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FILED

AUG 06 2020

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 v.)
)
 RICHARD J. KLARCHEK)

20CR 463

No. Violations: Title 18, United States Code,
Sections 152(1), 1014 and 1344

COUNT ONE

JUDGE WOOD

MAGISTRATE JUDGE COX

The United States Attorney charges:

1. At times material to this Information:

a. Defendant RICHARD J. KLARCHEK engaged in the business of owning and operating manufactured home communities, including renting, selling and financing the sale of manufactured homes and the management of sixteen manufactured home communities in Illinois, Indiana, Michigan and Minnesota from offices at 875 North Michigan Avenue, Chicago, Illinois, (the Klarchek Enterprise);

The Klarchek Enterprise

b. Defendant RICHARD J. KLARCHEK created the Klarchek Enterprise as a complex structure of approximately forty interlocking entities in which various functions involved in operating the manufactured home communities (ownership, management, rental, sales and financing of sales) were purportedly divided and organized into separate and multiple corporations and limited liability companies (the Klarchek Enterprise Companies);

c. Defendant RICHARD J. KLARCHEK was owner and president of Capital First Realty, Inc., through which defendant KLARCHEK managed and

provided oversight of the on-site management of the manufactured home communities in the Klarchek Enterprise;

d. Defendant RICHARD J. KLARCHEK was owner and president of Capital Home Sales LLC, which was comprised of sales, finance and rental divisions, each of which was divided into multiple entities;

e. The sales divisions of Capital Home Sales LLC included Kestrel One LLC, Emerald One LLC and Widgeon LLC through which defendant RICHARD J. KLARCHEK owned and sold manufactured homes located at manufactured home communities in the Klarchek Enterprise;

f. The finance divisions of Capital Home Sales LLC included Kestrel Financial LLC, and Emerald Financial LLC through which defendant RICHARD J. KLARCHEK financed the purchase of manufactured homes located at manufactured home communities in the Klarchek Enterprises;

g. The rental divisions of Capital Home Sales, LLC included Kestrel Rentals LLC, Drake Rentals LLC, Mallard Rentals LLC, and Partridge LLC through which defendant RICHARD J. KLARCHEK owned and rented manufactured homes located at manufactured home communities in the Klarchek Enterprise;

h. Sterling Estates and Greenwood Estates were manufactured home communities in the Klarchek Enterprise;

The Sale Agreement and the Sale Agreement Annuity

i. On or about April 1, 2001, defendant RICHARD J. KLARCHEK entered into an agreement to sell to the Klarchek Family Trust all of defendant

KLARCHEK's interests in limited partnerships and limited liability companies that had interests in manufactured home communities (the Sale Agreement) in return for the Klarchek Family Trust paying defendant KLARCHEK an annuity of approximately \$7.8 million for the life of defendant KLARCHEK (the Sale Agreement Annuity);

j. The funds available to the Klarchek Family Trust to pay the Sale Agreement Annuity to defendant RICHARD J. KLARCHEK were from the operations of manufactured home communities in the Klarchek Enterprise;

The Klarchek Enterprise Borrowers and Loans

k. Bank of America, CapitalSource Bank, Citibank, Comerica Bank, Delaware Place Bank, JPM Chase Bank, MB Financial Bank, TCF National Bank and Wells Fargo Bank were financial institutions the deposits of which were insured by the Federal Deposit Insurance Corporation (Financial Institution Lenders);

l. Defendant RICHARD J. KLARCHEK caused various Klarchek Enterprise Companies (Klarchek Enterprise Borrowers) to obtain and attempt to obtain loans and lines of credit secured by the assets of Klarchek Enterprise Borrowers (Klarchek Enterprise Loans) from Financial Institution Lenders;

m. On or about April 29, 2003, defendant RICHARD J. KLARCHEK caused Bank of America to lend approximately \$40.5 million to Sterling Estates;

n. Bank of America sold the loans that it made to Klarchek Enterprise Borrowers to a trust for which Wells Fargo was the trustee and the beneficiaries included Citibank, Comerica Bank, JPM Chase Bank and Wells Fargo

Bank (the Wells Fargo Trust), but continued to service these loans on behalf of the Wells Fargo Trust;

Klarchek Enterprise Loan Agreement Terms

o. The loan agreements documenting the Klarchek Enterprise Loans contained similar terms requiring the Klarchek Enterprise Borrowers to make truthful disclosures and reports of financial conditions to the respective Financial Institution Lenders, both in applying for the loan and as a continuing obligation during the term of the loan, which were material to the Financial Institution Lenders' decisions whether to make the loan, to extend the loan and to exercise rights, including rights to collateral, under the loan agreements;

p. The loan agreements required each Klarchek Enterprise Borrower to periodically disclose operating income and net operating income to enable the Financial Institution Lender to determine whether the Klarchek Enterprise Borrower met the debt-service coverage ratio required to demonstrate that the Klarchek Enterprise Borrower was generating sufficient operating income to make the payments required to service the debt;

q. The loan agreements defined operating income to exclude income from tenants not paying rent and placed limits on the amount of operating income in the form of inter-company payments from Capital Home Sales under a Master Lease (Master Lease Income);

r. The loan agreements required each Klarchek Enterprise Borrower to submit annual and quarterly financial statements, including certified

rent rolls and operating statements, which disclosed operating income and net operating income;

s. The loan agreements contained similar terms and conditions that the Klarchek Enterprise Borrowers were required to abide by, including not commingling its assets with any other Klarchek Enterprise Company, paying its trade debt within 60 days and providing notice of any default in the terms of the loan agreement;

The Personal Guarantees

t. In and about September and November 2005, defendant RICHARD J. KLARCHEK personally guaranteed the obligations of Emerald Financial LLC, Capital Home Sales LLC, and Drake Rentals LLC, to TCF National Bank under various loan and line of credit agreements;

u. On or about March 15, 2006, in order to induce TCF National Bank to loan additional funds to Drake Rentals LLC, defendant RICHARD J. KLARCHEK entered into an agreement with TCF National Bank under which defendant KLARCHEK assigned to TCF National Bank a “first position security interest in and to the Sale Agreement,” and the Sale Agreement Annuity, and promised TCF National Bank that he, defendant KLARCHEK, would not subsequently assign any part of his interest in the Sale Agreement (the TCF Collateral Assignment of Sale Agreement);

v. In and about March, May and June 2007, defendant RICHARD J. KLARCHEK personally guaranteed the obligations of Capital Home Sales LLC, dba

Kestrel Rental, Kestrel One Division and Kestrel Financial Division to MB Financial Bank under various loan and line of credit agreements;

The Financial Condition of the Klarchek Enterprise

w. By at least in and about 2007, the operating income of the Klarchek Enterprise was insufficient to pay its outstanding obligations and the Klarchek Enterprise Companies became dependent on funds from the refinancing the Klarchek Enterprise Loans to sustain the Klarchek Enterprise and defendant RICHARD J. KLARCHEK;

x. On or about October 6, 2010, defendant RICHARD J. KLARCHEK filed a Chapter 11 bankruptcy (10-44866) in the United States Bankruptcy Court for the Northern District of Illinois (the Klarchek Bankruptcy Case); and

y. Defendant RICHARD J. KLARCHEK listed financial institutions as creditors in the Klarchek Bankruptcy Case, including Delaware Place Bank, MB Financial Bank, TCF National Bank and Wells Fargo Bank.

z. On or about May 1, 2012, the United States Trustee appointed a trustee to administer the Klarchek Bankruptcy Case.

aa. On or about May 2, 2012, the United States Bankruptcy Court for the Northern District of Illinois granted MB Financial Bank's motion and converted the Klarchek Bankruptcy Case from a Chapter 11 to a Chapter 7.

2. Beginning no later than in and about 2007, and continuing until, at least, in and about 2010,

RICHARD J. KLARCHEK,

defendant herein, together with others known and unknown to the United States Attorney, knowingly devised, intended to devise, and participated in a scheme to defraud financial institutions, and to obtain money from the financial institutions by means of materially false and fraudulent pretenses, representations, and promises, which is further described below.

OVERVIEW OF THE SCHEME

3. It was part of the scheme that defendant RICHARD J. KLARCHEK defrauded and attempted to defraud Financial Institution Lenders by making material false representations to Financial Institution Lenders concerning the financial condition of the Klarchek Enterprise Borrowers for the purpose of causing and attempting to cause Financial Institution Lenders:

- a. to make and to extend the terms of at least approximately \$10 million in loans to Klarchek Enterprise Borrowers; and
- b. not to exercise rights under loan agreements, including rights to the assets securing Klarchek Enterprise Loans.

MEANS AND METHODS OF THE SCHEME

4. It was further part of the scheme that defendant RICHARD J. KLARCHEK used means and methods to perpetrate the scheme which included:

a. preparing and causing Klarchek Enterprise employees to prepare documents and records which purported to support the materially false representations that defendant RICHARD J. KLARCHEK made to the Financial Institution Lenders;

b. comingling the assets and income of the Klarchek Enterprise Companies for the purpose of concealing the actual financial condition of individual Klarchek Enterprise Borrowers; and

c. assigning defendant RICHARD J. KLARCHEK's interest in the Sale Agreement and the Sale Agreement Annuity to two different Financial Institution Lenders on the false representation to the second Financial Institution Lender that the asset had not been pledged to any other entity.

THE SCHEME

5. It was further part of the scheme that defendant RICHARD J. KLARCHEK made materially false representations to Financial Institution Lenders which inflated the operating income of Klarchek Enterprise Borrowers and made it appear to the Financial Institution Lenders that Klarchek Enterprise Borrowers had sufficient net-operating income to meet the debt-service coverage ratio required under loan agreements.

False Rent Rolls and Fictitious Tenants

6. It was further part of the scheme that defendant RICHARD J. KLARCHEK fraudulently inflated the rental income of Sterling Estates and Greenwood Estates.

7. It was further part of the scheme that the defendant RICHARD J. KLARCHEK prepared and caused Klarchek Enterprise Employees to prepare false rent rolls that inflated rental income by including fictitious rental income from fictitious tenants and tenants who were not paying rent.

8. It was further part of the scheme that defendant RICHARD J. KLARCHEK caused Klarchek Enterprise Employees to prepare false rent rolls by using as fictitious tenants the names of individuals who had moved out, the names of individuals who had inquired about or applied to be a tenant, but had never moved in, and the names of Klarchek Enterprise employees who did not reside in Sterling Estates.

9. It was further part of the scheme that defendant RICHARD J. KLARCHEK increased the pay of Klarchek Enterprise employees whose names were used as fictitious tenants and then offset the increase with payroll deductions for rent, thereby creating the false appearance of the receipt of rental income in the financial account records of Sterling Estates.

False Master Lease Income

10. It was further part of the scheme that defendant RICHARD J. KLARCHEK fraudulently inflated Master Lease Income of Klarchek Enterprise Borrowers from Capital Home Sales.

11. It was further part of the scheme that defendant RICHARD J. KLARCHEK transferred funds from Capital Home Sales to Klarchek Enterprise Borrowers for the purpose of documenting the receipt of Master Lease Income in the

financial account records of Klarchek Enterprise Borrowers, only later to reverse the funds transfers.

False Promotional Income

12. It was further part of the scheme that defendant RICHARD J. KLARCHEK fraudulently inflated promotional income of Klarchek Enterprise Borrowers from Capital Home Sales and Capital Home Realty.

13. It was further part of the scheme that defendant RICHARD J. KLARCHEK created false records to support the inflated promotional income through false journal entries in the records of Klarchek Enterprise Companies purportedly representing the transfer of funds from Capital Home Sales and Capital Home Realty to Klarchek Enterprise Borrowers.

Comingling Assets to Pay Debts of Klarchek Enterprise Borrowers

14. It was further part of the scheme that defendant RICHARD J. KLARCHEK comingled the assets of the Klarchek Enterprise Companies and used these assets to pay trade debt of Klarchek Enterprise Borrowers, thereby concealing from Financial Institution Lenders that Klarchek Enterprise Borrowers were unable to pay trade debt from their operating income.

Creation of False Financial Statements

15. It was further part of the scheme that defendant RICHARD J. KLARCHEK prepared and caused Klarchek Enterprise employees to prepare annual and quarterly financial statements, including operating statements, which (a) inflated the operating income of Klarchek Enterprise Borrowers through the use of

fictitious rental income, Master Lease Income and promotional income, and (b) inflated the net operating income of Klarchek Enterprise Borrowers by concealing that funds of other Klarchek Enterprise Companies had been comingled and used to pay the trade debt of Klarchek Enterprise Borrowers.

Providing False Financial Statements to Financial Institution Lenders

16. It was further part of the scheme that defendant RICHARD J. KLARCHEK repeatedly caused false annual and quarterly financial statements of Klarchek Enterprise Borrowers, including operating statements with inflated operating income and net operating income, and rent rolls with inflated rental income, to be provided to Financial Institution Lenders which falsely made it appear that Klarchek Enterprise Borrowers had sufficient net-operating income to meet the debt-service coverage ratio required under loan agreements.

17. It was further part of the scheme that, continuing until on or about April 12, 2010, defendant RICHARD J. KLARCHEK repeatedly provided, and caused to be provided, false annual and quarterly financial statements to Bank of America, as servicer for the Wells Fargo Trust, including operating statements that materially inflated the operating income of Sterling Estates and supporting false rent rolls, (a) to make it appear that Klarchek Enterprise Borrowers had sufficient net-operating income to meet the debt-service coverage ratio required under loan agreements and (b) to fraudulently cause Bank of America not to exercise the Wells Fargo Trust's rights under loan agreements, including rights to the assets securing Klarchek Enterprise Loans.

Double-Pledging the Sales Agreement and Sales Agreement Annuity

18. It was further part of the scheme that, on or about May 31, 2009, in order to induce MB Financial Bank to restructure the loans of Capital Home Sales, LLC, dba Kestrel Rental, Kestrel One Division and Kestrel Financial Division, defendant RICHARD J. KLARCHEK fraudulently double-pledged the Sales Agreement and the Sales Agreement Annuity by collaterally assigning to MB Financial Bank “all of his right, title and interest in and to the annuity payments” owing to defendant RICHARD J. KLARCHEK under the Sale Agreement (the MB Financial Bank Collateral Assignment of Rights Under Sale Agreement).

19. It was further part of the scheme that defendant RICHARD J. KLARCHEK falsely represented to MB Financial in the MB Financial Bank Collateral Assignment of Rights Under Sale Agreement:

a. That “[t]here has been no assignment of the Annuity payments or the Assigned Rights under the Sale Agreement to any other person or entity,” when as defendant RICHARD J. KLARCHEK then knew that on or about March 15, 2006, he, defendant RICHARD J. KLARCHEK, had assigned the annuity payments and the assigned rights under the Sale Agreement to TCF National Bank; and;

b. That he, defendant RICHARD J. KLARCHEK, “is not prohibited under any agreement with any other person . . . from the execution and delivery of this Assignment,” when as defendant RICHARD J. KLARCHEK then knew that on or about March 15, 2006, he, defendant RICHARD J.

KLARCHEK, had promised TCF National Bank in the TCF Collateral Assignment of Sale Agreement that he, defendant RICHARD J. KLARCHEK, would not subsequently assign any part of his interest in the Sale Agreement.

Providing False Financial Information to Prospective Financial Institution Lenders

20. It was further part of the scheme that, continuing until in and about June 2010, defendant RICHARD J. KLARCHEK caused false financial statements of Klarchek Enterprise Borrowers to be provided to Financial Institution Lenders, including CapitalSource Bank, Delaware Place Bank, MB Financial Bank and TCF Bank, for the purpose of inducing the refinancing of loans and the making of new loans to Klarchek Enterprise Borrowers.

21. It was further part of the scheme that defendant RICHARD J. KLARCHEK misrepresented and concealed and caused to be misrepresented and concealed the purposes of, and acts done in furtherance of, the scheme in order to avoid detection of the scheme and to conceal the proceeds of the scheme, including by transferring and making false statements about and concealing property of defendant RICHARD J. KLARCHEK's bankruptcy estate from the trustee, creditors and the United States Trustee in the Klarchek Bankruptcy Case.

22. On or about May 31, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD J. KLARCHEK,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, fraudulently caused MB Financial Bank to restructure the loans and lines of credit of Capital Home Sales, LLC, dba Kestrel Rental, Kestrel One Division and Kestrel Financial Division, by renewing and extending a \$25 million line of credit;

In violation of Title 18, United States Code, Section 1344.

COUNT TWO

The United States Attorney further charges:

1. Paragraphs 1 through 21 of Count One are re-alleged and incorporated here.

2. On or about August 17, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD J. KLARCHEK,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly provided false financial statements to Bank of America, as servicer for the Wells Fargo Trust, including an operating statement and supporting rent rolls for June 2009 that included approximately 109 false tenants and inflated the rental income of Sterling Estates by approximately \$119,852;

In violation of Title 18, United States Code, Section 1344.

COUNT THREE

The United States Attorney further charges:

1. Paragraphs 1 through 21 of Count One are re-alleged and incorporated here.
2. On or about November 4, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD J. KLARCHEK,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly provided false financial statements to Bank of America, as servicer for the Wells Fargo Trust, including an operating statement and supporting rent rolls for September 2009 that included approximately 97 false tenants and inflated the rental income of Sterling Estates by approximately \$124,521;

In violation of Title 18, United States Code, Section 1344.

COUNT FOUR

The United States Attorney further charges:

1. Paragraphs 1 through 21 of Count One are re-alleged and incorporated here.
2. On or about March 5, 2010, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD J. KLARCHEK,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly provided false financial statements of Capital First Realty to TCF Bank, including materially false statements concerning occupancy at Sterling Estates, for the purpose of inducing the refinancing of loans to Klarchek Enterprise Borrowers;

In violation of Title 18, United States Code, Section 1344.

COUNT FIVE

The United States Attorney further charges:

1. Paragraphs 1 through 21 of Count One are re-alleged and incorporated here.
2. On or about March 19, 2010, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD J. KLARCHEK,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly provided false financial statements of Capital First Realty and Kestrel Financial to MB Financial Bank, including an operating statement with materially inflated income, for the purpose of inducing the refinancing of loans to Klarchek Enterprise Borrowers;

In violation of Title 18, United States Code, Section 1344.

COUNT SIX

The United States Attorney further charges:

1. Paragraphs 1 through 21 of Count One are re-alleged and incorporated here.

2. On or about April 2, 2010, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD J. KLARCHEK,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly provided false financial statements of Klarchek Enterprise Borrowers to CapitalSource Bank, including an operating statement for December 2009 that inflated rental income of Sterling Estates by approximately \$139,761, a rent roll for March 31, 2010 that included approximately 62 false tenants, a vacancy summary for the previous five years which falsely represented that vacancies were decreasing, and an operating statement for the twelve months ending February 28, 2010, which inflated the rental income of Sterling Estate by approximately \$1,549,876, for the purpose of inducing the making of loans to Klarchek Enterprise Borrowers;

In violation of Title 18, United States Code, Section 1344.

COUNT SEVEN

The United States Attorney further charges:

1. Paragraphs 1 through 21 of Count One are re-alleged and incorporated here.
2. On or about April 12, 2010, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD J. KLARCHEK,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly provided false financial statements to Bank of America, as servicer for the Wells Fargo Trust, including an operating statement and supporting rent rolls for December 2009 that included approximately 89 false tenants and inflated the rental income of Sterling Estates by approximately \$139,761;

In violation of Title 18, United States Code, Section 1344.

COUNT EIGHT

The United States Attorney further charges:

1. Paragraphs 1 through 21 of Count One are re-alleged and incorporated here.

2. On or about June 14, 2010, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD J. KLARCHEK,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly provided false financial statements of Capital First Realty to TCF Bank, including an operating statement with materially inflated income, for the purpose of inducing the refinancing of loans to Klarchek Enterprise Borrowers;

In violation of Title 18, United States Code, Section 1344.

COUNT NINE

The United States Attorney further charges:

1. Paragraphs 1 through 21 of Count One are re-alleged and incorporated here.
2. On or about June 18, 2010, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD J. KLARCHEK,

defendant herein, for the purpose of executing the above-described scheme and attempting to do so, knowingly provided false financial statements of Klarchek Enterprise Borrowers to Delaware Place Bank, including an operating statement of Consolidated MHC Rental & Sales with materially inflated income, for the purpose of inducing the refinancing of loans to Klarchek Enterprise Borrowers;

In violation of Title 18, United States Code, Section 1344.

COUNT TEN

The United States Attorney further charges:

1. Paragraphs 1 and 18 of Count One are re-alleged and incorporated here.
2. On or about May 31, 2009, at Chicago, in the Northern District of Illinois, Eastern Division,

RICHARD J. KLARCHEK,

defendant herein, knowingly made and caused to be made a false statement of fact to MB Financial Bank for the purpose of influencing MB Financial Bank to restructure the loans and lines of credit of Capital Home Sales, LLC, dba Kestrel Rental, Kestrel One Division and Kestrel Financial Division, in that defendant RICHARD J. KLARCHEK falsely represented to MB Financial in the MB Financial Bank Collateral Assignment of Rights Under Sale Agreement:

a. That “[t]here has been no assignment of the Annuity payments or the Assigned Rights under the Sale Agreement to any other person or entity,” when as defendant RICHARD J. KLARCHEK then knew that on or about March 15, 2006, he, defendant RICHARD J. KLARCHEK, had assigned the annuity payments and the assigned rights under the Sale Agreement to TCF National Bank; and;

b. That he, defendant RICHARD J. KLARCHEK, “is not prohibited under any agreement with any other person . . . from the execution and delivery of this Assignment,” when as defendant RICHARD J. KLARCHEK then knew that on or about March 15, 2006, he, defendant RICHARD J. KLARCHEK, had promised TCF National Bank in the TCF Collateral Assignment of Sale Agreement that he,

defendant RICHARD J. KLARCHEK, would not subsequently assign any part of his interest in the Sale Agreement;

In violation of Title 18, United States Code, Section 1014.

COUNT ELEVEN

The United States Attorney further charges:

1. The allegations of paragraph 1 of Count One are re-alleged here.

2. From on or about May 1, 2010, through on or about July 7, 2015, at Chicago, in the Northern District of Illinois, Eastern Division,

RICHARD J. KLARCHEK,

defendant herein, knowingly and fraudulently concealed from a trustee charged with the control and custody of property and, in connection with a case under Title 11, namely, *In re Richard J. Klarchek*, 10-44866, from creditors and from the United States Trustee, property belonging to the estate of a debtor, namely, RICHARD J. KLARCHEK, to wit, antique furniture and the proceeds from the sale of antique furniture in the amount of at least approximately \$23,500;

In violation of Title 18, United States Code, Section 152(1).

FORFEITURE ALLEGATION

The United States Attorney alleges:

1. The allegations of this information are incorporated here for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982(a)(2).

2. As a result of the violations of Title 18, United States Code, Sections 152, 1014 and 1344, as alleged in the information,

RICHARD J. KLARCHEK,

defendant herein, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2), any and all right, title, and interest they may have in any property constituting, and derived, directly and indirectly, from proceeds traceable to the commission of the offenses.

3. If any of the forfeitable property described above, as a result of any act or omission by the defendants:

- a. Cannot be located upon the exercise of due diligence;
- b. Has been transferred or sold to, or deposited with, a third party;
- c. Has been placed beyond the jurisdiction of the Court;
- d. Has been substantially diminished in value; or
- e. Has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

All pursuant to Title 18, United States Code, Section 982(a)(2).

JASON YONAN Digitally signed by JASON YONAN
Date: 2020.08.02 15:24:25 -05'00'

Signed by Jason Yonan on behalf of the
UNITED STATES ATTORNEY