

Approved: Jennifer E. Burns
JENNIFER E. BURNS
REED M. BRODSKY
Assistant United States Attorneys

Before: HONORABLE JAMES C. FRANCIS IV
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA : Sealed Complaint
-v.- : Violations of
JOSEPH PREBUL, : 18 U.S.C. §§ 1343 and 2
Defendant. : COUNTY OF OFFENSE:
NEW YORK
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SOUTHERN DISTRICT OF NEW YORK, ss.:

SCOTT ROMONOWSKI, being duly sworn, deposes and says that he is a Criminal Investigator with the United States Attorney's Office for the Southern District of New York, and charges as follows:

COUNTS ONE THROUGH ELEVEN
(Wire Fraud)

1. From at least in or about October 2005 up through and including in or about July 2008, in the Southern District of New York and elsewhere, JOSEPH PREBUL, the defendant, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully and knowingly would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, to wit, on or about the dates set forth below, as a result of making false representations regarding the investment of money, PREBUL caused millions of dollars to be transferred by wire from New York, New York to Tennessee:

COUNT	Approximate Date	Substance of Wire
ONE	January 11, 2006	Wire Transfer of approximately \$1,500,000 from New York, New York, to Tennessee.
TWO	June 29, 2006	Wire Transfer of approximately \$500,000 from New York, New York, to Tennessee.
THREE	November 28, 2006	Wire Transfer of approximately \$300,000 from New York, New York, to Tennessee.
FOUR	February 12, 2007	Wire Transfer of approximately \$368,000 from New York, New York, to Tennessee.
FIVE	February 16, 2007	Wire Transfer of approximately \$799,975 from New York, New York, to Tennessee.
SIX	April 27, 2007	Wire Transfer of approximately \$199,975 from New York, New York, to Tennessee.
SEVEN	May 30, 2007	Wire Transfer of approximately \$3,000,000 from New York, New York, to Tennessee.
EIGHT	August 7, 2007	Wire Transfer of approximately \$850,000 from New York, New York, to Tennessee.
NINE	September 12, 2007	Wire Transfer of approximately \$300,000 from New York, New York, to Tennessee.
TEN	December 17, 2007	Wire Transfer of approximately \$5,000,000 from New York, New York, to Tennessee.
ELEVEN	May 2, 2008	Wire Transfer of approximately \$1,699,975 from New York, New York, to Tennessee.

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

The bases for my knowledge and the foregoing charges are, in part, as follows:

2. I have been a Criminal Investigator with the Southern District of New York since July 2007, and was an investigator for the New Jersey Office of the Attorney General for approximately six years. I have been personally involved in the investigation of this matter. This affidavit is based upon my conversations with witnesses, and my examination of bank records, credit card statements, electronic communications, recordings of telephone calls and other documents. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Relevant Individuals and Accounts

3. Based on my review of publicly available information, I have learned the following: At all relevant times, JOSEPH PREBUL, the defendant, was a resident of Chattanooga, Tennessee, and the president of Prebul Auto Group. At certain relevant times, Prebul Auto Group had approximately eleven car dealerships in Georgia and Tennessee, including Prebul Jeep Inc. At certain relevant times, PREBUL was a member of the Board of Directors of CapitalMark Bank and Trust, which is a private bank located in Chattanooga and Knoxville, Tennessee.

4. Based on my conversations with several individuals in New York, New York, I have learned that a certain person (hereinafter "Victim-1") was a relative of JOSEPH PREBUL, the defendant, and gave millions of dollars to PREBUL for investment purposes. At all relevant times, Victim-1 was a resident of New York, New York, and the owner of several businesses in the music industry.

5. Based on my conversations with a representative of Chrysler Financial Services Americas LLC (hereinafter "Chrysler") and my review of documents from Chrysler, I have learned the following:

a. From at least in or about June 2007 through in or about December 2008, Prebul Jeep Inc. had two accounts with Chrysler: (i) a financing account called the "Wholesale Floorplan" (hereinafter "Financing Account") and (ii) a cash management program account (hereinafter "CMP Account"). The

Financing Account was, in sum and substance, a loan from Chrysler to the dealership of JOSEPH PREBUL, the defendant, to fund its business operations. When PREBUL's dealership earned money, PREBUL had the option of transferring the money into an account under Chrysler's cash management program, which offset the outstanding balance on any loans that PREBUL's dealership owed to Chrysler.

b. Money in the CMP Account did not earn interest for either the car dealership, PREBUL, or any other person. The funds deposited in the CMP Account offset the interest rate charged on the balance of a car dealership's loans; therefore, the car dealership, PREBUL, and any other person did not earn interest on the funds in the CMP Account.

6. Based on my conversations with Victim-1, I have learned that JOSEPH PREBUL, the defendant, represented to Victim-1 and others that PREBUL would invest their money in an account at Chrysler (hereinafter "Prebul's Investment Account") where it would be liquid, accessible, and earn an above-average interest rate. Victim-1 further told me that PREBUL stated that Victim-1 could not invest the money directly in Prebul's Investment Account, because PREBUL had to make the investment himself.

PREBUL's Misrepresentations

7. In a January 15, 2006 e-mail that I have reviewed, JOSEPH PREBUL, the defendant, represented to several potential investors, including individuals working for Victim-1, that the rate of return for Prebul's Investment Account was approximately six percent or better. In a January 23, 2006 e-mail that I reviewed, PREBUL represented to potential investors, including individuals working for Victim-1, that Prebul's Investment Account was "drawing over 6% interest per month." I also learned from Victim-1 that PREBUL represented that Victim-1 could redeem all of the money invested in Prebul's Investment Account at any time.

8. Based on my review of bank records and e-mail communications between Victim-1 and JOSEPH PREBUL, the defendant, I have learned that from in or about 1995 through in or about July 2008, Victim-1 transferred millions of dollars by wire and/or by check through the mail to PREBUL for purposes of investing the money in Prebul's Investment Account. For example, I have reviewed the documents evidencing the wire transfers referenced in Counts One through Eleven.

9. Based on my review of e-mail communications and my conversations with Victim-1, I have learned that from in or about 1995 through in or about July 2008 on at least three occasions, JOSEPH PREBUL, the defendant, or an accountant working for PREBUL (hereinafter "Prebul's Accountant") sent a confirmation by e-mail to Victim-1 acknowledging that Victim-1's money was received and that the money would be invested in Prebul's Investment Account.

10. Based on my review of documents and my conversations with Victim-1, I have learned that from in or about 1995 through in or about July 2008, JOSEPH PREBUL, the defendant, or Prebul's Accountant occasionally sent monthly statements and/or spreadsheets to Victim-1 which stated that Victim-1's money was deposited in Prebul's Investment Account and earning interest, at a specified interest rate.

11. Based on my conversations with Victim-1 and my review of bank records, I know that from in or about 1995 through in or about June 2008, JOSEPH PREBUL, the defendant, returned Victim-1's money each time that Victim-1 had requested the money back, which created the false impression that Victim-1's money was properly invested in Prebul's Investment Account. Based on my conversations with Victim-1 and my review of e-mail communications between PREBUL and individuals working for Victim-1, I learned that PREBUL never told Victim-1 that (i) Victim-1's money would be used to operate PREBUL's businesses, and/or (ii) PREBUL would be using the money to pay for personal expenses.

12. In contrast to the representations of JOSEPH PREBUL, the defendant, to Victim-1, certain bank records and documents from Prebul Jeep Inc. show that, during the relevant period, PREBUL used Victim-1's money to support PREBUL's business and lavish lifestyle, as follows:

a. In contrast with PREBUL's representations that Victim-1's money would be invested in Prebul's Investment Account, Victim-1's money was deposited into the CMP Account and a central operating account of PREBUL's business and controlled by PREBUL. As described above, the money that PREBUL deposited in the CMP Account did not earn interest but offset certain loans that Chrysler had made to PREBUL in the past. PREBUL used the central operating account for expenses relating to Prebul Auto Group, PREBUL's real estate properties, and PREBUL's airplanes. In addition, PREBUL withdrew approximately \$1,000,000 annually from this central operating account as part of his salary and other compensation.

b. Based on my conversations with an accountant who audited the books and records of PREBUL's companies and spoke with Prebul's Accountant, I have learned that PREBUL told Prebul's Accountant that Victim-1's money was a loan and directed Prebul's Accountant to use Victim-1's money for PREBUL's businesses and to pay for PREBUL's personal expenses.

c. PREBUL used Victim-1's money on personal expenses, including private chartered planes, family vacations, golf lessons and tournaments, and five-star hotel accommodations.

d. The central operating account where PREBUL deposited a part of Victim-1's money was also used to pay the credit card accounts of PREBUL and PREBUL's wife. From in or about December 2006 through in or about December 2008, PREBUL's credit card expenditures totaled approximately \$1.2 million. From in or about December 2006 through in or about December 2008, PREBUL's wife's credit card expenditures totaled approximately \$800,000, with an average monthly balance of approximately \$15,000.

13. Based on my review of business records of the Prebul Auto Group, I have learned that from in or about 2005 through in or about 2008, Prebul Auto Group, in aggregate, lost at least approximately \$1,600,000.

14. Based on my conversation with Victim-1 and my review of consensually recorded conversations between Victim-1 and JOSEPH PREBUL, the defendant, I have learned that on multiple occasions in or about July and August 2008, Victim-1 demanded that PREBUL return all of the money that Victim-1 had given to PREBUL for investment, which by that time totaled at least approximately \$6,800,000, plus at least approximately \$800,000 in earned interest.

15. Based on my review of a consensually recorded conversation between Victim-1 and JOSEPH PREBUL, the defendant, on or about July 31, 2008, I know that PREBUL admitted that he owed Victim-1 money. In addition, PREBUL claimed that Prebul's Investment Account had no money left. Despite PREBUL's representation to Victim-1, based on my review of bank records, I know that there was approximately \$700,000 in Prebul's Investment Account at that time.

16. Based on my review of a consensually recorded conversation between Victim-1 and JOSEPH PREBUL, the defendant, on or about August 4, 2008, I know that PREBUL admitted to

Victim-1 that PREBUL used Victim-1's money for expenses related to PREBUL's car dealerships.

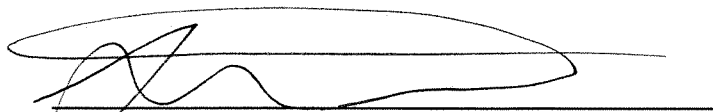
17. Based on my review of a consensually recorded conversation between Victim-1 and JOSEPH PREBUL, the defendant, in or about August 2008, and my conversation with Victim-1, I have learned that PREBUL met with Victim-1 in New York, New York in or about August 2008, and that PREBUL admitted during that meeting that he owed millions of dollars to Victim-1. I have reviewed a document that PREBUL gave to Victim-1 at that meeting stating that PREBUL owed Victim-1 a little more than approximately \$7,641,000. Based on my conversations with Victim-1 and my review of e-mail communications between Victim-1 and PREBUL, I know that at this meeting in New York, New York, PREBUL claimed to Victim-1 for the first time that Victim-1's money was a loan.

18. Based on my review of bank and credit card records, I have learned that from in or about July 2008 through in or about December 2008, tens of thousands of dollars were charged to the credit card accounts of JOSEPH PREBUL, the defendant, and PREBUL's wife; and over \$160,000 per month deposited directly into PREBUL's personal bank account.

19. Based on my review of publicly available information, I have learned that on or about December 1, 2008, JOSEPH PREBUL, the defendant, closed one of his automobile dealerships in Dayton, Tennessee, and on or about January 12, 2009, PREBUL closed another automobile dealership in Ringgold, Georgia.

20. Based on my conversations with Victim-1, my review of consensually recorded conversations between Victim-1 and JOSEPH PREBUL, the defendant, and my review of bank records, I know that, as of the date of this Complaint, PREBUL had not returned Victim-1's money in the amount of approximately \$7,641,000.

WHEREFORE, the deponent prays that a warrant be issued for the arrest of JOSEPH PREBUL, the defendant, and that he be imprisoned or bailed, as the case may be.



SCOTT ROMONOWSKI
Criminal Investigator
United States Attorney's Office

FEB 09 2009

Sworn to before me this
___ day of February 2009



HONORABLE JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK