C.D. knew or reasonably should have known that the [asset] was being used in the course of or intended for use in the course of a violation of the RICO Act [or was derived from or realized through a violation of the RICO Act]. If you decide that Defendant C.D. neither knew nor reasonably should have known that the property was being used or intended for use in the course of a violation of the RICO Act [or was derived from or realized through a violation of the RICO Act], then you must decide that C.D. is an innocent person and that the [asset] is not subject to forfeiture to the State of Florida.<sup>4</sup>

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<sup>3</sup>Section 895.05(9), Fla. Stat. (1985)

<sup>4</sup>Section 895.05(2), Fla. Stat. (1985); General Motors Acceptance Corp. v. State, 152 Fla. 197, 11 So.2d 482 (1943); In re 1975 Pontiac, 374 So.2d 1119 (Fla.2d DCA 1979); One 1973 Cadillac v. State, 372 So.2d 103 (Fla.2d DCA 1979).



#### 4. BURDEN OF PROOF

The Plaintiff has the burden of proof on all issues except the issue whether the Defendant C.D. knew or reasonably should have known that the [asset] was being used in the course of or intended for use in the course of [or was derived from or realized through] a RICO Act violation. Defendant has the burden of proof on that issue.<sup>5</sup>

The burden of proof in this case is that burden which normally applies in civil cases, that is, proof by the greater weight of the evidence.<sup>6</sup>

The "greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case.<sup>7</sup>

The phrase "greater weight of the evidence" is not a technical term. To illustrate what it means, you may imagine a pair of scales that is equally balanced. If you put additional weight on one side, that side will sink down. We can say that that side outweighs the other side.<sup>8</sup>

On those issues for which the Plaintiff has the burden of proof, if the greater weight of the evidence does not support

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<sup>5</sup>Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 94 S.Ct. 2080 (1974); U.S. v. One 1976 Lincoln Continental Mark IV, 584 F.2d 266 (8th Cir. 1978); U.S. v. One 1976 Lincoln Mark IV, 462 F.Supp. 1383 (W.D. Pa. 1979); State v. Thompson, 390 So.2d 715 (Fla. 1980); Hough v. Menses, 95 So.2d 410 (Fla. 1957); General Motors Acceptance Corp. v. State, 152 Fla. 197, 11 So.2d 482 (1943); Armstrong v. State, 96 So. 399 (Fla. 1923); Circuit Court Order, Case No. 82-2483, Sixth Judicial Circuit, Pasco County, Florida.

<sup>6</sup>One Lot Emerald Cut Stones v. United States, 409 U.S. 232, 93 S.Ct. 489, 34 L.Ed.2d 438; State v. Dubose, 152 Fla. 304, 11 So.2d 477 (1943); Marks v. State, 416 So.2d 872 (Fla.5th DCA 1982).

<sup>7</sup>Standard Jury Instruction 3.9.

<sup>8</sup>Instructions for Florida, §879 (Supp. 1965) (taken from record in Tampa Drug Co. v. Wait, 103 So.2d 603 (Fla. 1958)).

the Plaintiff's claim on the issue, then your verdict on that issue should be for the Defendants. However, if the greater weight of the evidence does support the Plaintiff's claim, then your verdict should be for the Plaintiff.<sup>9</sup>

With respect to the issue for which the Defendant C.D. has the burden of proof, if the greater weight of the evidence supports that he neither knew or reasonably should have known that the [asset] was being used or was intended for use in the course of [derived from or realized through] a violation of the RICO Act, then your verdict on that issue should be for the Defendant. However if the greater weight of the evidence does not support his claim on the issue, then your verdict should be for the Plaintiff on that issue.<sup>10</sup>

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<sup>9</sup>Standard Jury Instruction 3.7.

<sup>10</sup>Id.

## 5. RICO ACT VIOLATION

A violation of the Racketeer Influenced and Corrupt Organization Act means:

I. A Defendant was employed by or associated with an enterprise.<sup>11</sup>

II. A Defendant conducted or participated, directly or indirectly, in the affairs of the enterprise.<sup>12</sup>

III. A Defendant's conduct or participation in the enterprise was through a pattern or racketeering activity.<sup>13</sup>

An enterprise means an individual, sole proprietorship, partnership, corporation, association, or group of individuals associated in fact although not a legal entity, and it includes legal as well as illegal enterprises.<sup>14</sup>

A pattern of racketeering activity means at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents.<sup>15</sup>

An incident of racketeering conduct means any of the following acts:

(1) An offense of trafficking in cannabis. A Defendant committed the offense of trafficking in cannabis if he knowingly sold, delivered or brought into this state, or was

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<sup>11</sup>Section 895.03(3), Fla. Stat. (1985)

<sup>12</sup>Section 895.03(3), Fla. Stat. (1985)

<sup>13</sup>Section 895.03(3), Fla. Stat. (1985)

<sup>14</sup>Section 895.02(3), Fla. Stat. (1985)

<sup>15</sup>Section 895.02(4), Fla. Stat. (1985)

knowingly in the actual or constructive possession of, the substance known as cannabis or marijuana, in an amount in excess of 100 pounds.<sup>16</sup>

(2) A conspiracy to commit the offense of trafficking in cannabis is also an incident of racketeering conduct. A conspiracy means an express or implied agreement of two or more persons to accomplish, by concerted action, the unlawful act of drug trafficking.<sup>17</sup>

(3) It is also an incident of racketeering conduct if a Defendant knowingly or intentionally conspires with other persons to possess cannabis with intent to distribute it.<sup>18</sup>

The Defendant is considered to be in possession of cannabis or marijuana within the meaning of the drug trafficking law if he has either actual possession or constructive possession of an amount in excess of 100 pounds.

"Actual possession" means physical possession or actual personal dominion over the marijuana.<sup>19</sup>

"Constructive possession" means that the Defendant, although he does not have physical possession, has knowledge that the substance is present and has the ability to maintain control over it.<sup>20</sup>

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<sup>16</sup>Sections 895.02(1)(a)24 and 893.135(1)(a), Fla. Stat. (1985)

<sup>17</sup>Section 777.04(3), Fla. Stat. (1981); Boyd v. State, 389 So.2d 642, n. 2 at 647 (Fla.2d DCA 1980).

<sup>18</sup>Section 895.02(1)(b), Fla. Stat.; 21 U.S.C. §§841 and 846.

<sup>19</sup>Ellis v. State, 346 So.2d 1044 (Fla.1st DCA 1977), cert. denied, 352 So.2d 175 (Fla. 1977); United States v. Wynn, 544 F.2d 786 (5th Cir. 1977).

<sup>20</sup>Brown v. State, 428 So.2d 250 (Fla. 1983); United States v. Wynn, supra.

## 6. FORFEITURE

Property is subject to forfeiture to the State if it is used in the course of a RICO Act violation, or if the person who violated the RICO Act intended to use it in the course of the RICO Act violation. Property is also subject to forfeiture if it was directly or indirectly derived from or realized through a RICO Act violation. In other words, the proceeds of a RICO Act violation are forfeitable, and an asset purchased with the proceeds of a RICO Act violation is forfeitable.<sup>21</sup>

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<sup>21</sup>Section 895.05(2), Fla. Stat. (1985)

7. FIFTH AMENDMENT CLAIMS - PERMISSIBLE INFERENCES

During the course of these proceedings, the Defendant A.B. refused to answer certain questions based on his Fifth Amendment privilege against self incrimination. Defendant has a constitutional right to decline to answer a question on the ground that it may tend to incriminate him. However, when a party refuses to answer questions or testify in response to probative evidence offered against him, you may infer by such refusal that the answers, if given, would have been unfavorable to the party and supportive of other evidence offered on the same point.<sup>22</sup>

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<sup>22</sup>Baxter v. Palmigiano, 425 U.S. 308 (1976); United States v. Roberson, 233 F.2d 517 (5th Cir. 1956) (forfeiture case); Kent v. United States, 157 F.2d 1 (5th Cir. 1946) (same); DeLisi v. Bankers Ins. Co., 436 So.2d 1101 (Fla.4th DCA 1983); Geiger v. Mather of Lakeland, Inc., 217 So.2d 897 (Fla.4th DCA 1968). See also tax and forfeiture cases cited in Instruction 7 above).

#### 8. CLOSING INSTRUCTIONS

It is your responsibility to reach a verdict on those issues presented to you for decision. Your verdicts must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdicts, you are not to be swayed from the performance of your duty by prejudice, sympathy or any other sentiment for or against any party.<sup>23</sup>

When you retire to the jury room, you should select one of your number to act as a foreperson to preside over your deliberations and sign your verdicts. Your verdicts must be unanimous, that is, your verdicts must be agreed to by each of you.

You will be given a verdict form, which I shall now read to you:

When you have agreed on your verdicts, the foreperson, acting for the jury, should date and sign the appropriate verdict form. You may now retire to consider your verdicts.<sup>24</sup>

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<sup>23</sup>Standard Jury Instruction 7.1.

<sup>24</sup>Standard Jury Instruction 7.2.

VERDICT FORM

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA.

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. \_\_\_\_\_

A.B., and C.D.,

Defendants.

\_\_\_\_\_

VERDICT FORM

MARK ONE BOX IN EACH SENTENCE BELOW:

1. The Defendant A.B. / / violated / / did not  
violate the Florida RICO Act.

2. The [describe asset] was / / used / / not used  
in the course of the RICO Act violation.

3. The [describe asset] was / / intended for use  
/ / not intended for use in the course of the RICO Act  
violation.

4. The [describe asset] was / / derived from or  
realized through / / not derived from or realized through the  
RICO Act violation.

5. The Defendant C.D. / / either knew or had reason  
to know / / had no knowledge or reason to know that the  
[describe asset] was used, or intended for use, or derived or  
realized through the RICO Act violation.

THE FOREGOING REPRESENT THE UNANIMOUS FINDINGS OF THE JURY.

By: \_\_\_\_\_  
Foreperson



FEDERAL RICO JURY INSTRUCTIONS

RICO Instructions: upheld in Armco Ind. Cred. Corp. v. SLT Warehouse, 789 F.2d 475, 480, 482, 483 (5th Cir. 1986)



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

---

ARMCO INDUSTRIAL CREDIT )  
CORPORATION, a corporation )

Plaintiff )

v. )

Civil Action No. 3-82-1272-B

SLT WAREHOUSE COMPANY, ROBERT )  
W. RIGBY, JR., RICHARD B. )  
CONKLIN, Jointly and )  
Severally )

Defendants )

COURT'S CHARGE TO THE JURY

(Prior to Argument)

MEMBERS OF THE JURY:

Now that you have heard the evidence, it is my duty to instruct you as to the law that is applicable to this case. At this time I will instruct you regarding the law that you should apply in answering certain questions of fact in the case, and I will read to you those questions.

Then counsel will have the opportunity to make their closing arguments. You are instructed that the statements and arguments of counsel are not evidence. They are only intended to assist the jury in understanding the evidence and the contention of the parties to this suit.

After the closing arguments, I will give you some additional instructions, after which you will retire to commence your deliberations.

### Plaintiff's Contentions

Plaintiff Armco contends that Defendants SLT, Conklin and Rigby each participated in a scheme by Pritchett & Company to defraud Armco through, among other acts, falsified accounts receivable invoices. Armco contends that SLT, Conklin and Rigby's conduct constituted violations of Section 1962(c) of the RICO Act, that the Defendants' RICO violations injured Armco's business and property, and that Armco should recover damages for such violation.

Armco also contends that SLT, Conklin and Rigby committed fraud against Armco in participating in Pritchett & Company's scheme to defraud Armco. Armco contends that the Defendant SLT breached its contract with Armco in several material respects. Finally, Armco contends that SLT breached its express warranties to Armco.

### Defendant's Contentions

Defendant SLT Warehouse, Inc. ("SLT") denies any liability to Armco. SLT says that if Richard Conklin participated in a scheme to defraud Plaintiff Armco, he acted beyond the scope of his employment by SLT in doing so. SLT contends that it only obligated to inform Armco of irregularities, if any, in the inventory, not in accounts receivable. SLT contends that Armco became aware, or should have been aware, of any Pritchett & Company scheme to defraud Armco.

Defendant Conklin denies any liability to Armco, and contends that he acted within his duties as bonded agent of SLT in maintaining an inventory certification service at Pritchett & Co. Conklin denies any consent or participation in any plot or scheme to defraud Armco.

Defendant Rigby denies any liability to Armco and denies that he participated in any decision to create bogus invoices. Rigby also denies participating in any plan or scheme to defraud Armco.

The burden is upon the Plaintiff to prove every essential element of its claim by a preponderance of the evidence, unless I instruct you otherwise.

"Preponderance of the evidence" means the greater weight and degree of credible evidence. Preponderance of the evidence does not require proof to an absolute certainty, because such a degree of proof is seldom possible. It is evidence which satisfies the conscience and brings conviction to an intelligent mind.

"Proximate cause" means that cause which, in a natural and continuous sequence produces an event, and without which cause such event would not have occurred; and in order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Two of the parties in this case are corporations -- Plaintiff Armco and Defendant SLT Warehouse. You are instructed that a corporation can act only through its officers, employees or other agents.

### Damages

In considering the issue of damages, if any, with respect to the RICO and fraud claims, you are instructed that you should assess the amount you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of the damages, no more and no less. Damages are not allowed as a punishment, and cannot be imposed or increased to penalize a party. Neither can damages be based on speculation because it is only actual damages -- what the law calls compensatory damages -- that are recoverable.

You should consider the amount of damages, if any, with respect to each claim separate and independent from the amount of damages, if any, with respect to other claims. For example, and by way of example only, if you determine that damages should be awarded Armco under its RICO claim you should award full, just, and reasonable compensation for damages under the RICO claim, without regard to the damages, if any, you might award under any other claim.

### Agency

For purposes of these instructions, and all the interrogatories that follow, you are instructed that the following rules of agency law apply. Under general agency law, principals are liable when their agents act within the scope of their authority. Two types of agent's authority are alleged to be applicable to this case -- actual authority and apparent authority.

Actual authority is such authority as is delegated to the agent, either by words that expressly or directly authorize him to do a delegable act, or such authority as may be implied from the facts and circumstances to do whatever is reasonably necessary to accomplish or perform the acts or transactions which have been expressly delegated to the agent by the principal.

Apparent authority is such authority as a reasonably prudent person, acting with diligence, discretion and good faith in view of the principal's conduct, would naturally and reasonably suppose that the agent possessed. Apparent authority can exist even though no actual authority is present.

So, a principal is liable when its agent acts within the scope of the agent's authority, whether actual or apparent. Furthermore, if an agent's acts were taken within the scope of his authority, either actual or apparent, the knowledge of the agent of matters over which the agent has authority is deemed to be knowledge of the principal.



### RICO

Armco has alleged that SLT, Conklin and Rigby have committed a violation of the Racketeering Influenced and Corrupt Organization ("RICO") Act. Section 1969(c) to Title 10 of the United States Code provides that:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .

To show that a defendant has violated Section 1962(c), Armco must prove each of the following elements by a preponderance of the evidence:

1. the existence of an enterprise which affects interstate or foreign commerce;
2. that a defendant was employed by or associated with the enterprise;
3. that that defendant participated in the conduct of the enterprise's affairs; and
4. that the participation was through a pattern of racketeering activity.

An "enterprise" includes any individual, partnership, corporation, association or other legal entity. An enterprise may also be any group of individuals associated in fact although not legal entity. Proof that an entity has a legal existence, such a corporation or a partnership, satisfies the definition of an enterprise.

An enterprise "affects interstate or foreign commerce" if the enterprise either engages in or pursues activities affecting commerce between the states or between the states and foreign

countries.

As used in Section 1962, a "person" includes any individual or entity capable of holding a legal or beneficial interest in property. You are instructed that a corporation is a legal entity which, like an individual, is capable of holding a legal or beneficial interest in property.

"Employed by or associated with" means that a defendant must have a minimal association with the enterprise. A defendant must know something about the enterprise's activities as they relate to the racketeering activity, but it is not necessary that the defendant be aware of all racketeering activities of each of the participants in the enterprise.

To "participate in the conduct of the enterprise's affairs" means to perform activities necessary or helpful to the operation of the enterprise, whether directly or indirectly.

"Racketeering activity" includes mail fraud, Section 1341 of Title 18, United States Code.

"A pattern of racketeering activity" means at least two acts of racketeering activity occurring within ten years of this date.

Armco alleges that SLT, Conklin and Rigby are "persons" under the Act, that Conklin was SLT's agent and was associated with Pritchett & Co., that Pritchett & Co. constituted an enterprise affecting interstate commerce, that Conklin and Rigby participated in the conduct of its affairs, and that the mailing of bogus invoices from Pritchett & Co. to Armco constituted a pattern of

✓ racketeering activity. The mail fraud statute, Section 1341, provides in pertinent part that:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, [shall be guilty of an offense against the laws of the United States.]

In order to establish that mail fraud has been committed for purposes of this case, Armco must show by a preponderance of the evidence that:

1. Some person or persons willfully and knowingly devised a scheme or artifice to defraud, or for obtaining money or property by means of false pretenses, representations or promises, and

2. Some person or persons used the United States Postal Service by mailing, or by causing to be mailed, some matter or thing for the purpose of executing the scheme to defraud.

In order to establish fraudulent intent on the part of a person, it must be established that such person knowingly and intentionally attempted to deceive another. One who knowingly and intentionally deceives another is chargeable with fraudulent intent notwithstanding the manner and form in which the deception was attempted.

A statement or representation is "false" or "fraudulent" within the meaning of the mail fraud statute if it relates to a material fact and is known to be untrue or is made with reckless indifference as to its truth or falsity, and is made or caused to be made with intent to defraud. A statement or representation may

also be "false" or "fraudulent" when it constitutes a half truth, or effectively conceals a material fact, with intent to defraud. A "material fact" is a fact that would be important to a reasonable person in deciding whether to engage or not engage in a particular transaction. Good faith constitutes a complete defense to mail fraud.

It is not necessary that Armco prove all of the details concerning the precise nature and purpose of the scheme; or that the material was itself false or fraudulent; or that the alleged scheme actually succeeded in defrauding anyone; or that the use of the mail as intended as the specific or exclusive means of accomplishing the alleged fraud.

What must be shown by a preponderance of the evidence is that one or more of the Defendants knowingly and willfully devise or intended to devise a scheme to defraud substantially the same as the one alleged by Plaintiff; and that the use of the U.S. mail was closely related to the scheme in that one or more of the Defendants either mailed something to cause it to be mailed in an attempt to execute or carry out the scheme. To "cause" the mail to be used is to do an act with knowledge that the use of the mails will follow in the ordinary course of business or where such use can reasonably be foreseen.

Each separate use of the mails in furtherance of a scheme to defraud constitutes a separate racketeering activity.

Mail Fraud as a racketeering activity may be established without proof that one or more the Defendants personally did every

act constituting Mail Fraud. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished by him through direction of another person as his agent, or by acting in concert with, or under the direction of, another person or persons in a joint effort.

Title 18, United States Code, Section 2, provides:

Whoever commits [Mail Fraud] or aids, abets, counsels, commands, induces, or procures its commission, is [liable] as a principal.

Whoever willfully causes an act to be done, which if directly performed by him or another would be [Mail Fraud], is [liable] as a principal.

QUESTION NO. 1

Do you find by a preponderance of the evidence that SLT, Conklin and/or Rigby violated Section 1962(c), Title 18, U.S. Code -- the RICO Act.

Check only one answer as to each Defendant.

"SLT did violate Section 1962(c)." \_\_\_\_\_

"SLT did not violate Section 1962(c)." \_\_\_\_\_

"Conklin did violate Section 1962(c)." \_\_\_\_\_

"Conklin did not violated Section 1962(c)." \_\_\_\_\_

"Rigby did violate Section 1962(c)." \_\_\_\_\_

"Rigby did not violated Section 1962(c)." \_\_\_\_\_

If you answered this Question as to any Defendant "did violate Section 1962(c)," answer Question No. 2.

If you answered this Question "did not violate Section 1962(c)" as to all Defendants, then skip forward to page 15 of these instructions.

QUESTION NO. 2

If Plaintiff has shown that any defendant violated Section 1962(c), Plaintiff must also show that, by reason of the defendant's violation of Section 1962(c), Armco was injured in its business or property.

Do you find by a preponderance of the evidence that Armco was injured in its business or property by reason of a defendant's violation of Section 1962(c).

Check only one answer.

"Armco was injured" \_\_\_\_\_

"Armco was not injured" \_\_\_\_\_

If you answered this Question "Armco was injured," proceed to Question No. 3; if you answered "Armco was not injured," proceed to page 15.

QUESTION NO. 3

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Armco for its damages, if any, proximately caused by the Defendant(s)'s violation of Section 1962(c)?

Answer in dollars and cents, if any.

ANSWER:

\$ \_\_\_\_\_

You are instructed that for damages to be proximately caused by a violation of Section 1962(c), Armco must show that, except for Section 1962(c) violation, such damage would not have occurred. There may be more than one proximate cause of an event.



### Fraud

Armco alleges that SLT, Conklin and Rigby committed fraud against Armco. Each defendant denies this allegation.

The essential elements, each of which Armco must prove by a preponderance of the evidence to establish its claim against any defendant for fraud, are as follows.

First: The defendant(s) made a false material representation that consisted of either a positive untrue statement of material fact or the concealment of a material fact. The representation or concealment must be false, and it must be material in the sense that it related to a matter of some importance or significance.

Second: Armco must show that the defendant(s) knew of the falsity of the representation or concealment at the time it was made.

Third: Armco must prove the defendant(s) intended Armco to rely and act upon the false representation or concealment. To do something intentionally is to do it knowingly and voluntarily, and not because of accident or mistake. Such intent may be inferred from the facts and circumstances of the case.

Fourth: Armco must prove that it justifiably relied and acted upon the false representation or concealment. If, in the exercise of reasonable care for the protection of its own interests, Armco could have ascertained the truth of the matter, making a reasonable inquiry or investigation under the circumstances presented, but failed to do so, then it cannot be

said that Armco's reliance was "justifiable."

Finally, Armco must prove that it suffered injury or damage as a proximate result of the false representation or concealment. As stated earlier, for damage to be the proximate result of fraud it must be shown that, except for the fraud, such damage would not have occurred.

QUESTION NO. 4

Do you find from a preponderance of the evidence that SLT, Conklin and/or Rigby committed fraud upon Armco?

Check only one answer for each defendant.

"SLT did commit fraud" \_\_\_\_\_

"SLT did not commit fraud" \_\_\_\_\_

"Conklin did commit fraud" \_\_\_\_\_

"Conklin did not commit fraud" \_\_\_\_\_

"Rigby did commit fraud" \_\_\_\_\_

"Rigby did not commit fraud" \_\_\_\_\_

If you answered this Question as to any defendant "did commit fraud" proceed to Question No. 5; if you answered "did not commit fraud" as to all defendants, proceed to page 19.

QUESTION NO. 5

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Armco for its damages, if any, proximately caused by the fraud found in Question No. 4.

Answer in dollars and cents, if any.

Answer: \$\_\_\_\_\_

### Damages

In considering the issue of damages, if any, with respect to breach of contract and breach of warranty claims, you are instructed that you should assess the amount, if any, you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of the damages, no more and no less. Damages are not allowed as a punishment, and cannot be imposed or increased to penalize a party. Neither can damages be based on speculation because it is only actual damages -- what the law calls compensatory damages -- that are recoverable.

You are instructed that any person who claims damages as a result of an alleged breach of contract or breach of warranty on the part of another has a duty under the law to "mitigate" those damages -- that is, to take advantage of any reasonable opportunity he may have had under the circumstances to reduce or minimize the loss or damage.

So, if you should find from a preponderance of the evidence that the Plaintiff failed to seek out or take advantage of an opportunity that was reasonably available to it to mitigate its damages, then you should reduce the amount of its damages by the amount it could have reasonably realized if it had taken advantage of such opportunity.

### Breach of Contract

A breach of contract takes place whenever a party fails to perform material acts which that party has promised to perform. Armco contends that SLT (1) promised; and, (2) failed to perform the following acts:

- a. To faithfully perform its duties and obligations in regard to safekeeping the Pritchett & Co. inventory;
- b. To hire agents and employees who would represent SLT and not accept instructions in regard to the inventory from Pritchett & Co.;
- c. To notify immediately Armco of any conditions which were detrimental to Armco's interests; and
- d. To install and maintain records and procedures required for the control of inventory financing.

In order for failure to perform an act promised to be a breach of contract, the act must be material to the contract, that is, the promised act must relate to a matter of some importance or significance to the contract and become a basis of the agreement.

QUESTION NO. 6

Do you find by a preponderance of the evidence that SLT breached its contract with Armco?

Check only one answer.

"SLT did breach the contract" \_\_\_\_\_

"SLT did not breach the contract" \_\_\_\_\_

If you answered this Question "SLT did breach the contract," proceed to Question No. 7; otherwise, proceed to page 23.

QUESTION NO. 7

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Armco for the damages, if any, proximately caused by SLT's breach of contract?

Answer in dollars and cents, if any.

Answer: \$\_\_\_\_\_



Breach of Warranty

Armco alleges that SLT made express warranties to Armco concerning the following matters:

- a. That SLT would faithfully perform its duties and obligations in regard to safekeeping the Pritchett & Co. inventory;
- b. That SLT's agents and employees would be SLT representatives and not accept instructions in regard to the inventory from Pritchett & Co.;
- c. That SLT would conduct surprise inspections of the Pritchett & Co. inventory;
- d. That SLT would immediately notify Armco of any conditions which were detrimental to Armco's interests; and
- e. That SLT would install and maintain records and procedures required for the control of inventory financing.

An affirmation of fact or promise made by SLT which relates to the provision of its services and which becomes a basis of the contract between SLT and Armco creates an express warranty that SLT's services would conform to the affirmation or promise.

It is not necessary to the creation of an express warranty that SLT use formal words such as "warranty" or "guaranteed."

QUESTION NO. 8

Do you find by a preponderance of the evidence that SLT breached any express warranty to Armco?

Check only one answer:

"SLT did breach its warranty" \_\_\_\_\_

"SLT did not breach its warranty" \_\_\_\_\_

If you answered this Question "SLT did breach its warranty," proceed to Question No. 9; if you answered "SLT did not breach warrant," do not answer any more questions.

QUESTION NO. 9

What sum of money, if any, if paid now in cash do you find from a preponderance of the evidence would fairly and reasonably compensate Armco for the damages, if any, proximately caused by SLT's breach of its warranty?

Answer in dollars and cents, if any.

Answer: \$\_\_\_\_\_

COURT'S CHARGE TO THE JURY

(After Argument)

MEMBERS OF THE JURY:

In arriving at your verdict, it is your duty to follow the rules of law which I give to you and to find the facts of this case from the evidence introduced at the trial and in accordance with these rules of law.

You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole.

You should not consider or be influenced by the fact that during the trial of this case, counsel have made objections to the testimony, as it is their duty to do so, and it is the duty of the Court to rule on those objections in accordance with the law.

It is the function of the jury to determine the credibility of each witness and to determine the weight to be given the witness' testimony. Consider all of the circumstances under which the witness testified; the interest, if any, the witness has in the outcome of the case; the witness' appearance and demeanor while on the witness stand; the witness' apparent candor and fairness, or the lack thereof; the reasonableness of unreasonableness of the witness' testimony; and the extent to which the witness is contradicted or supported by other credible evidence. You will rely on your own good judgment and common sense in considering the evidence and determining the weight to be given it.

The testimony of a single witness, which produces in your minds the belief in the likelihood of truth, is sufficient for the proof of any fact, even though a greater number of witnesses may have testified to the contrary, if you believe this witness and have considered all the other evidence.

Generally speaking, there are two types of evidence which a jury may consider in properly finding the truth as to the facts in this case. One is direct evidence -- such as testimony of an eye witness. The other is indirect or circumstantial evidence -- the proof of a chain of circumstances which points to the existence or non-existence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from a preponderance of all the evidence, both direct and circumstantial.

During the trial of this case, certain testimony has been read to you by way of deposition, consisting of sworn answers to questions asked of the witness in advance of the trial by the attorneys for the parties to the case. Such testimony is entitled to the same consideration and is to be judged as to credibility, and weighed, as if the witness had given from the witness stand the same testimony as given in the deposition.

In this case you have heard opinion testimony. You have heard testimony from persons we call "expert witnesses." These are witnesses who, by education and experience, have become expert in some art, science, profession or calling. Expert witnesses state

their opinions on relevant and material matters on which they are expert and they may also state the reasons for their opinions. You have also heard opinions from witnesses who are not testifying as experts, about matters which the witnesses have personally observed, and as to which the witnesses have personal knowledge or personal experience.

It is for you to consider all the opinion testimony and give it the weight you think it deserves. If you should conclude an opinion is not sound, or if you feel that an opinion is outweighed by other evidence, you may disregard the opinion entirely.

While you should consider only the evidence in the case, you are permitted to draw reasonable inferences and deductions from the evidence. The word "infer" -- or the expression "to draw an inference" means to find that a fact exists based on proof of another fact. An inference may be drawn only if it is reasonable and logical, not if it is speculative. Therefore, in deciding whether to draw an inference, you must consider all the facts in the light of reason, common sense, and experience. After you have done that, the question whether to draw a particular inference is for you to decide.

The parties to this litigation must be treated exactly alike insofar as their rights are concerned. This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or

similar stations in life. A corporation is entitled to the same fair trial as a private individual. All persons, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

You are the sole and exclusive judges of the facts. You should determine these facts without any bias, prejudice, sympathy, fear, or favor, and this determination should be made from a fair consideration of all the evidence that you have seen and heard in this trial. Do not speculate on matters which are not in evidence. Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in the case. Your answers and verdict must be unanimous; that is, all of you must agree to each of your answers. You will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict, regardless of the consequences.

You will now retire to the jury room. In a few minutes I will send to you this charge and the exhibits which the Court has admitted into evidence. After you receive the charge and exhibits from the Court, you should select your foreperson and commence your deliberations.

If during the course of your deliberations you wish to communicate with the Court, you should do so only in writing by a note handed to the deputy marshal and signed by the foreperson. During your deliberations you will set your own work schedule, deciding for yourselves when and how frequently you wish to recess

and for how long.

After you have reached your verdict, you will return this charge together with your written answers to the foregoing questions. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me.

Your foreperson will sign in the space provided below after you have reached your verdict.

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BAREFOOT SANDERS  
UNITED STATES DISTRICT JUDGE

Date: June \_\_\_\_\_, 1984.



VERDICT OF THE JURY

We, the jury, have answered the above and foregoing questions as indicated, and herewith return the same into Court as our verdict.

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FOREPERSON

Dated: June \_\_\_\_\_, 1984.

