UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD H. RECHBERGER IV, AS TRUSTEE UNDER
A TRUST AGREEMENT DATED MARCH 11, 1998,
AS AMENDED FEBRUARY 26, 2001,
LEWIS J. SERVENTI,
KAREN K. RECHBERGER,

Plaintiffs,

vs. 07-CV-61A(F)

DUSTIN C. HURLBURT,
LISA HURLBURT,
HURLBURT INVESTMENT CLUB,
and ROBERT M. BURT,

Defendants.

PLAINTIFFS' MOTION FOR LEAVE
TO FILE SUR-REPLY DECLARATION

Plaintiffs, Edward H. Rechberger IV, as Trustee under a Trust Agreement dated March 11, 1998, as Amended February 26, 2001, Lewis J. Serventi and Karen K. Rechberger, by counsel, for their Motion seeking Leave to File Sur-Reply Declaration, state:

1. On January 31, 2008, Plaintiffs served a Freedom of Information Act Request ("FOIA") on the Federal Bureau of Investigation ("FBI") seeking documents related to the investigation of Defendants. Counsel for Plaintiffs routinely followed up with the FBI seeking a response to the FOIA request. The FBI advised that it would produce responsive information but needed to review the file for privileged materials. The FBI advised that there was a tremendous backlog in the review process. Finally, on January 4, 2010, after roughly two years, counsel for Plaintiffs received from the FBI documents responsive to the FOIA request. Those documents have now been Bates labeled FBI 1 through FBI 1106 and are being produced to all counsel in this case.

2. The documents produced by the FBI further bolster Plaintiffs' opposition to Defendant Burt's motion for summary judgment (Docket No. 62) and motion for sanctions (Docket

No. 63). Critically, the documents support Defendant Dustin Hurlburt's sworn testimony that implicates Defendant Burt in the scheme to use the Enterprise to defraud Plaintiffs. Defendant Burt has argued that the Court should disregard Defendant Dustin Hurlburt's testimony because it was somehow the result of a "deal" struck with Plaintiffs. Defendant Dustin Hurlburt and Plaintiffs have already denied this baseless claim. The documents produced by the FBI put this allegation to rest. Defendant Dustin Hurlburt was implicating Defendant Burt in the fraudulent Enterprise as early as Spring 2004, and well <u>before</u> he ever had contact with Plaintiffs.

3. Plaintiffs seek leave to file a declaration to place these documents before the Court so that the newly discovered information can be considered in the determination of Defendant Burt's motions. Plaintiffs are offering the newly discovered information to all parties and the Court immediately after it was obtained.

4. Plaintiffs hereby move for leave to file a Sur-Reply Declaration in further opposition to Defendant Burt's motion for summary judgment and the motion for sanctions in order to present this newly discovered evidence. Attached hereto as *Exhibit A* is a true and accurate copy of the Sur-Reply Declaration that Plaintiffs seek leave to file.

WHEREFORE, Plaintiffs respectfully request that the Court grant them leave to file the Sur-Reply Declaration attached hereto as *Exhibit A* and that, if leave is granted, the Sur-Reply Declaration be treated as filed as of the date of the Order, and for all such other and further relief as the Court deems just and proper.

DATED: Buffalo, New York
January 6, 2010

DAMON MOREY LLP

By: /s/ William F. Savino
William F. Savino
Brian D. Gwitt
Attorneys for Plaintiffs
The Avant Building, Suite 1200
200 Delaware Avenue
Buffalo, New York 14202-2150
Phone: (716) 856-5500

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD H. RECHBERGER IV, AS TRUSTEE UNDER
A TRUST AGREEMENT DATED MARCH 11, 1998,
AS AMENDED FEBRUARY 26, 2001,
LEWIS J. SERVENTI,
KAREN K. RECHBERGER,

Plaintiffs,

vs. 07-CV-61A(F)

DUSTIN C. HURLBURT,
LISA HURLBURT,
HURLBURT INVESTMENT CLUB,
and ROBERT M. BURT,

Defendants.

DECLARATION OF WILLIAM F. SAVINO

William F. Savino, declares and states:

1. I am a general partner with the law firm of Damon Morey LLP, counsel for Plaintiffs, Edward H. Rechberger IV, as Trustee under a Trust Agreement dated March 11, 1998, as Amended February 26, 2001, Lewis J. Serventi and Karen K. Rechberger, in the above-captioned lawsuit. I am fully familiar with the facts and circumstances set forth herein, and with the pleadings and proceedings had to date, and am competent to testify about these matters.

2. I offer this declaration in further opposition to the motion for summary judgment (Docket No. 62) and the motion for sanctions (Docket No. 63) filed by Defendant, Robert M. Burt. As the Court is aware, these motions have been fully briefed. Plaintiffs, however, have just come in possession of documents provided by the Federal Bureau of Investigation ("FBI") that further support Plaintiffs' opposition to these motions. The documents were requested from the FBI on January 31, 2008 through a Freedom of Information Act request. Despite repeated requests and

follow-ups with the FBI, counsel for Plaintiffs did not receive the responsive documents on January 4, 2010, roughly two years after the FOIA request. The documents are being produced to all counsel and Bates labeled *FBI 1* through *FBI 1106.*

3. Had these documents been provided in a timely manner by the FBI, the documents would have been used in opposition to Defendant Burt's motion for summary judgment and motion for sanctions. The crux of Defendant Burt's motions is that the testimony of Defendant Dustin Hurlburt implicating Defendant Burt in the Enterprise is not credible and should not be relied on by the Court. Plaintiffs have already submitted to the Court admissible evidence and sworn testimony that implicates Defendant Burt and supports Defendant Dustin Hurlburt's allegations. These credibility determinations alone provide a more than sufficient basis for the denial of both the motion for summary judgment and the motion for sanctions.

4. After receiving the documents from the FBI, Plaintiffs found additional proof that supports Defendant Dustin Hurlburt's allegations. Attached hereto as *Exhibit A* are true and accurate copies of various statements produced by the FBI, in which Defendant Dustin Hurlburt consistently maintains that Defendant Burt was involved with (and the apparent master mind of) the scheme to defraud people out of money through the Enterprise. Defendant Burt has argued that the Court should disregard Defendant Dustin Hurlburt's testimony (taken in September, 2005) because it was somehow the result of a "deal" struck with Plaintiffs. Defendant Dustin Hurlburt and Plaintiffs have already denied this baseless claim. The contemporaneous, pre-discovery documents produced by the FBI wholly undercut this allegation. Defendant Dustin Hurlburt was implicating Defendant Burt in the fraudulent Enterprise as early as <u>Spring 2004</u>, and well <u>before</u> he ever had contact with Plaintiffs.

5. According to statements made by Defendant Dustin Hurlburt to representatives of the government, Defendant Burt was aware of "the significant losses" that the enterprise was

incurring and yet he still continued to bring in new investors (*Exhibit A* at FBI 841.) Defendant Dustin Hurlburt went on to inform the government that Defendant Burt possessed the account numbers and passwords to the Enterprise accounts and that Defendant Burt actually accessed those accounts, as evidenced by the fact that Defendant Dustin Hurlburt saw the accounts open on Defendant Burt's computer screen at Burt's Lumber. (*Id.*)

6. Further, Defendant Dustin Hurlburt told the government that Defendant Burt would bring in new investors and then have the Enterprise immediately cut a check to Defendant Burt. Defendant Burt did this even after he knew that the Enterprise was losing (or had no) money. (*Id.*) These allegations are completely consistent with Defendant Dustin Hurlburt's subsequent deposition testimony, as already presented by the Court.

7. Also consistent with his deposition testimony, Defendant Dustin Hurlburt told the government that Defendant Burt forced him to obtain a life insurance policy with Defendant Burt named as the beneficiary. Defendant Dustin Hurlburt took these steps because he feared that Defendant Burt "would kill" him. (*Exhibit A* at FBI 842.)

8. Statements from Defendant Dustin Hurlburt taken by the FBI further confirmed Defendant Dustin Hurlburt's allegations that Defendant Burt was involved in the scheme to defraud people of money and was fully aware of all of the illegal activities. (*Exhibit A* at FBI 1061 to FBI 1073.)

9. Although Defendant Burt's name appears to have been redacted by the FBI when producing these documents in response to the FOIA request, a review of the documents reveals that Defendant Dustin Hurlburt is plainly implicating Defendant Burt. For example, document labeled FBI 841 references the person using a computer at "[redacted] Lumber." the only "Lumber" at issue in this case is Burt's Lumber, Defendant Burt's business. Further, it is undisputed that the life insurance policies referenced in the various documents are all in reference to the life insurance policy

that Defendant Burt required Defendant Dustin Hurlburt to take out on his life with Defendant Burt as the beneficiary. (*Exhibit A* at FBI 842, FBI 1062 and FBI 1067.) The amounts described in the documents as being deposited and withdrawn also are identical to the amounts that Defendant Burt and Burt's Lumber deposited and withdrew. Finally, the bounced check that Defendant Burt received in early 2003 in the amount of approximately $80,000.00 is described by Defendant Dustin Hurlburt in a statement to the FBI (*Exhibit A* at FBI 1067.) Again, it is undisputed that Defendant Burt was the recipient of that bounced check.

10. The documents also substantiate that Plaintiffs' expert report, which shows that both Defendant Burt and his company, Burt's Lumber, took out <u>more</u> money from the Enterprise than they ever invested, making them the only persons to profit from the scheme. Indeed, the restitution claims made by both Defendant Burt and Burt's Lumber were denied by the FBI because those parties gained from the enterprise. Attached hereto as *Exhibit B* are true and accurate copies of the documents Bates labeled FBI 14 through FBI 20, FBI 36, FBI 136 through FBI 137, FBI 138 through FBI 143.

11. Plaintiffs respectfully request that this newly discovered information be considered by the Court when determining both Defendant Burt's motion for summary judgment and motion for sanctions. The documents further support Plaintiffs' arguments that Defendant Burt was fully aware and involved in the scheme to use the Enterprise to steal money from Plaintiffs (among others) and fully support the claims asserted by Plaintiffs through the Amended Complaint.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 6, 2010 in Erie County, New York.

<u>/s/ William F. Savino</u>
William F. Savino

#1405065

EXHIBIT A

FD-340 (Rev. 3-8-01)

Universal Case File Number 318B-BF-37539 1A-22

Field Office Acquiring Evidence BUFFALO

Serial # of Originating Document

Date Received 5/4/04

From Dustin Hurlburt
(Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted] b6 b7C

To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☐ Yes ☒ No

Federal Taxpayer Information (FTI)

☐ Yes ☒ No

Title:

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of
Dustin Hurlburt

Dustin Hurlburt 5/4/04

[redacted]

Dustin H

AUSA Mary Ellen Kresse

[redacted]

myself

b6
b7C

- [redacted] was aware of the significant losses I was incurring in the ~~Hurlburt Investment Club~~ Investments I was makin for individuals. [redacted] continued to bring new investors to me. Such as [redacted]

Most of the investors $ was brought to me by [redacted]. Some I have never met

met [redacted] in approx 2000 through [redacted] Dad, [redacted]

- [redacted] had my ~~Ameritrade~~ Datek/ Acct #'s and passwords. Saw that [redacted] had accessed the acct @ [redacted] Lumber - saw my name on screen

b6
b7C

[redacted] would bring new investors $ in & then have me write checks to him from the $ rec'd to pay me back. He did this after he knew I was losing $ on the investments

- I was depressed @ the time due to the fact that I had lost my girlfriend [redacted]

not sure when - His deposits would have slowed down when I told him this

- ~~Approx Summer 2007~~ I told [redacted] I was losing the $ through the investment [redacted] said not to worry.

I was provided [redacted] w/ handwritten investment statements.

- Believes [redacted] is selling cocaine [redacted] (PH) This is based on his assoc w/ [redacted] b6 b7C [redacted] W/m - Sols

Believes they are doing this w/ the man who owns [redacted] - all in ~~the~~ Perry, NY.

Ins. Policies

[redacted] wanted me to get an insurance policy w/ him [redacted] was [redacted] He wanted me to get this b/c if something went wrong (Dustin took this to mean he ~~they~~ would kill me if I told anyone about the losses I was incurring.)

About same time

1) Allstate - I paid $335.00 b6 b7C

2 [redacted] - [redacted] agency - [redacted] stacked the [redacted] calls

Neither policy never went into effect

I was an overweight smoker

I am scared of [redacted]

- One-time [redacted] brought me a bag full of cash, maybe $100K, asked me to invest

I said no. Can't remember when this occurred

FD-302 (Rev. 10-6-95)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 05/27/2004

Pursuant to a Proffer Agreement, a meeting was held with DUSTIN HURLBURT at the United States District Courthouse, Buffalo, New York. Also in attendance at this meeting was [redacted] attorney for DUSTIN HURLBURT, Assistant United States Attorney (AUSA) MARYELLEN KRESSE, Financial Analyst (FA) [redacted] and Special Agent (SA) [redacted] HURLBURT thereafter provided the following information:

HURLBURT stated that [redacted] was aware of the significant losses that he(HURLBURT) was incurring related to the investments he was making on behalf of individuals. HURLBURT stated that when [redacted] would bring new investor's monies into the investment club he would then have HURLBURT write checks to [redacted] from the money received from the new investors. [redacted] did this even after he knew that HURLBURT was losing money on the investments with individuals such as [redacted] HURLBURT advised that most of the investors were brought to him by [redacted] He added that some of the investors he never met in person. b6 b7C

(X) Son

HURLBURT indicated that he first met [redacted] in approximately 2000 through PATTY COOK's [redacted]

HURLBURT advised that [redacted] was aware of his Datek/Ameritrade investment account numbers and passwords. HURLBURT recalled that on one occasion while he was at [redacted] he observed his account had been accessed by [redacted]

HURLBURT recalled telling [redacted] that he was losing money through the investments he was making for individuals and [redacted] replied for him not to worry. HURLBURT is not sure when he had this conversation with [redacted] about losing money, however, he added that [redacted] deposits into the investment club would have slowed down when he advised him [redacted] of this. HURLBURT added that he was providing [redacted] with handwritten investment statements at the time. He added that he was also depressed at the time due to the fact that he had lost his girlfriend, PATTY COOK, and their baby. b6 b7C

HURLBURT believes that [redacted] is selling cocaine. This is based on [redacted] association with [redacted] (phonetic) (ph) who is the owner of the Lumber Yard Restaurant in Perry, New York. He described [redacted] as a white male in his 50s. HURLBURT also believes

Investigation on 05/04/2004 at Buffalo, New York

File # 318B-BF-37539-59 Date dictated 05/26/2004

by SA FA [redacted] SLH:RMM

FILE COPY

that [redacted] and [redacted] are selling the cocaine with an unknown male who owns Darryl's Pizzeria in Perry, New York.

HURLBURT indicated that on one occasion [redacted] brought him a bag full of cash, possibly $100,000, and asked him (HURLBURT) to invest these monies. HURLBURT replied to [redacted] that he could not do this. He could not remember when this incident occurred.

HURLBURT advised that [redacted] wanted him to obtain a life insurance policy with him [redacted] as the beneficiary. [redacted] wanted HURLBURT to obtain this policy in case something went wrong. HURLBURT took this to mean that [redacted] would kill him if he told anyone about the losses he was incurring relating to his investing for individuals. HURLBURT stated that he attempted to obtain life insurance on two occasions with [redacted] as the beneficiary. The first policy he attempted to obtain was through Allstate which he paid an initial premium of $335.00. The second policy he attempted to obtain was through Erie Insurance. This policy was applied for through [redacted] Insurance Agency. HURLBURT added that [redacted] initially contacted [redacted] regarding obtaining a life insurance policy for HURLBURT. HURLBURT added that neither policy ever went into effect, due to the fact that he was an overweight smoker. HURLBURT stated that he is extremely afraid of [redacted] HURLBURT added that [redacted] is an investor in HURLBURT's investment club.

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HURLBURT provided the interviewing Agent with a photocopy of an application for life insurance from Allstate Life Insurance Company of New York which was signed by HURLBURT on March 10, 2002. He also provided the interviewing Agent with a photocopy of an $87,000 Official Check made payable to the order of [redacted] These photocopies will be retained as evidence.

To: [redacted]

b6
b7C

From: Dustin Hurlburt

(3) pages

FILE COPY

318B-BF-37539-60

Between 6-6-03 and 7-31-03 [redacted] or His Family Members had withdrawn $150,000 equal to [redacted] Deposit. On 8-11-03 [redacted] with drew $50,000 Putting the account to about 0.

Since at this ~~th~~ time there was no more money [redacted] Brought on [redacted] and then the [redacted],

On Approximately 9-23-03 the [redacted] Deposited 300,000 and as soon as the check cleared [redacted] withdrew $40,000 I'm sure with no time at all the money would have Been In [redacted] Hand in no time at all.

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b7C

In Regards to the three Million dollar life insurance that [redacted] kept on insisting that I get. The mans name is [redacted] I'm not sure of the spelling of his name. He works in Perry new York (Hurts Insurance) His Phone number is [redacted]

I hope this will help Build the case against [redacted] And help prove that this wasn't my sceme and that everything I did I did out of fear ~~for~~ for my family and myself, There may be more proof then what I have givin you If there is anything I can do to help please give Me a call as I May Have overlooked something not thinking It would help.

On 3-24-03 [redacted] [redacted] [redacted]osted $16,000
3-24-03 Deposited $9,000
3-27-03 eposited $5,000
3-28-03 eposited $10,000
3-28-03 Deposited $10,000

$50,000 Deposited
Check #800
$50,000 withdraw
On 4-3-03 Burt Lumber Withdrew

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On 3-26-03 [redacted] Deposited $9,000
4-2-03 [redacted] Deposited $5,800

$14,800 Deposited
$14,000 withdrew
On 4-15-03 [redacted] withdrew
$800 Difference

On 3-17-03 [redacted] Deposited $13,200 Deposited

Check # not Available
On 5-2-03 [redacted] Withdrew $14,000 withdrew
If you add the difference from the difference above $13,200 to the $800 you get [redacted] Withdrew of $14,000

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On 5-27-03 [redacted] Deposited $50,000
6-5-03 Deposited $150,000

On 6-6-03 [redacted] ithdrew #821 $10,000
6-25-03 ithdrew #832 $22,000
7-15-03 ith drew $8,200
7-21-03 ithdrew #842 $20,000
7-22-03 withdrew $6,000
7-22-03 [redacted] withdrew $6,000
7-22-03 ithdrew $73,800
7-31-03 ithdrew 4,000

Total withdrew By [redacted] $150,000
....and His Family.

b6
b7C

To: [redacted]

From: Dustin Hurlburt

(8) pages

FILE COPY

318B-BF-37539 - 61

Mr. [redacted]

After our conversation on 5/4/04, I went home and looked at notes I had. The first time [redacted] was aware of what was really going on was sometime in the beginning of 2002. To the best of my knowledge, he wanted to make a withdrawal and I told him that the money was not there, that the money was lost. He then became irate. Soon after that, he started about the life insurance. He said that I was an asset to him now. This scared me to death, at this point I feared he was going to kill me or have someone do it so he could collect the life insurance. Soon after this I was taken to the hospital on several occasions for anxiety attacks etc. It took a while, but with medication it was somewhat under control. [redacted] put fear into me like no one else has ever done.

I continued to do paperwork for [redacted] as he wanted to bring in more clients. This is where his scheme came into play. Soon after, (to the best of my knowledge) he had [redacted], the [redacted] and others to invest. The second time [redacted] was aware what was going on was early 2003. This is when he wanted I think around $80,000 and there was not enough in the account so I went to the bank and got a loan.

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b6
b7C

Soon after this [redacted] started getting more people to invest - [redacted] [redacted], and [redacted] People would deposit money - then most of the money people would invest went right to [redacted] or Burts Lumber.

To the best of my knowledge - this is how I remember about [redacted] being informed as to the money being lost. I did what I did out of fear, with the life insurance and just the way that [redacted] is, scared me to death. I fear (and still do) for my life, as well as my family's life. I just didn't know how to get out of this mess. I hope this will help you. In the next few days I'll have to you - the proof I have about [redacted] taking the money from other peoples deposits.

Please let me know if there is anything more that I can do.

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b7C

I have enclosed a paper from datek that [redacted] Had me do. This should Help Prove that [redacted] Was involved. My lawyer now ~~the~~ Has the origional If you need it.

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Thank

The rest of the checks will be faxed on Monday the latest. I will also mail you a hard copy.

DATEK

79 HUDSON STREET
JERSEY CITY NJ, 07302-4599
(TELE) 1-800-U2-DATEK
(WEB) www.datek.com

TRUSTEE CERTIFICATION OF INVESTMENT POWERS

- This form authorizes designated trustee(s) to open a brokerage account and transact business with Datek on behalf of the Trust
- Please complete and sign this Trustee Certification of Investment Powers Form.
- Mail the original to the above address.

Trustee Certification Of Investment Powers

Datek Account Number or Username: Hurlburt Investment Club

In consideration of your opening and/or maintaining one or more accounts for the Trust named below, I (we) the undersigned trustee(s), certify to Datek Online Financial Services LLC ("Datek Online"), that the following is true, under the penalty of perjury.

1. The title of the Trust to which this certification applies is: Dustin C. Hurlburt (name of Trust)
2. Effective Date of Trust 7-8-02 (month, day, year) Latest Date of Amendment or Restatement 7-8-03 (month, day, year)
3. There are no Trustees of the Trust other than the undersigned.
4. The Trust explicitly authorizes each of the following Trustees to act individually without the approval of the other Trustees. You have the authority to accept orders and other instructions relative to the trust accounts from any of these trustees and they may execute any documents on behalf of the Trust which you may require.

Pl[redacted]st Agreement where this authority is granted Page #2

(Tr[redacted] (Trustee)

Dustin C. Hurlburt (Trustee) (Trustee)

b6
b7C

Please Note: Although the trust agreement may allow a Trustee to act individually, under certain circumstances, Datek Online policies may require that the written approval of all co-Trustees be obtained.

5. The undersigned Trustees certify that we have the power under the Trust to enter into transactions for the purchase and sale of securities and other investments, including, without limitation, stocks (preferred or common), bonds, mutual funds, and certificates of deposit.

In addition to the foregoing powers, the undersigned Trustees are specifically authorized:

(I) to maintain a Margin and Short account, and through such account to borrow money to purchase securities on margin, sell securities which the Trust does not own (i.e., short sales) and to borrow securities in connection therewith.
☒ Yes ☒ No D.H.
Please indicate the paragraph or page of the Trust Agreement where this authority is granted ________.

(II) to trade in options, including, without limitation, the purchase of puts and calls and the writing (sale) of covered and uncovered puts and calls.
☐ Yes ☒ No
Please indicate the paragraph or page of the Trust Agreement where this authority is granted ________.

6. The undersigned Trustees jointly and severally indemnify you and hold you harmless from any liability (including attorney's fees) arising out of or related to any actual or alleged improper or unsuitable actions resulting from instructions given by any of us to you. This indemnification is made by us in our capacities as trustees and in our individual capacities. We agree to inform you, in writing, of any amendment to the Trust, any change in the composition of the Trustees or any other event which could alter the certifications made above. We acknowledge Datek Online Financial Services LLC's right to examine the Trust and hereby agree to provide you with a copy of the Trust if so requested in writing. (Where applicable plural references in this certification shall be deemed singular).

Name of Trustee	Signature of Trustee	Date
Dustin C. Hurlburt	Dustin C. Hurlburt	7-8-02
[redacted]		6-26-02

ALL TRUSTEES MUST SIGN

On Approx. 2-23-03

2-23-0 [redacted] Deposited $10,000

2-23-03 Burts lumber Deposited $50,000

Then on 3-4-03 when the checks cleared [redacted] Withdrew $60,000 for Burts Lumber.

I have inclosed checks For proof.

---

on Appox. 6-17-03

[redacted] Deposited 20,000

and on 6-25-03 [redacted] withdrew 22,000 for Him self.

b6
b7C

On Approx 3-28-03

[redacted]

Deposited	$10,000
	$10,000
//	5,000
//	16,000
//	10,000
//	9,000
//	

Then On Approx 4-1-03 when the checks cleared [redacted] Withdrew $5,0000 For Burts Lumber. There are many more like this I will get to you as soon as I can I hope it will Help.

[illegible signature]

THE BANK OF CASTILE
A Tompkins Community Bank

DUSTIN C HURLBURT
Page: 3 of 4

b6
b7C

Dustin C. Hurlburt
The Bank of Castile
764
Pay to the order of [redacted]
FIFTEEN THOUSAND ... TWO AND 37/100 ... DOLLARS
Close of account
C022306818C 915-41124-5 0764 /0001509237/

02/24/2003 $15,092.37

769
C022306818C 915-41124-5 0769
C022306818C 915-41124-5 /0006000000/

03/04/2003 769 $60,000.00

NAME Dustin C. Hurlburt
ACCOUNT NO. 915411245 9154116352 DATE 3-12-03
915411245
PAY TO THE ORDER OF Cash $ 5,000.00
Five thousand dollars and 00/100 DOLLARS
The Bank of Castile
C022306818C 915-41124-5 009

03/17/2003 9 $5,000.00

Dustin C. Hurlburt
The Bank of Castile
770
Pay to the order of [redacted]
TWO-HUNDRED-FIFTY AND 00/100 ... DOLLARS
Sale of Stock
C022306818C 915-41124-5 0770

03/03/2003 770 $250.00

Dustin C. Hurlburt
The Bank of Castile
765
Pay to the order of [redacted]
THREE-HUNDRED-SEVENTY AND 00/100 ... DOLLARS
Sale of Stock
C022306818C 915-41124-5 0765

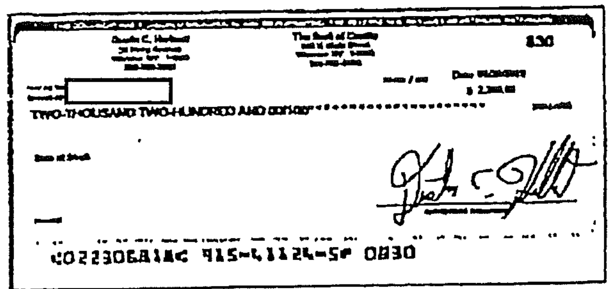
02/24/2003 765 $370.00

Dustin C. Hurlburt
The Bank of Castile
771
Pay to the order of [redacted]
THREE-HUNDRED AND 00/100 ... DOLLARS
Sale of Stock
C022306818C 915-41124-5 0771 /0000030000/
C022306818C 915411245 0771 /0000030000/

03/05/2003 771 $300.00

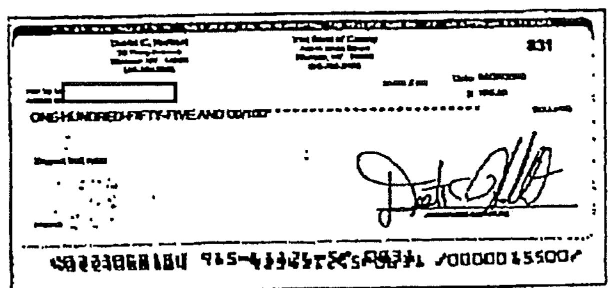
DUSTIN C HURLBURT

Page: 3 of 2

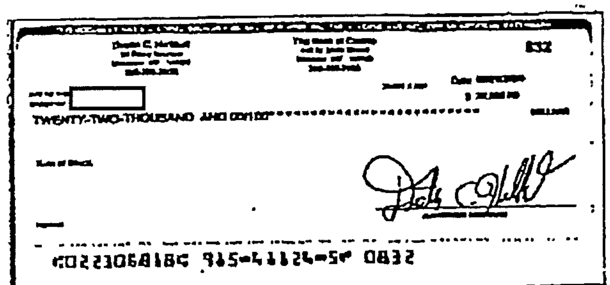


06/23/2003 830 $2,200.00

b6
b7C



06/24/2003 831 $155.00



06/25/2003 832 $22,000.00

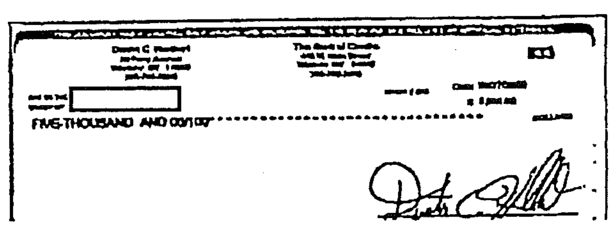


EXHIBIT B

Mr. [redacted]

b6
b7C

Petitioner has failed to meet this requirement. The documentation provided with your petition revealed that although your investments totaled $294,500, your withdrawals totaled $327,000. Therefore, you have no interest in the seized property because you have suffered no pecuniary loss.

RECONSIDERATION REQUEST

You may request that the FBI reconsider the denial of your petition. A request for reconsideration must be based on evidence not previously considered and must be submitted within <u>ten</u> days of the receipt of this letter denying your petition. <u>See</u> 28 C.F.R. § 9.3(j). The request must be addressed to the Federal Bureau of Investigation, Legal Forfeiture Unit (NP-300), 935 Pennsylvania Avenue, NW, Washington DC 20535.

Sincerely,

Maury V. Taylor
Chief
Legal Forfeiture Unit

By: Stephen J. Jobe
Assistant General Counsel
Legal Forfeiture Unit
Office of the General Counsel

1 - U.S. Marshals Service

Mr. [redacted]

NOTE:

1. Recommendation:

On 1/27/04, a petition seeking remission or mitigation of the administrative forfeiture of the above described property was filed with the FBI. It is recommended that the petition be denied as the petitioner has not met the administrative requirements of 28 C.F.R. § 9.5(a)(1)(i).

2. Property:

A. Date Seized: 11/17/03
B. Appraised Value: $109,104.40 (06); $4,695.00 (08)
C. Requested for Official Use: No
D. Requested for Equitable Sharing: No
E. Other Petitions: Yes. A total of twenty-eight petitions were received. Petitions submitted by [redacted] and Burt's Lumber will be denied. Rulings on the remaining petitions are currently pending.

3. Administratively Forfeited: Yes, Declaration of Forfeiture was executed on 7/26/04 (08), 10/22/04 (06).

4. Petition: b6 b7C

A. Petitioner:

[redacted]
Perry, New York 14530

B. Petitioner's Representative:

N/A

C. Petitioner's Interest: non-owner victim

5. Petitioner's Allegation:

Petitioner alleges that he is an innocent victim with an interest in the seized property.

Mr. [redacted]

6. Petition Investigation:

FBI investigation revealed that Dustin Hurlburt had defrauded investors of the Hurlburt Investment Club. The Bank of Castile (TBC)reported that Hurlburt deposited checks payable to Hurlburt or the Hurlburt Investment Club, and shortly after making these deposits, made out checks to other investors. The checks had a notation indicating they were for the sale of stock. TBC also reported that there had been no wire transfers into or out of Hurlburt's account to Ameritrade or other brokerage companies. Hurlburt admitted that he invested money for others under the Hurlburt Investment Club. Hurlburt stated that he lost money when he got more investors and told investors their accounts were making money because he thought he could make it up. Hurlburt estimated that he had approximately $168,000 available to invest with Ameritrade and admitted that he was approximately $100,000 to $120,000 behind with the amount that investors believed they were earning. Hurlburt admitted that he paid off some investors with funds he had received from other investors and also used investors' funds to purchase a Jeep Grand Cherokee as well as day-to-day living expenses. The funds were seized by the FBI for forfeiture on 11/17/03.

b6
b7C

[redacted] filed a petition for remission on 1/27/04. [redacted] invested $294,500 in the Hurlburt Investment Club. The documentation provided by [redacted] with the petition showed actual withdrawals totaling $327,000. Therefore, [redacted] did not suffer a pecuniary loss.

7. The seizing office recommends denying the petition.

8. Attached is the original petition.

PETITION FOR REMISSION OR MITIGATION OF A CRIMINAL OR CIVIL FORFEITURE ACTION BY THE UNITED STATES DEPARTMENT OF JUSTICE

Note: There is no legal form or format required for filing a petition
For more specific guidance on filing your petition, please consult Title 28, Code of Federal Regulations (C.F.R), Section 9

To: FBI
(Attorney General of the United States for a judicial forfeiture or the seizing agency for an administrative forfeiture)

From: [redacted] b6 b7C
(Na[redacted]resentative)

[redacted]
(Social Secu[redacted]titioner)

I am petitioning for the remission of the property described below because I am:

Check all that apply:

___ an owner of the property (complete Sections I, II and V)

___ a lienholder of the property (complete Sections I, II, V and net equity form)

X a victim of the crime underlying the forfeiture of this property (complete Sections I, III and V)

If you would like to petition for the mitigation of the property (return of part of your interest in the property or return upon the imposition of certain conditions) because of extreme hardship, you must also complete Section IV.

SECTION I

Description of Property

This section should be completed by all petitioners.

Asset Description (including make, model, serial numbers): $ 109,104.40 US. Currency (3110-04-F-0006); $ 4,695.98 (3110-04-F-0008)

Seizing Agency: FBI

Seizure Number/Asset ID Number: CATS 04-FBI-000527 3110-04-F-0006 | 04-FBI-000658 3110-04-F-0008

Date and Place of Seizure: 11/17/03 at Warsaw, NY

Act by LFU Unit Chief in letter dated 11/1/04

318E-BF-201958 37539-69

SECTION III

Victim's Explanation of Loss

This section should be completed by victim petitioners only.

I am requesting remission of this forfeiture because I am a victim of the criminal offense underlying the forfeiture of this property or am the victim of a related offense and I have suffered a pecuniary loss as a result of that offense as described below:

In the space provided below, please explain how you are a victim of the criminal offense, or related offense, underlying the forfeiture of this property. Please be as specific as you can and include dates of contact, names of individuals who contacted you, amount of money lost and any other information that you believe would be helpful in verifying your loss. If you have any documentation of your loss, including receipts, invoices, bank statements, wire transfer confirmation statements and cancelled checks, please attach copies of those documents to your petition. **Please do not attach your original documents to the petition.**

I STARTED OUT in MARCH of 2001 By Giving $8000.00 to Dustin Hurlburt to Invest For me. Until Oct. 03, I HAD Deposited At total of $294,500.00 with Him AND HAVE withdrawn A total of $267,000.00. As these Records that Dustin sent ME SHOW I SHOULD HAVE A total of $880,457.88 in my Account.

ACTUAL WITHDRAWALS TOTALED $327,000 –
see documentatin

NO LOSS incurred
except "profit"

SECTION V

Declaration

This section must be completed by all petitioners. The following declaration should be completed by the petitioner. If the petitioner is represented by an attorney, the attorney may complete the declaration as long as the petitioner completes the sworn notice of representation.

I declare under penalty of perjury that the information provided in the for[redacted]ect.

b6
b7C

Sig[redacted]

Printed N[redacted]

1-27-04

Date

Sworn Notice of Representation

This section must be completed only by petitioners who are represented by an attorney and whose attorney has executed the declaration provided above.

I have retained the above-named attorney to represent me in this matter. I have reviewed the foregoing petition and found that its contents are accurate to the best of my information and belief. I declare under penalty of perjury that the foregoing information is true and correct.

Signature

Printed Name

Date

[redacted]

b6
b7C

Deposits to Dustin - Dates Entered

3-16-01	$ 8000.00	
5-8-01	$ 10000.00	
5-18-01	$ 10,000.00	
6-22-01	$ 10,000.00	
11-13-01	$ 8500.00	Bank could not find
11-28-01	$ 20,000.00	
12-28-01	$ 45,000.00	
1-14-02	$ 25,000.00	
10-26-01	$ 9,000.00	
2-15-02	$ 10,000.00	
6-12-02	$ 100,000.00	
9-23-02	$ 21,000.00	
2-14-03	$ 18,000.00	

Deposits - 294,500.00

[redacted]

b6
b7C

Withdrawl From Dustin - Dates Entered

6-30-01	—	$ 3000.00
9-20-01	—	$ 3000.00
3-19-02	—	$ 5000.00
5-7-02	—	$ 5000.00
5-21-02	—	$ 3500.00
7-9-02	—	$ 5000.00
8-19-02	—	$ 5000.00
10-14-02	—	$ 6500.00
11-12-02	—	$ 15000.00
11-25-02	—	$ 9000.00
12-16-02	—	$ 25,000.00
1-3-03	—	$ 28,000.00
2-3-03	—	$ 4000.00
3-14-03	—	$ 5000.00
7-15-03	—	$ 8200.00
7-22-03	—	$ 73800.00
7-28-03	—	$ 5000.00
7-31-03	—	$ 4000.00
9-8-03	—	$ 14000.00
9-26-03	—	$ 40,000.00

Withdrawls - 267,000.00

4-8-03	14,000.00	
5-2-03	14,000.00	327,000.00
6-6-03	10,000.00	
6-17-03	22,000.00	

Mr. [redacted]

NOTE:

1. Recommendation:

On 1/29/04, a petition seeking remission or mitigation of the administrative forfeiture of the above described property was filed with the FBI. It is recommended that the petition be denied as the petitioner has not met the administrative requirements of 28 C.F.R. § 9.5(a)(1)(i).

2. Property:

A. Date Seized: 11/17/03
B. Appraised Value: $109,104.40 (06); $4,695.00 (08) b6 b7C
C. Requested for Official Use: No
D. Requested for Equitable Sharing: No
E. Other Petitions: Yes. A total of twenty-eight petitions were received. Petitions submitted by Robert Burt and Burt's Lumber will be denied. Rulings on the remaining petitions are currently pending.

3. Administratively Forfeited: Yes, Declaration of Forfeiture was executed on 7/26/04 (08), 10/22/04 (06).

4. Petition:

A. Petitioner:

[redacted]
Perry, New York 14530

B. Petitioner's Representative:

N/A

C. Petitioner's Interest: non-owner victim

5. Petitioner's Allegation:

Petitioner alleges that it is an innocent victim with an interest in the seized property.

Mr. [redacted]

6. Petition Investigation:

FBI investigation revealed that Dustin Hurlburt had defrauded investors of the Hurlburt Investment Club. The Bank of Castile (TBC)reported that Hurlburt deposited checks payable to Hurlburt or the Hurlburt Investment Club, and shortly after making these deposits, made out checks to other investors. The checks had a notation indicating they were for the sale of stock. TBC also reported that there had been no wire transfers into or out of Hurlburt's account to Ameritrade or other brokerage companies. Hurlburt admitted that he invested money for others under the Hurlburt Investment Club. Hurlburt stated that he lost money when he got more investors and told investors their accounts were making money because he thought he could make it up. Hurlburt estimated that he had approximately $168,000 available to invest with Ameritrade and admitted that he was approximately $100,000 to $120,000 behind with the amount that investors believed they were earning. Hurlburt admitted that he paid off some investors with funds he had received from other investors and also used investors' funds to purchase a Jeep Grand Cherokee as well as day-to-day living expenses. The funds were seized by the FBI for forfeiture on 11/17/03.

b6
b7C

[redacted] filed a petition for remission on 1/29/04. [redacted] invested $194,250 in the Hurlburt Investment Club. However, [redacted] admitted that he received $240,800 in withdrawals, which was supported with documentation. Therefore, [redacted] did not suffer a pecuniary loss.

7. The seizing office recommends denying the petition.

8. Attached is the original petition.

PETITION FOR REMISSION OR MITIGATION OF A CRIMINAL OR CIVIL FORFEITURE ACTION BY THE UNITED STATES DEPARTMENT OF JUSTICE

Note: There is no legal form or format required for filing a petition
For more specific guidance on filing your petition, please consult Title 28, Code of Federal Regulations (C.F.R), Section 9

To: FBI
(Atto [redacted]

From: [redacted]
(Nam [redacted]

b6
b7C

(Social Security Number/Taxpayer Identification Number of petitioner)

I am petitioning for the remission of the property described below because I am:

Check all that apply:

___ an owner of the property (complete Sections I, II and V)

___ a lienholder of the property (complete Sections I, II, V and net equity form)

X a victim of the crime underlying the forfeiture of this property (complete Sections I, III and V)

If you would like to petition for the mitigation of the property (return of part of your interest in the property or return upon the imposition of certain conditions) because of extreme hardship, you must also complete Section IV.

SECTION I

Description of Property

This section should be completed by all petitioners.

Asset Description (including make, model, serial numbers): $109,104.40 US Currency; $4,695.98 US Currency

Seizing Agency: FBI

Seizure Number/Asset ID Number: CATS 04-FBI-000527 3110-04-F-0006 ; 04-FBI-000658 3110-04-F-0008

Date and Place of Seizure: 11/17/03

201960

Ack by LFU Unit Chief in letter dated 11/11/04

SECTION II

Request for Remission

This section should be completed by owners and lienholders.

I am requesting remission of this forfeiture because I have a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder as evidenced by:

____

____
(Explain interest in property and provide supporting documentation such as bills of sale, retail installment agreements, contracts, or mortgages)

AND

I am innocent within the meaning of the innocent owner standard as provided in 18 U.S.C. § 983(d) as evidenced by:

A. For ownership interests in existence at the time of the conduct giving rise to the forfeiture:

Check the appropriate line and explain:

___ I did not know of the conduct giving rise to the forfeiture; or
___ Upon learning of the conduct giving rise to the forfeiture, I did all that reasonably could be expected under the circumstances to terminate such use of the property

____

____

____

____

B. For ownership interests acquired after the conduct giving rise to the forfeiture:

Check all that apply and explain:

___ I was a bona fide purchaser or seller for value; and
___ I did not know and was reasonably without cause to believe that the property was subject to forfeiture

____

____

____

____

SECTION III

Victim's Explanation of Loss

This section should be completed by victim petitioners only.

I am requesting remission of this forfeiture because I am a victim of the criminal offense underlying the forfeiture of this property or am the victim of a related offense and I have suffered a pecuniary loss as a result of that offense as described below:

In the space provided below, please explain how you are a victim of the criminal offense, or related offense, underlying the forfeiture of this property. Please be as specific as you can and include dates of contact, names of individuals who contacted you, amount of money lost and any other information that you believe would be helpful in verifying your loss. If you have any documentation of your loss, including receipts, invoices, bank statements, wire transfer confirmation statements and cancelled checks, please attach copies of those documents to your petition. **Please do not attach your original documents to the petition.**

[redacted] First gave money to Dustin Hurlburt to Invest in March of 2002 [redacted] total Deposits with Dustin over this time was $ 194,250.00. total withdrawals over this time was $240,800.00. our Balance as of 10/30/03 was supposed to Be 202,471.45

b6
b7C

SECTION IV

Petition for Mitigation of the Forfeiture

This section need be completed only by petitioners seeking alternative relief to complete remission of the property.

In the event that the Ruling Official determines that I do not qualify for remission of the property, I hereby request mitigation of the forfeiture to avoid extreme hardship. In support of my request, I would like the Ruling Official to consider the following extenuating circumstances:

SECTION V

Declaration

This section must be completed by all petitioners. The following declaration should be completed by the petitioner. If the petitioner is represented by an attorney, the attorney may complete the declaration as long as the petitioner completes the sworn notice of representation.

I declare under penalty of perjury that the information provided in the foregoing petition is true and correct.

____
Signature

____
Printed Name

____
Date

Sworn Notice of Representation

This section must be completed only by petitioners who are represented by an attorney and whose attorney has executed the declaration provided above.

I have retained the above-named attorney to represent me in this matter. I have reviewed the foregoing petition and found that its contents are accurate to the best of my information and belief. I decla[redacted]he foregoing information is true and correct.

b6
b7C

Signa[redacted]

Print[redacted]

1-29-04
Date

[redacted]

b6
b7C

Deposits Given to Dustin - Date Entered

2-26-02	$ 39,000.00 ✓
5-8-02	$ 14,250.00 ✓
8-21-02	$ 100,000.00 ✓
2-3-03	$ 50,000.00 ✓
	$ 194,250.00

Withdrawals From Dustin - Date Entered

3-25-02	$ 1200.00 ✓
4-22-02	$ 1200.00 ✓
5-27-02	$ 1200.00 ✓
6-24-02	$ 1200.00 ✓
7-30-02	$ 1200.00 ✓
9-6-02	$ 1200.00 ✓
9-30-02	$ 1200.00 ✓
~~9-30-02~~ 11-04-02	$ 1200.00 ✓
2-26-03	$ 60,000.00 ✓
3-28-03	$ 50,000.00 ✓
5-1-03	$ 100,000.00 ✓
7-22-03	$ 20,000.00 ✓
11-25-03	1200.00
	239,600.00
	1,200.00
	240,800.00

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD H. RECHBERGER IV, AS TRUSTEE UNDER
A TRUST AGREEMENT DATED MARCH 11, 1998,
AS AMENDED FEBRUARY 26, 2001,
LEWIS J. SERVENTI,
KAREN K. RECHBERGER,

Plaintiffs,

vs. 07-CV-61A(F)

DUSTIN C. HURLBURT,
LISA HURLBURT,
HURLBURT INVESTMENT CLUB,
and ROBERT M. BURT,

Defendants.

CERTIFICATE OF SERVICE

NOTICE IS GIVEN that I, William F. Savino, hereby certify and affirm that on the 6th day of January, 2010, I electronically filed the foregoing *Plaintiffs' Motion for Leave to File Sur-Reply Declaration* with the Clerk of the United States District Court for the Western District of New York using its CM/ECF system, which would then electronically notify the following CM/ECF participants of this filing:

Steven E. Cole, Esq.
LeClair Korona Giordano Cole LLP
Attorneys for Defendant, Robert Burt
150 State Street, Suite 300
Rochester, New York 14614

Joel L. Daniels, Esq.
Law Offices of Joel L. Daniels
Attorneys for Defendants, Dustin C. Hurlburt, Lisa Hurlburt and Hurlburt Investment Club
107 Delaware Avenue
Suite 1366
Buffalo, New York 14202

By: /s/ William F. Savino

#1405708