

EXHIBIT 7

STATE OF TENNESSEE
In the Circuit Court of Hamilton County

DANNY BENSUSAN,

Plaintiff,

vs.

JOSEPH PREBUL; PREBUL ENTERPRISES, LLC;
PREBUL CHRYSLER JEEP DODGE, LLC; PREBUL
CHEVROLET, LLC; CAROLEX, LLC; CAROLEX
AIR, LLC; CAROLEX PROPERTIES, LLC;
CAROLEX MANAGEMENT, INC.; DAVID
DALTON; and DEANA M. JOHNSTON,

Defendants.

FILED IN OFFICE
2009 FEB 12 AM 10:50
PAULA T. THOMPSON, CLERK
BY [Signature] DC

Court Docket No: 09C239

DIVISION: _____

SUMMONS

VIA PRIVATE PROCESS SERVER - PLEASE ISSUE AND RETURN TO ATTORNEY FOR SERVICE

TO: Prebul Chrysler Jeep Dodge, LLC c/o Registered Agent R. Wayne Peters, 320 McCallie Ave, Chatt, TN 37402
Defendant Address

You are hereby summoned to answer and make defense to a bill of complaint which has been filed in the Circuit Court of Hamilton County, Tennessee in the above styled case. Your defense to this complaint must be filed in the office of the Circuit Court Clerk of Hamilton County, Tennessee on or before thirty (30) days after service of this summons upon you. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WITNESSED and Issued this 12th day of Feb., 2009

Paula Thompson, Circuit Court Clerk

By C. Highsmith D.C.
Deputy Circuit Court Clerk

ATTORNEYS FOR PLAINTIFF Bruce Bailey, Hugh Moore, Jr., and Thomas Greenholtz Chambliss, Bahner & Stophel, P.C., 1000 Tallan Building, Two Union Square, Chattanooga, Tennessee 37402-2500
Address

PLAINTIFF'S ADDRESS: Danny Bensusan c/o Chambliss, Bahner & Stophel, P.C., 1000 Tallan Building, Two Union Square, Chattanooga, Tennessee 37402

Received this _____ day of _____, 20 _____

/s/ _____
Deputy Sheriff

COST BOND

I hereby acknowledge and bind myself for the prosecution of this action and payment of all costs in this court which may at any time be adjudged against the plaintiff in the event said plaintiff shall not pay the same.

Witness my hand this 12 day of February, 2009

[Signature]
Surety

Chambliss, Bahner & Stophel, P.C.,
1000 Tallan Building, Two Union Square,
Chattanooga, Tennessee 37402-2500
Address

State of Tennessee,
County of Hamilton

I, Paula Thompson, Clerk of the Circuit Court, in and for the State and County aforesaid, hereby certify that the within and foregoing is a true and correct copy of the original writ of summons issued in this case.

Paula Thompson, Circuit Court Clerk

By _____ D.C.

OFFICER'S RETURN

I certify that I served this summons together with the complaint as follows:

On, _____, 20____, I delivered a copy of the summons and complaint to the defendant, _____

Failed to serve this summons within 30 days after its issuance because:

_____, Sheriff

Deputy Sheriff

CLERK'S RETURN

I hereby acknowledge and accept service of the within summons and receive copy of same, this _____ day of _____, 20_____.

Defendant

Paula Thompson, Circuit Court Clerk

By _____ D.C.

NOTICE TO DEFENDANT(S)

Tennessee law provides a four thousand (\$4,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt, with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

FILED IN OFFICE
2009 FEB 12 AM 10:50
BY _____
K. T. THOMPSON, CLERK
BC

DANNY BENSUSAN,

Plaintiff,

vs.

JOSEPH PREBUL;
PREBUL ENTERPRISES, LLC;
PREBUL CHRYSLER JEEP DODGE,
LLC;
PREBUL CHEVROLET, LLC;
CAROLEX, LLC;
CAROLEX AIR, LLC;
CAROLEX PROPERTIES, LLC;
CAROLEX MANAGEMENT, INC.;
DAVID DALTON; and
DEANA M. JOHNSTON,

Defendants.

Court Docket No:

09C239

DIVISION: _____

COMPLAINT

Comes now the Plaintiff, Danny Bensusan, by and through counsel, and for causes of action against Defendants Joseph Prebul; Prebul Enterprises, LLC; Prebul Chrysler Jeep Dodge, LLC; Prebul Chevrolet, LLC; Carolex, LLC; Carolex Air, LLC; Carolex Properties, LLC; Carolex Management, Inc.; David Dalton; and Deana M. Johnston, states as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff Danny Bensusan is a citizen and resident of New York.
2. Defendant Joseph Prebul is a citizen and resident of Tennessee.
3. Prebul Jeep, Inc., d/b/a Prebul Auto Group, d/b/a/ Prebul Kia, is a party of interest to the events described herein. It is a for-profit corporation organized, incorporated, and existing

under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. Prebul Jeep, Inc. cannot yet be named as a formal party to this action due to its filing a Petition in Bankruptcy on or about February 10, 2009. However, but for the filing of this Petition in Bankruptcy, Mr. Bensusan would seek compensatory and punitive damages for the fraud, conversion, and gross negligence committed by Prebul Jeep, Inc.

4. Prebul Motorcars, LLC, d/b/a/ Prebul Used Cars d/b/a Prebul Volvo of Chattanooga, is a party of interest to the events described herein. It is a for-profit limited liability corporation organized and existing under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. Prebul Motorcars, LLC cannot yet be named as a formal party to this action due to its filing a Petition in Bankruptcy on or about February 10, 2009. However, but for the filing of this Petition in Bankruptcy, Mr. Bensusan would seek compensatory and punitive damages for the fraud and/or conversion committed by Prebul Motorcars, LLC.

5. Prebul Infiniti of Chattanooga, LLC is a party of interest to the events described herein. It is a for-profit limited liability corporation organized and existing under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. Prebul Infiniti of Chattanooga, LLC cannot yet be named as a formal party to this action due to its filing a Petition in Bankruptcy on or about February 10, 2009. However, but for the filing of this Petition in Bankruptcy, Mr. Bensusan would seek compensatory and punitive damages for the fraud and/or conversion committed by Prebul Infiniti of Chattanooga, LLC.

6. Defendant Prebul Enterprises, LLC, is a for-profit limited liability corporation organized and existing under the laws of the State of Tennessee and having its principal place of

business at 2120 Chapman Road in Chattanooga, Tennessee. The registered agent for service of process is Joe Prebul, who may be served at 2120 Chapman Road in Chattanooga, Tennessee, 37421.

7. Prebul Dodge of Chattanooga, LLC is a party of interest to the events described herein. It is a for-profit limited liability corporation organized and existing under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. Prebul Dodge of Chattanooga, LLC cannot yet be named as a formal party to this action due to its filing a Petition in Bankruptcy on or about February 10, 2009. However, but for the filing of this Petition in Bankruptcy, Mr. Bensusan would seek compensatory and punitive damages for the fraud and/or conversion committed by Prebul Dodge of Chattanooga, LLC.

8. Defendant Prebul Chrysler Jeep Dodge, LLC is a for-profit limited liability corporation organized and existing under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. The registered agent for service of process is R. Wayne Peters, Esq., who may be served at 320 McCallie Avenue, Chattanooga, Tennessee 37402.

9. Defendant Prebul Chevrolet, LLC is a for-profit limited liability corporation organized and existing under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. The registered agent for service of process is R. Wayne Peters, Esq., who may be served at 320 McCallie Avenue, Chattanooga, Tennessee 37402.

10. Defendant Carolex, LLC is a for-profit limited liability corporation organized and existing under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. The registered agent for service of process is

R. Wayne Peters, Esq., who may be served at 320 McCallie Avenue, Chattanooga, Tennessee 37402.

11. Defendant Carolex Air, LLC is a for-profit limited liability corporation organized and existing under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. The registered agent for service of process is R. Wayne Peters, Esq., who may be served at 320 McCallie Avenue, Chattanooga, Tennessee 37402.

12. Defendant Carolex Properties, LLC is a for-profit limited liability corporation organized and existing under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. The registered agent for service of process is Joe Prebul who may be served at 2120 Chapman Road in Chattanooga, Tennessee, Chattanooga, Tennessee 37421.

13. Defendant Carolex Management, Inc. is a for-profit corporation organized, incorporated, and existing under the laws of the State of Tennessee and having its principal place of business at 2120 Chapman Road in Chattanooga, Tennessee. The registered agent for service of process is R. Wayne Peters, Esq., who may be served at 320 McCallie Avenue, Chattanooga, Tennessee 37402.

14. Defendant David Dalton is a citizen and resident of Tennessee. At all times relevant to the events set forth in this Complaint, Defendant Dalton was the Chief Financial Officer of Prebul Auto Group.

15. Defendant Deana M. Johnston is a citizen and resident of Tennessee. At all times relevant to the events set forth in this Complaint, Defendant Johnston was the Controller of Prebul Auto Group.

16. This Court has subject matter jurisdiction over the causes of action alleged herein.

17. Each of the Defendants is subject to the personal jurisdiction of this Court, as each is a citizen and resident of the State of Tennessee.

18. Venue is proper in this Court.

II. FACTUAL BACKGROUND

A. General Background:

19. Danny Bensusan operates a number of music performance clubs and other venues throughout the world. Bensusan's wife is Lillie Prebul Bensusan, a sister of Defendant Prebul. Through his wife Bensusan became acquainted with Defendant Prebul, Bensusan's brother-in-law.

20. Defendant Prebul, through Prebul Jeep, Inc. and operating as Prebul Automotive Group, owned and managed several new car dealerships in the Chattanooga area, including Prebul Chrysler Jeep Dodge, Prebul Infiniti, Prebul Kia and Prebul Volvo. Additional Prebul-owned dealerships were located in Ringgold, Georgia and in Dayton, Tennessee.

21. Defendant Prebul is the CEO of Prebul Auto Group. In this capacity, he oversees, and is responsible for overseeing the financial condition of his dealerships. In addition, Defendant Prebul regularly reviewed the financial statements of each of his dealerships.

22. In his capacity as CEO of Prebul Auto Group, Defendant Prebul oversees, and at all times relevant, has been responsible for overseeing, other officers and employees of the company, including the company's Controller, Defendant Johnston and the Company's Chief Financial Officer, Mr. Dalton.

B. Investments in the Chrysler Cash Management Account:

23. In 1996, Defendant Prebul offered Mr. Bensusan the opportunity to invest cash in a Chrysler Cash Management Account ("**Chrysler CMA**"), which was maintained in the name of Prebul Jeep, Inc.

24. This Chrysler CMA is an account from Chrysler Financial that allows dealers such as Prebul Jeep to offset loans owed by the dealer to Chrysler for financing of dealer floorplans and inventory. Upon information and belief, the Chrysler CMA was moved at some point by Defendant Prebul to Wachovia Bank.

25. This Chrysler CMA was one of two financial accounts maintained by Defendant Prebul and Prebul Jeep. Upon information and belief, Defendant Prebul maintained only *one* bank account, which was located at FSG Bank in Chattanooga, Tennessee, for all of his business interests, including the operation of the dealerships, real estate activity, et cetera. Disbursements related to various entities from the FSG account were accounted for by a series of inter-company accounts.

26. Defendant Prebul represented to Mr. Bensusan that this Chrysler CMA offered a higher interest rate on deposits than that paid by banks. Defendant Prebul further represented to Mr. Bensusan that the investment of monies into the Chrysler CMA was secure and that interest was paid monthly on funds deposited in the Chrysler CMA.

27. Defendant Prebul never informed Mr. Bensusan that these monies would be used to operate any of Defendant Prebul's dealerships or otherwise used to pay for Defendant Prebul's personal expenses.

28. In reality, however, the Chrysler CMA did not actually pay interest to Defendant Prebul, Prebul Jeep or to any other person or entities. Instead, the interest earned on monies

deposited into the Chrysler CMA was used to pay down loans owed by Defendant Prebul and/or Prebul Jeep to Chrysler.

29. Defendant Prebul further represented to Mr. Bensusan that any money invested in the Chrysler CMA would be liquid and accessible at any time. Defendant Prebul represented to Mr. Bensusan that Mr. Bensusan could not invest the money directly into the Chrysler CMA and that any such investment had to be made directly by Defendant Prebul himself.

30. In agreeing to help Mr. Bensusan to invest money in the Chrysler CMA, Defendant Prebul placed himself in the role of an agent for Mr. Bensusan with respect to these investments.

31. At various times from and after 2005, Mr. Bensusan invested approximately \$15,497,925.00 in the Chrysler CMA through Defendant Prebul, both personally and through various operating entities, including Alliance Investments, LLC, TSE Group, LLC, and 117 7th Avenue, LP.

32. Mr. Bensusan, or those working on his behalf, would wire or send investments through overnight carrier to Defendant Johnston and/or Defendant Dalton for investment by Defendant Prebul in the Chrysler CMA. When the investment monies were to be transferred by Mr. Bensusan by wire, Defendant Dalton instructed Mr. Bensusan or others acting on behalf of Mr. Bensusan to wire the monies into a checking account owned and maintained by Defendant Prebul Auto Group at FSG Bank in Chattanooga, Tennessee.

33. Mr. Bensusan has guaranteed the monies invested by or on behalf of Alliance Investments, LLC, TSE Group, LLC, and 117 7th Avenue, LP, and as such, Mr. Bensusan is therefore liable to each of these entities for the amounts invested. Moreover, Alliance Investments, LLC, TSE Group, LLC, and 117 7th Avenue, LP have each assigned their respective actual and potential causes of action against the Defendants to Mr. Bensusan.

34. On more than one occasion, Defendant Prebul encouraged Mr. Bensusan to invest additional monies in the Chrysler CMA's, including a request that Mr. Bensusan invest excess cash from their joint investment in the B.B. King's club in New York City in the Chrysler CMA. Defendant Prebul regularly reviewed the operating statements from B.B. King's, and was well aware of the substantial amount of funds from that operation that were invested in the Chrysler CMA.

35. For example, on January 15, 2006, Defendant Prebul urged Tsion Bensusan, Mr. Bensusan's son, to invest in the Chrysler CMA through David Dalton. Defendant Prebul further stated that because the rate of return on the Chrysler CMA was 6% or better, the TSE funds should not be placed in accounts earning substantially less. As but one example of Defendant Prebul's solicitation of monies, Mr. Bensusan attaches to this complaint a redacted copy of this January 15, 2006 solicitation as **Exhibit A**.

36. In addition, on January 23, 2006, Defendant Prebul recommended both to Tsion Bensusan and to Steven Bensusan, who is also Mr. Bensusan's son and Tsion's brother, that any excess cash should be distributed or otherwise placed in the offset account at his office that was drawing over 6% in interest per month (the Chrysler CMA).

37. In addition, on June 14, 2006, Defendant Prebul again urged Tsion Bensusan to send monies to David Dalton, the CFO of Prebul Auto Group, to draw 7.85% interest in the Chrysler CMA. Defendant Prebul explained that this rate was "a great rate and I hate to lose money on cash that is not getting the best rate of return."

38. During a visit to New York in July 2008 to visit with Mr. Bensusan, Defendant Prebul represented to Mr. Bensusan that he was attempting to negotiate with Chrysler to obtain a higher interest rate on monies held in the Chrysler CMA. Defendant Prebul made these

representations in order to induce Mr. Bensusan to place and invest more money in the Chrysler CMA.

C. Details of the Defendants' Fraudulent Scheme Part I: Defendants' Improper Deposit of Monies into Accounts other than into the Chrysler CMA:

39. Although Defendant Prebul represented to Mr. Bensusan that all monies transferred by Mr. Bensusan would be deposited into the Chrysler CMA, in reality, approximately \$3,450,000.00 sent by Mr. Bensusan was never deposited into the Chrysler CMA. For example,

a. On June 30, 2006, Mr. Bensusan or others working on his behalf wired or transferred approximately \$500,000.00 to be invested by Defendant Prebul in the Chrysler CMA. However, none of this money was transferred to the Chrysler CMA, and it remained in the FSG checking account owned and maintained by Prebul Jeep.

b. On November 28, 2006, Mr. Bensusan or others working on his behalf wired or transferred approximately \$300,000.00 to be invested by Defendant Prebul in the Chrysler CMA. However, none of this money was transferred to the Chrysler CMA, and it remained in the FSG checking account owned and maintained by Prebul Jeep.

c. On August 7, 2007, Mr. Bensusan or others working on his behalf wired or transferred approximately \$850,000.00 to be invested by Defendant Prebul in the Chrysler CMA. However, none of this money was transferred to the Chrysler CMA, and it remained in the FSG checking account owned and maintained by Prebul Jeep.

d. On September 12, 2007, Mr. Bensusan or others working on his behalf wired or transferred approximately \$300,000.00 to be invested by Defendant Prebul in the Chrysler CMA. However, none of this money was transferred to the Chrysler CMA, and it remained in the FSG checking account owned and maintained by Prebul Jeep.

e. On October 3, 2007, Mr. Bensusan or others working on his behalf wired or transferred approximately \$500,000.00 to be invested by Defendant Prebul in the Chrysler CMA. However, none of this money was transferred to the Chrysler CMA, and it remained in the FSG checking account owned and maintained by Prebul Jeep.

f. On December 17, 2007, Mr. Bensusan or others working on his behalf wired or transferred approximately \$5,000,000.00 to be invested by Defendant Prebul in the Chrysler CMA. However, approximately \$1,000,000.00 of this amount was not transferred to the Chrysler CMA, and it remained in the FSG checking account owned and maintained by Prebul Jeep.

40. Moreover, on various occasions, Mr. Bensusan or those working at his direction, including Mr. Andrew Fedde, would specifically request confirmation that funds sent for deposit by Defendant Prebul into the Chrysler CMA had been received and that these funds were deposited as instructed. When such requests for confirmation were made, Mr. Dalton or Ms. Johnston would confirm receipt of the monies and deposits as directed.

41. For example, on November 30, 2006, Mr. Fedde requested that Defendant David Dalton confirm receipt of a wire of \$300,000.00 intended for deposit into the Chrysler CMA. Mr. Fedde also requested to receive an account balance after the deposit of the \$300,000.00.

42. That same day, on November 30, 2006, Defendant Dalton confirmed to Mr. Fedde his receipt of \$300,000.00 intended for deposit in the Chrysler CMA. Although these monies were never actually deposited into the Chrysler CMA, Defendant Dalton represented to Mr. Fedde that the Chrysler CMA account balance after the receipt of this money was \$325,807.53 and that interest earned on the monies deposited for November would be added in the next few days. Defendant Dalton's "confirmation" of these false representations was made to Mr. Fedde

under cover of an email signed by "David Dalton, Jr., CPA" in his capacity as "CFO, Prebul Auto Group."

43. As but one example of these confirmations, Mr. Bensusan attaches to this Complaint as **Exhibit B** the November 30, 2006 email string between Defendant Dalton and Mr. Fedde; the FSG Bank Account statement from Prebul Jeep, Inc. showing the wire transfer of \$300,000.00 on November 28, 2006 from Mr. Fedde; the November and December 2006 account statements for the Chrysler CMA (Wachovia) showing the absence of any deposits of \$300,000.00 into this account. Each of these documents has been redacted to remove personal information.

44. On August 8, 2007, Mr. Fedde requested from Ms. Johnston confirmation that she had received a wire transfer of \$850,000.00, and he requested confirmation that the money had been posted to the Alliance Investments account in the Chrysler CMA.

45. Later that same day on August 8, 2007, Ms. Johnston confirmed receipt of the wire transfer, stating that "it went into the account on 8/7/07 for \$850,000.00." In reality, however, this money was not deposited into the Chrysler CMA, but was instead deposited into the FSG Bank account for Prebul Jeep. Such improper and unauthorized deposit of money was accomplished without the knowledge, authorization, or permission of Mr. Bensusan.

46. On September 11, 2007, Mr. Fedde requested from Ms. Johnston confirmation that a wire transfer of \$300,000 had been deposited to the Alliance Investments account in the Chrysler CMA.

47. The following day on September 12, 2007, Ms. Johnston confirmed receipt of the wire transfer, stating that "[w]e received the money today 9/12/07 \$300,000.00." In reality, however, this money was not deposited into the Chrysler CMA, but was instead deposited into

the FSG Bank account for Prebul Jeep, Inc. Such improper and unauthorized deposit of money was accomplished without the knowledge, authorization, or permission of Mr. Bensusan.

48. On October 2, 2007, Mr. Fedde notified Mr. Dalton that he was sending by Federal Express \$500,000 to be deposited by Defendant Prebul to the Chrysler CMA in the name of Alliance Investments.

49. The following day on October 3, 2007, Mr. Dalton confirmed receipt of the transfer, stating that he had "[r]eceived it this morning." In reality, however, this money was not deposited into the Chrysler CMA, but was instead deposited into the FSG Bank account for Prebul Jeep, Inc. Such improper and unauthorized deposit of money was accomplished without the knowledge, authorization, or permission of Mr. Bensusan.

50. Defendants used the approximately \$3,450,000.00, sent in trust but not deposited into the Chrysler CMA as directed by Mr. Bensusan, for the exclusive use and benefit of the dealerships mentioned above and for their owner, Defendant Prebul. Mr. Bensusan received no benefit, direct or otherwise, from the improper and unauthorized use of the monies he intended to be deposited into the Chrysler CMA.

51. Neither Mr. Bensusan nor any entity otherwise transmitting money for deposit into the Chrysler CMA has ever been repaid for any of these amounts that were intended to be deposited into the Chrysler CMA, but which were not actually deposited into the Chrysler CMA.

D. Details of the Defendants' Fraudulent Scheme Part II: Defendants' Improper Withdrawal and Use of Chrysler CMA Monies for Personal and Other Expenses:

52. In addition to failing to make approximately \$3,450,000.00 in deposits as agreed, Defendants withdrew, improperly and without authorization or permission, approximately

\$4,022,657.44 in additional monies intended by Mr. Bensusan to be deposited and maintained in the Chrysler CMA.

53. The approximate amount of monies improperly taken from the Chrysler CMA by the Defendants were used solely for the use and benefit of the dealerships mentioned above and of their owner, Defendant Prebul. Mr. Bensusan received no benefit, direct or otherwise, from the improper and unauthorized use of the monies he intended to be deposited by Defendant Prebul into the Chrysler CMA.

54. On April 12, 2006, Defendants improperly withdrew \$1,000,000.00 from the Chrysler CMA. Mr. Bensusan received no benefit, direct or otherwise, from the improper and unauthorized withdrawal of this money, and he did not authorize the withdrawal. The Defendants acted to keep the fact of the withdrawal secret from Mr. Bensusan or others associated with him so that he would not otherwise know of its occurrence.

55. On June 11, 2007, Defendants improperly withdrew an additional \$1,000,000.00 from the Chrysler CMA. Mr. Bensusan received no benefit, direct or otherwise, from the improper and unauthorized withdrawal of this money, and he did not authorize the withdrawal. The Defendants acted to keep the fact of the withdrawal secret from Mr. Bensusan or others associated with him so that he would not otherwise know of its occurrence.

56. On June 27, 2007, Defendants improperly withdrew an additional \$1,522,657.44 from the Chrysler CMA. Mr. Bensusan received no benefit, direct or otherwise, from the improper and unauthorized withdrawal of this money, and he did not authorize the withdrawal. The Defendants acted to keep the fact of the withdrawal secret from Mr. Bensusan or others associated with him so that he would not otherwise know of its occurrence.

57. On June 16, 2008, Defendants improperly withdrew an additional \$500,000.00 from the Chrysler CMA. Mr. Bensusan received no benefit, direct or otherwise, from the

improper and unauthorized withdrawal of this money, and he did not authorize the withdrawal. The Defendants acted to keep the fact of the withdrawal secret from Mr. Bensusan or others associated with him so that he would not otherwise know of its occurrence.

58. Most, if not all of these monies, withdrawn from the Chrysler CMA were deposited into the FSG Bank account maintained by Prebul Jeep.

59. From this FSG Bank account, Defendant Prebul paid for expenses relating to Prebul Jeep, Defendant Prebul's real estate properties, and Defendant Prebul's airplanes. In addition, Defendant Prebul withdrew from this FSG Bank account monies as part of his salary and other compensation, and Defendant Prebul used money from this account to pay for credit card accounts belonging to himself and his wife.

60. Defendant Prebul used monies intended by Mr. Bensusan for deposit into the Chrysler CMA on various personal expenses.

61. Neither Mr. Bensusan nor any entity otherwise transmitting money to Defendant Prebul for deposit into the Chrysler CMA has ever been repaid for any of these amounts improperly withdrawn without the authority or knowledge of Mr. Bensusan.

E. Details of the Defendants' Fraudulent Scheme Part III: Concealment of Fraud Through Creation of Fictitious and Fraudulent Account Statements:

62. On a monthly basis, Defendant Johnston, an employee of Defendant Prebul's dealership, would send statements regarding the various accounts purporting to show monies actually invested by Mr. Bensusan through Mr. Andrew Fedde.

63. These monthly statements purported to show the amounts of cash deposited into, and withdrawn from, the Chrysler CMA; the amounts of interest earned with a specified interest rate; and the balance remaining in those accounts at the end of the applicable reporting period.

Different monthly statements would be issued for each entity sending money for deposit into the Chrysler CMA.

64. However, these statements sent by Defendant Johnson did not reflect the true amounts of investment monies deposited by Mr. Bensusan into the Chrysler CMA, and were wholly fictitious and fraudulent.

65. Rather, these fictitious and fraudulent statements sent by Defendant Johnson were prepared in order to deceive Mr. Bensusan and the other entities investing money in the Chrysler CMA as to the true amounts invested in the Chrysler CMA, as to the true amount of interest paid on amounts invested, and as to the true amount of monies available for withdrawal. Mr. Bensusan relied upon the accuracy of these reports in financial dealings.

66. Defendant Prebul was aware of these fictitious and fraudulent statements because Defendant Johnson would also send a copy of these fictitious and fraudulent statements to Defendant Prebul at his email address of jprebul@carolex.com. In addition, Defendant Dalton often received a copy of these fictitious and fraudulent statements at his email address of jeepcpa@prebulautogroup.com.

67. Upon information and belief, these fictitious and fraudulent statements were created by Defendant Prebul or were created on his behalf and at his direction by Defendants Johnston and Dalton.

68. Defendant Prebul was aware that these fictitious and fraudulent statements did not accurately reflect the true financial position of the Chrysler CMA into which Mr. Bensusan and other entities had invested money. At no time did Defendant Prebul attempt to correct any of the information that had been misrepresented to Mr. Bensusan.

69. Representative copies of these fictitious and fraudulent account statements are attached to this Complaint as **Exhibit C**, including the fictitious and fraudulent account

statement showing the "deposit" of the \$300,000.00 referenced in **Exhibit B** on or about November 28, 2006.

F. Details of the Defendants' Fraudulent Scheme Part IV: Repayment of Monies to Mr. Bensusan from Sources Other than the Chrysler CMA:

70. On at least seven (7) occasions, Mr. Bensusan requested from Defendant Prebul to withdraw various amounts of funds that Mr. Bensusan reasonably believed were deposited in the Chrysler CMA.

71. When Mr. Bensusan or those working on his behalf made requests for withdrawals of money, Defendant Johnston or Defendant Dalton would wire money, ostensibly from the Chrysler CMA, into an account owned or controlled by Mr. Bensusan.

72. However, because Defendant Prebul and/or Prebul Jeep failed to make deposits as agreed and improperly withdrew monies from the Chrysler CMA for their own use and benefit, monies transferred to Mr. Bensusan often had to come from sources other than the Chrysler CMA.

73. On May 4, 2006, Mr. Bensusan or others working on his behalf requested a withdrawal of \$2,000,000.00 from the Chrysler CMA. Because Mr. Bensusan had previously sent to Defendant Prebul for deposit more than \$2,000,000.00 into the Chrysler CMA, Mr. Bensusan believed that sufficient funds were present in the Chrysler CMA at the time the withdrawal was requested.

74. However, because Defendant Prebul and/or Prebul Jeep had already withdrawn \$1,000,000.00 from this account improperly and without authority, Defendant Prebul and/or Prebul Jeep transferred \$1,000,000.00 from the Chrysler CMA and another \$1,000,000.00 from a line of credit maintained by Prebul Jeep at FSG Bank. Neither Defendant Prebul nor Prebul Jeep

informed Mr. Bensusan that insufficient funds were present in the Chrysler CMA for the requested \$2,000,000.00 withdrawal, nor was Mr. Bensusan informed that the FSG line of credit had been used to transmit half of the requested money.

75. Similarly, on July 10, 2007, Mr. Bensusan or others working on his behalf requested a withdrawal of \$600,000.00 from the Chrysler CMA. Although Mr. Bensusan received a subsequent transfer of \$600,000.00, the money was transferred to Mr. Bensusan from the FSG checking account owned and maintained by Prebul Jeep, not from the Chrysler CMA as requested.

76. On October 15, 2007, Mr. Bensusan or others working on his behalf requested a withdrawal of \$1,700,000.00 from the Chrysler CMA. Although Mr. Bensusan received a subsequent transfer of \$1,700,000.00, the money was transferred from the FSG checking account owned and maintained by Prebul Jeep, not from the Chrysler CMA as requested.

77. On March 13, 2008, Mr. Bensusan or others working on his behalf requested a withdrawal of \$250,000.00 from the Chrysler CMA. Although Mr. Bensusan received a subsequent transfer of \$250,000.00, the money was transferred from the FSG checking account owned and maintained by Prebul Jeep, not from the Chrysler CMA as requested.

78. Also on March 13, 2008, Mr. Bensusan or others working on his behalf requested an additional withdrawal of \$50,000.00 from the Chrysler CMA. Although Mr. Bensusan received a subsequent transfer of \$50,000.00, the money was transferred from the FSG checking account owned and maintained by Prebul Jeep, not from the Chrysler CMA as requested.

79. With respect to each of the above requests for withdrawals from the Chrysler CMA, each Defendant knew that, because of their individual and collective actions, the Chrysler CMA did not have sufficient funds available to satisfy the requested withdrawal by Mr. Bensusan.

80. At no time prior to July 30, 2008 did any Defendant or Prebul Jeep inform Mr. Bensusan or anyone working for Mr. Bensusan that the Chrysler CMA had, at any time, insufficient monies to satisfy his requests for withdrawals.

G. Mr. Bensusan's Discovery of Defendants' Fraud and Abuse of Monies in the Chrysler CMA and Defendant Prebul's Confirmation of Wrongdoing:

81. In July 2008, Bensusan requested from Defendant Prebul the withdrawal of approximately \$5,000,000.00 that he believed was held in the Chrysler CMA.

82. The fictitious and fraudulent statements of balances in the Chrysler CMA provided to Mr. Bensusan by the Defendants showed approximately \$12,178,778.44 at the end of June 2008, with the following closing balances specifically noted:

- a. \$9,812,423.59 invested on behalf of the Alliance Investment Group as of the end of June 2008;
- b. \$1,820,938.89 invested on behalf of 117 7th Avenue South as of the end of June 2008;
- c. \$545,415.96 invested on behalf of TSE Group as of the end of January 2008.

83. On July 23 2008, Mr. Bensusan requested a withdrawal of \$1,550,000.00 from the Alliance Investment Group holdings, and received that amount on that day. Shortly thereafter, on July 29, 2008, Mr. Bensusan requested the withdrawal of an additional \$5,000,000.00 be withdrawn from the Chrysler CMA. However, although the Chrysler CMA should have had well in excess of \$10.5 million after the mid-July withdrawal according to the fictitious and fraudulent account statements—and more than \$9.3 million, not accounting for interest payments, from Mr. Bensusan's own records—the Defendants only transmitted approximately \$3,000,000.00 of the funds requested to Mr. Bensusan.

84. On or about July 30, 2008, Mr. Bensusan requested to know from Defendant Prebul why the additional \$2,000,000.00 had not been transmitted as requested. Defendant Prebul told Mr. Bensusan that there were no funds available in the Chrysler CMA. Defendant Prebul told Mr. Bensusan that the individuals responsible for handling funds for the Prebul Automotive Group “were transferring it [the funds Mr. Bensusan had been told were invested in the Chrysler CMA] over to the interest bearing account and utilizing that into the operation [of the various Prebul dealerships].”

85. The following day, on or about July 31, 2008, Defendant Prebul confirmed to Steven Bensusan that the original understanding was that Mr. Bensusan’s money was to be placed in the Chrysler CMA, earmarked with the contributing depositor company names, and would earn money, and would not be removed from this account. Defendant Prebul also confirmed that as of July 31, 2008, “[t]here is nothing in that account right now.”

86. Upon information and belief, approximately \$700,000 remained in the Chrysler CMA, however, at the time that Defendant Prebul represented to Mr. Bensusan that the account had no funds available.

87. Throughout the period 2006 to 2008, Defendant Prebul knew that his dealerships were losing money in the approximate amount of \$1,500,000.00. Defendant Prebul knew that the funds provided to him in trust by Mr. Bensusan for deposit into the Chrysler CMA were not being invested in a secure, interest-bearing account, as his sister and brother-in-law believed, but rather were being used to keep Defendant Prebul’s failing businesses afloat, and to fund his lavish lifestyle.

88. During phone call conversations with Steven Bensusan, Defendant Prebul and his lawyer confirmed that “Joe and his company owe this money to Danny [Bensusan]. No question

about that.” Defendant Prebul’s lawyer also confirmed to Steven Bensusan that “Joe owes the money, that’s no problem.”

89. Defendant Prebul also confirmed to Steven Bensusan that he would have to start liquidating some stores to repay the debt owed to Mr. Bensusan. Defendant Prebul also stated to Steven Bensusan that “I’m not going to sit and point fingers or defend or anything until I get you paid back.”

90. Similarly, Defendant Prebul represented to Danny Bensusan in a telephone call that “I’m not going to stop until I get you paid back.”

91. At a meeting with Mr. Bensusan and Steven Bensusan in New York on or about August 5, 2008, Defendant Prebul again personally confirmed his understanding that repayment of this money was ultimately his responsibility, remarking, “[t]hat’s what I said to you at first, and I’ll say it until I pay you every penny back.” Defendant Prebul also delivered a promissory note to Mr. Bensusan in the amount of \$7,641,362.48 (hereinafter “**Promissory Note**”) and personally guaranteed repayment of this money. This Promissory Note is dated August 1, 2008 and is to be paid with compound interest at the rate of 10% running from July 1, 2008. This Promissory Note affirmatively waives demand, presentment, and protest and all notices thereto.

92. A true and accurate copy of this August 1, 2008 Promissory Note is attached to this Complaint as **Exhibit D**.

93. To date, Mr. Bensusan has received no payments from Defendant Prebul, whether in recognition of the original takings or on the August 1, 2008 promissory note.

94. On or about February 9, 2009, Defendant Prebul was charged with mail and wire fraud arising out of these events in a federal criminal complaint issued from the Southern District of New York. See United States v. Joseph Prebul, No. 09-MAG-321 (S.D.N.Y., Feb. 9, 2009.)

This criminal complaint is attached to this Complaint as **Exhibit E**, and the allegations of this criminal complaint are incorporated herein by reference pursuant to Tenn. R. Civ. P. 10.04.

III. CAUSES OF ACTION

COUNT I: FRAUD

95. Mr. Bensusan hereby incorporates each and every allegation contained in each paragraph above as if fully set forth herein.

96. Defendant Prebul made the following representations of fact to Mr. Bensusan:

a. that he, Defendant Prebul, or persons authorized to act on his behalf, would receive monies from Mr. Bensusan in trust for investment in the Chrysler CMA;

b. that he, Defendant Prebul, or persons authorized to act on his behalf, would deposit all monies received from Mr. Bensusan for this investment purpose into the Chrysler CMA, earmarked was monies deposited by Mr. Bensusan;

c. that he, Defendant Prebul, or persons authorized to act on his behalf, would segregate the monies received from Mr. Bensusan from other monies in the Chrysler CMA;

d. that monies deposited by Mr. Bensusan or on his behalf into the Chrysler CMA would earn monthly payments of interest;

e. that monies deposited by Mr. Bensusan or on his behalf into the Chrysler CMA would not be used for any purpose relating to the expenses or operations of Defendant Prebul's dealerships or other unauthorized purpose; and

f. that the monies deposited by Mr. Bensusan or on his behalf into the Chrysler CMA, and interest earned thereupon, would be liquid and accessible, and that he, Defendant Prebul, or persons authorized to act on his behalf, would remit to Mr. Bensusan any or all monies

deposited in the Chrysler CMA upon request by Mr. Bensusan or persons authorized to act on Mr. Bensusan's behalf.

97. Defendant Prebul knew that these statements and representations were false at the time he made the statements, but did so hoping that Mr. Bensusan would rely upon these statements and provide Defendant Prebul monies believing that these funds entrusted to Defendant Prebul would be invested in the Chrysler CMA.

98. Mr. Bensusan relied upon Defendant Prebul's statements and representations as being true and invested more than \$15 million in the Chrysler CMA. Not only did Mr. Bensusan trust Defendant Prebul as a business partner and a brother-in-law, but the statements and representations of Defendant Prebul appeared objectively reasonable on their face. The statements and representations of Defendant Prebul were material to Mr. Bensusan's decision to provide monies for investment in the Chrysler CMA, and Mr. Bensusan would not have invested any money in the Chrysler CMA had Defendant Prebul's assurances not been given.

99. On or about January 11, 2006, Mr. Bensusan invested the sum of \$1,500,000.00 with Defendant Prebul in the Chrysler CMA, which, when combined with previously invested funds, resulted in an earmarked account balance in the Chrysler CMA of slightly more than \$2,000,000.00. However, within three months of this significant investment into the Chrysler CMA, Defendant Prebul, and persons authorized to act on his behalf, improperly and without authorization from, or the knowledge of, Mr. Bensusan withdrew \$1,000,000.00 of these funds for the use and benefit of Defendant Prebul and/or his dealerships.

100. After Defendant Prebul began withdrawing Mr. Bensusan's money, he encouraged Mr. Bensusan to provide additional funds for investment in the Chrysler CMA. Defendant Prebul encouraged these new investments with the knowledge that he and his business entities could now use the funds Defendant Prebul invested.

101. To further the deception and to hide their nefarious conduct, Defendant Prebul, and persons authorized to act on his behalf, drafted fictitious and fraudulent account statements purporting to show deposits of Mr. Bensusan's monies, payments of interest, and authorized withdrawals by Mr. Bensusan. These fictitious and fraudulent account statements did not show instances in which money from Mr. Bensusan was not actually deposited by Defendant Prebul into the Chrysler CMA or in which Defendant Prebul, or persons authorized to act on his behalf, surreptitiously withdrew monies from the Chrysler CMA.

102. To further the deception and to continue hiding their nefarious conduct, Defendant Prebul, and persons authorized to act on his behalf, fulfilled requested withdrawals of money by Mr. Bensusan from sources other than the Chrysler CMA, including the FSG Bank account maintained by Prebul Jeep and from an FSG Bank line of credit maintained by Prebul Jeep.

103. Through deceit, artifice, subterfuge, and active concealment, Defendant Prebul and persons authorized to act on his behalf, took at least \$7,472,657.44, exclusive of interest, from the Chrysler CMA belonging to Mr. Bensusan.

104. The actions of Defendant Prebul and persons authorized to act on his behalf were intentional and malicious.

105. As a result of the Defendants' fraud, Mr. Bensusan has suffered special and other damages in an amount to be proven at trial.

COUNT II: CONSPIRACY TO DEFRAUD AND TO CONVERT ASSETS

106. Mr. Bensusan hereby incorporates each and every allegation contained in each paragraph above as if fully set forth herein.

107. Defendant Prebul, Defendant Johnston, Defendant Dalton, Prebul Jeep, and all other Defendants and parties of interest, conspired in a common design and scheme to fraudulently misappropriate monies belonging to Mr. Bensusan invested, and intended to be invested, in the Chrysler CMA.

108. Defendant Prebul, Defendant Johnston, Defendant Dalton, Prebul Jeep, and all other Defendants and parties of interest, perpetuated this common design and scheme by committing multiple acts and omissions that resulted in the misappropriation and conversion of monies invested, and intended to be invested, in the Chrysler CMA on behalf of Mr. Bensusan. These acts included, but are not limited to, the following:

- a. soliciting investment monies from Mr. Bensusan under false pretenses and upon the false representations set forth above;
- b. improper and unauthorized depositing of monies intended by Mr. Bensusan for deposit in the Chrysler CMA into the FSG checking account maintained by Prebul Jeep for the use and benefit of the Defendants;
- c. improper and unauthorized withdrawals of other monies intended by Mr. Bensusan for deposit in the Chrysler CMA from that account for the use and benefit of the Defendants;
- d. active concealment of the fraudulent activities through creation of false and fictitious account statements delivered to Mr. Bensusan misrepresenting the state of Mr. Bensusan's investment in the Chrysler CMA; and
- e. active concealment of the fraudulent activities through fulfilling requested withdrawals of money by Mr. Bensusan from accounts other than the Chrysler CMA, including from the FSG Bank account and/or and FSG line of credit.

109. As a direct and proximate result of the concerted actions of the co-conspirators Defendant Prebul, Defendant Johnston, Defendant Dalton, Prebul Jeep, and all other Defendants and parties of interest, to misappropriate and convert monies invested, and intended to be invested, in the Chrysler CMA on behalf of Mr. Bensusan, Mr. Bensusan suffered special and other damages in an amount to be proven at trial.

COUNT III: BREACH OF FIDUCIARY DUTY

110. Mr. Bensusan hereby incorporates each and every allegation contained in each paragraph above as if fully set forth herein.

111. At all relevant times, Defendant Prebul acted as an agent for Mr. Bensusan in receiving monies to be invested in the Chrysler CMA. In this capacity, Defendant Prebul engaged the assistance of the other Defendants to assist him in fulfilling the obligations of the agency relationship.

112. By agreeing to undertake to transact some business, or to manage some affairs, for Mr. Bensusan relating to monies to be invested in the Chrysler CMA, Defendant Prebul functioned as an agent and trustee for Mr. Bensusan.

113. As a consequence of the agency relationship, Defendant Prebul owed to Mr. Bensusan a fiduciary duty founded upon trust and confidence reposed by Mr. Bensusan in the integrity and fidelity of Defendant Prebul and those working on his behalf. This agency relationship imposed upon Defendant Prebul, and others working on behalf of Defendant Prebul, to fulfill the obligations of the agency relationship, a duty to be careful, skillful, diligent and loyal in the performance of the business for Mr. Bensusan. Defendant Prebul, and others working on behalf of Defendant Prebul to fulfill the obligations of the agency relationship, owed

undivided fidelity and faithfulness to Mr. Bensusan, and they had no privilege to favor themselves at the prejudice of Mr. Bensusan.

114. Defendant Prebul breached his fiduciary duty owed to Mr. Bensusan by misappropriating, or by failing to supervise the appropriation of, the monies intended for deposit in the Chrysler CMA for the use and benefit of himself and/or his dealerships; by submitting, or allowing the submission of, fictitious and fraudulent statements of account to Mr. Bensusan relating to monies intended to be deposited in the Chrysler CMA; and by engaging in activities for the pleasure and benefit of himself and his dealerships, to the detriment of Mr. Bensusan and in a manner that was directly adverse to the interests of Mr. Bensusan.

115. Defendants Johnston and Dalton intentionally assisted Defendant Prebul in the breach of his fiduciary duty to Mr. Bensusan. As such, each of these Defendants is subject to liability for the harm they have caused to Mr. Bensusan and shall also owe restitution for any profit or benefit they unjustly derived or received from the transaction.

116. Prebul Jeep received monies otherwise intended by Mr. Bensusan for deposit into Chrysler CMA, and Prebul Jeep had knowledge that receipt of such monies into its operating funds were in violation of Defendant Prebul's fiduciary duty to Mr. Bensusan. As such, Prebul Jeep either holds the property thus acquired as a constructive trustee in favor of Mr. Bensusan, or, at the election of Mr. Bensusan, is subject to liability to the extent to which it has been unjustly enriched.

117. In a manner similar to Prebul Jeep, all other corporate Defendants and parties of interest also received monies otherwise intended by Mr. Bensusan for deposit into Chrysler CMA, and each of these Defendants and parties of interest had knowledge that receipt of such monies into its operating funds were in violation of Defendant Prebul's fiduciary duty to Mr. Bensusan. As such, each of these Defendants and parties of interest either holds the property

thus acquired as a constructive trustee in favor of Mr. Bensusan, or, at the election of Mr. Bensusan, is subject to liability to the extent to which each has been unjustly enriched.

118. As a direct and proximate result of the Defendant Prebul's breach of fiduciary duty, Mr. Bensusan has suffered special and other damages in an amount to be proven at trial.

COUNT IV: NEGLIGENT MISREPRESENTATION

119. Mr. Bensusan hereby incorporates each and every allegation contained in each paragraph above as if fully set forth herein.

120. Defendant Prebul made the following representations of fact to Mr. Bensusan:

a. that he, Defendant Prebul, or persons authorized to act on his behalf, would receive monies from Mr. Bensusan in trust for investment in the Chrysler CMA;

b. that he, Defendant Prebul, or persons authorized to act on his behalf, would deposit all monies received from Mr. Bensusan for this investment purpose into the Chrysler CMA, earmarked was monies deposited by Mr. Bensusan;

c. that he, Defendant Prebul, or persons authorized to act on his behalf, would segregate the monies received from Mr. Bensusan from other monies in the Chrysler CMA;

d. that monies deposited by Mr. Bensusan or on his behalf into the Chrysler CMA would earn monthly payments of interest;

e. that monies deposited by Mr. Bensusan or on his behalf into the Chrysler CMA would not be used for any purpose relating to the expenses or operations of Defendant Prebul's dealerships or other unauthorized purpose; and

f. that the monies deposited by Mr. Bensusan or on his behalf into the Chrysler CMA, and interest earned thereupon, would be liquid and accessible, and that he, Defendant Prebul, or persons authorized to act on his behalf, would remit to Mr. Bensusan any or all monies

deposited in the Chrysler CMA upon request by Mr. Bensusan or persons authorized to act on Mr. Bensusan's behalf.

121. Defendant Prebul either knew that these statements and representations were false at the time that he made the statements, or he failed to exercise reasonable care in ascertaining the truth of these statements, particularly with regard to the segregation and use of the monies received from Mr. Bensusan or others acting on behalf of Mr. Bensusan. Alternatively, Defendant Prebul failed to exercise reasonable care in communicating to Mr. Bensusan how the monies invested by Mr. Bensusan would be segregated and used by Defendant Prebul and by those acting at his direction.

122. In addition, Defendant Prebul and those authorized to work for him owed a duty to Mr. Bensusan to advise him truthfully of the various acts and omissions of the Defendants taken with regard to the monies invested in the Chrysler CMA. Defendant Prebul negligently made statements, or negligently adopted statements made by those authorized to work for him, with respect to the monies actually invested in the Chrysler CMA on behalf of Mr. Bensusan without taking reasonable care to ascertain the truth of the statements made or adopted.

123. Defendant Prebul, acting in the course of his business or in a commercial transaction in which he had a financial interest, intended that his statements and representations to Mr. Bensusan would influence Mr. Bensusan to entrust money to Defendant Prebul for investment in the Chrysler CMA.

124. Mr. Bensusan reasonably relied upon Defendant Prebul's statements and representations as being true and invested more than \$15 million in the Chrysler CMA. Not only did Mr. Bensusan trust Defendant Prebul as a business partner and a brother-in-law, but the statements and representations of Defendant Prebul appeared objectively reasonable on their face. The statements and representations of Defendant Prebul were material to Mr. Bensusan's

decision to invest money in the Chrysler CMA, and Mr. Bensusan would not have entrusted any money to Defendant Prebul for investment in the Chrysler CMA had Defendant Prebul's assurances not been given.

125. It was reasonably foreseeable to Defendant Prebul that his failure to exercise reasonable care in ascertaining the truth of his statements made to Mr. Bensusan would cause financial injury to Mr. Bensusan.

126. As a result of the Defendant Prebul's failure to exercise reasonable care, Mr. Bensusan has suffered special and other damages in an amount to be proven at trial.

COUNT V: NEGLIGENT SUPERVISION

127. Mr. Bensusan hereby incorporates each and every allegation contained in each paragraph above as if fully set forth herein.

128. In his capacity as owner and CEO of Prebul Jeep, Defendant Prebul had the authority to supervise the actions of persons at Prebul Jeep who handled Mr. Bensusan's money in connection with the Chrysler CMA, including those of Defendant Johnston and Defendant Dalton.

129. By soliciting investment from Mr. Bensusan in his Chrysler CMA, Defendant Prebul and Prebul Jeep assumed a duty to use reasonable care in the supervision of others who handled Mr. Bensusan's money in connection with the Chrysler CMA.

130. Defendant Prebul and Prebul Jeep negligently or recklessly failed to exercise reasonable care to prevent Mr. Bensusan's money, which was intended to be invested in the Chrysler CMA, from being diverted for deposit into the general checking account owned and maintained by Prebul Jeep at FSG Bank for the benefit of Defendant Prebul and/or his dealerships.

131. Defendant Prebul Jeep negligently or recklessly failed to exercise reasonable care to prevent Mr. Bensusan's money, which was intended to be invested in the Chrysler CMA, from being withdrawn from the Chrysler CMA and used for the benefit of Defendant Prebul and/or his dealerships.

132. It was reasonably foreseeable that a failure to exercise reasonable care in the supervision of persons handling Mr. Bensusan's money in connection with the Chrysler CMA would lead to mismanagement and misdirection of the intended uses of this money.

133. As a direct and proximate result of Defendant Prebul's failure to supervise the actions of persons at Prebul Jeep who handled Mr. Bensusan's money in connection with the Chrysler CMA, including those of Defendant Johnston and Defendant Dalton, Mr. Bensusan has suffered special and other damages in an amount to be proven at trial.

COUNT VI: CONVERSION

134. Mr. Bensusan hereby incorporates each and every allegation contained in each paragraph above as if fully set forth herein.

135. Defendant Prebul, along with each other Defendant and all parties of interest, and persons authorized to act on behalf of these persons and entities, intentionally took, for their own use and benefit, cash monies intended to be invested in the Chrysler CMA in excess of \$7,472,657.44, exclusive of interest, that were not rightfully due to them, and without permission to do so from Mr. Bensusan or persons acting on behalf of Mr. Bensusan.

136. In each of the actions alleged under this Count, the Defendants and parties of interest either intended that Mr. Bensusan be deprived of the future use of such assets, or knew that the inevitable result of their actions would be to deprive Mr. Bensusan of the future use of such assets.

137. No Defendant or any party of interest, nor any other person authorized to act on their behalf, was entitled to exercise control over any money invested in the Chrysler CMA without the authorization, permission, and knowledge of Mr. Bensusan.

138. At all times relevant, Defendants, parties of interest, and persons acting on their behalf were aware that their actions in converting the monies intended to be invested in the Chrysler CMA were not taken with the knowledge or permission, expressed or implied, of Mr. Bensusan or persons acting on Mr. Bensusan's behalf.

139. As a result of the Defendants' conversion, Mr. Bensusan has suffered special and other damages in an amount to be proven at trial.

COUNT VII: BREACH OF CONTRACT

140. Mr. Bensusan hereby incorporates each and every allegation contained in each paragraph above as if fully set forth herein.

141. As of January 29, 2009, the Promissory Note, bearing ten (10%) percent interest, compounded per annum, was due and owing to Mr. Bensusan and, notwithstanding demands for payment, Defendant Prebul has refused to pay any part of the principal or interest, in direct breach of his contractual obligation.

142. Mr. Bensusan has performed each and every act required to be performed by him in accordance with the terms and conditions of the relevant agreements.

143. As the direct and proximate result of Defendant Prebul's breach of contract, Mr. Bensusan has sustained and will continue to sustain actual damages in an amount to be determined at trial but not less than seven million six hundred forty one thousand three hundred sixty two dollars and forty eight cents (\$7,641,362.48), with interest thereon at the rate of ten (10%) annually, compounded, from July 1, 2008.

144. Mr. Bensusan also demands that Defendant Prebul indemnify him for all costs of collection and litigation, together with a reasonable attorney's fee, as set forth in the Promissory Note.

COUNT VIII: PROMISSORY ESTOPPEL

145. Mr. Bensusan hereby incorporates each and every allegation contained in each paragraph above as if fully set forth herein.

146. Defendant Prebul made the following representations of fact to Mr. Bensusan:

- a. that he, Defendant Prebul, or persons authorized to act on his behalf, would receive monies from Mr. Bensusan in trust for investment in the Chrysler CMA;
- b. that he, Defendant Prebul, or persons authorized to act on his behalf, would deposit all monies received from Mr. Bensusan for this investment purpose into the Chrysler CMA, earmarked was monies deposited by Mr. Bensusan;
- c. that he, Defendant Prebul, or persons authorized to act on his behalf, would segregate the monies received from Mr. Bensusan from other monies in the Chrysler CMA;
- d. that monies deposited by Mr. Bensusan or on his behalf into the Chrysler CMA would earn monthly payments of interest;
- e. that monies deposited by Mr. Bensusan or on his behalf into the Chrysler CMA would not be used for any purpose relating to the expenses or operations of Defendant Prebul's dealerships or other unauthorized purpose; and
- f. that the monies deposited by Mr. Bensusan or on his behalf into the Chrysler CMA, and interest earned thereupon, would be liquid and accessible, and that he, Defendant Prebul, or persons authorized to act on his behalf, would remit to Mr. Bensusan any or all monies

deposited in the Chrysler CMA upon request by Mr. Bensusan or persons authorized to act on Mr. Bensusan's behalf.

147. These promises were made by Defendant Prebul to induce Mr. Bensusan to provide monies for investment in the Chrysler CMA.

148. Mr. Bensusan reasonably relied upon Defendant Prebul's promises and invested more than \$15 million in the Chrysler CMA. Not only did Mr. Bensusan trust Defendant Prebul as a business partner and a brother-in-law, but the statements and representations of Defendant Prebul appeared objectively reasonable on their face. These promises made by Defendant Prebul were material to Mr. Bensusan's decision to invest money in the Chrysler CMA, and Mr. Bensusan would not have invested any money in the Chrysler CMA had Defendant Prebul's promises not been made.

149. Defendant Prebul has broken his promises to Mr. Bensusan by failing to keep the money invested by Mr. Bensusan segregated in the Chrysler CMA, by using these monies for the benefit of himself and/or his dealerships, and by failing to remit to Mr. Bensusan monies from the Chrysler CMA upon request by Mr. Bensusan or persons authorized to act on Mr. Bensusan's behalf.

150. Mr. Bensusan has suffered substantial economic loss in excess of \$7,472,657.44, exclusive of interest, in reliance upon the promises made by Defendant Prebul, and this loss was reasonably foreseeable to Defendant Prebul. The injustice resulting from the actions of Defendant Prebul may only be avoided by enforcing the promises made by Defendant Prebul.

COUNT IX: PREJUDGMENT ATTACHMENT

151. On February 10, 2009, Defendant Prebul made an initial appearance before the Honorable William B. Mitchell Carter, a United States Magistrate Judge for the Eastern District

of Tennessee. The Court also conducted a hearing to determine whether Defendant Prebul would be released from federal custody pending trial on the criminal complaint.

152. At the conclusion of the detention hearing, Magistrate Judge Carter determined that a set of conditions would ensure Defendant Prebul's attendance at the federal criminal trial, including the posting of a \$2,000,000.00 surety bond. The Court also ordered as a condition of release that Defendant Prebul not alienate or sale and real or personal property belonging to him, save for monies held in various bank accounts.

153. The Court's set of conditions did not address real or personal property in which the other Defendants to this action own or have an interest. In addition, the Court's set of conditions apparently did not address any other real or personal property owned by another entity in which Defendant Prebul owned a majority share.

154. The Government represented to the Court that its investigation revealed that Defendant Prebul himself did not have sufficient assets in which to pay restitution to Mr. Bensusan. As such, the availability of other assets is of critical importance to ensuring that amounts justly due to Mr. Bensusan are paid.

155. Upon information and belief, Prebul Jeep and several parties of interest ceased active operations, at least temporarily, on or about February 11, 2009. Local media reported this day that two of Defendant Prebul's dealerships, the Prebul Infiniti and the Prebul Volvo dealership, on Brainerd Road in Chattanooga, Tennessee were closed for business. In addition, inventory from Prebul Jeep are, or have been, in the process of being transported outside of the jurisdiction to Atlanta, Georgia.

156. At or near the close of business on February 11, 2009, several of Defendant Prebul's dealerships filed a Petition in Bankruptcy under Chapter 7 of the United States

Bankruptcy Code. The dealerships seeking liquidation in bankruptcy included Prebul Jeep, Inc., Prebul Motorcars, LLC, Prebul Infiniti, and Prebul Dodge, LLC, among others.

157. There is a reasonable probability that cause exists for the issuance of a writ of attachment exists under Tenn. Code Ann. § 29-6-101(2), as Mr. Bensusan believes that Defendant Prebul and/or Prebul Jeep have removed, or is about to remove, the Defendants' property from the State;

158. There is a reasonable probability that cause exists for the issuance of a writ of attachment exists under Tenn. Code Ann. § 29-6-101(6), as Mr. Bensusan believes that Defendant Prebul and/or Prebul Jeep have fraudulently conveyed, transferred or assigned certain personal property, or has fraudulently concealed, removed or disposed of property, all with the intent of hindering or delaying the Plaintiff or to render process of execution unavailing if judgment is obtained by the Plaintiff, by reason of the Defendants' actions of causing title to property in which the Defendants have or may have a beneficial interest to be held in the Defendants' name and the names of others as trustee for the Defendants' use and benefit or for the use and benefit of Defendants' family members.

159. Although the property of the bankrupting dealerships cannot be attached at this point due to application of 11 U.S.C. § 362, the present Defendants nevertheless still own or have interests in certain real estate located in Hamilton County, Tennessee, all as is more particularly described in **Exhibit F** attached hereto and made a part hereof. Mr. Bensusan is entitled, pursuant to Tenn. R. Civ. P. 64, to have the Defendants' interest, if any, in the property sequestered and attached so that the value thereof may be applied to the satisfaction of any judgment that may be rendered in Mr. Bensusan's favor.

160. This action is one principally in tort for fraud and other breaches of legal duty and for breach of contract on a Promissory Note. The damages sued for are justly due to Mr.

Bensusan. Although the true amount of such damages are not yet ascertained, these damages are believed to be no less than \$7,472,657.44, exclusive of interest.

WHEREFORE, for the foregoing reasons, Mr. Bensusan requests that the Court grant the following relief:

1. That proper process issue and be served upon Defendants requiring them to appear and answer this Complaint.

2. That an immediate temporary restraining order issue preventing Defendant Prebul and Defendant Corporations and Limited Liability Companies from encumbering, selling or otherwise disposing of assets outside of the normal and ordinary course of dealings of the business, or from taking any other action that will cause a depreciation of the value of the assets, property, and equipment until a hearing can be held, and that such temporary restraining order be converted to a preliminary injunction to last through the pendency of these proceedings.

3. That this Court issue a writ of attachment to the Sheriff of Hamilton County, Tennessee, directing the Sheriff forthwith to sequester and attach the real and personal property described in **Exhibit F** hereto, and to hold the same as provided by law for the satisfaction of any judgment recoverable by Mr. Bensusan for compensatory damages in the approximate amount of \$7,472,657.44;

4. That judgment be entered against the Defendants, jointly and severally, for compensatory damages in an amount to be proven at trial;

5. That judgment be entered against the Defendants, jointly and severally, for punitive damages in the amount of \$25,000,000.00 to punish the Defendants for their willful, wanton, malicious, and reckless misconduct described above;

6. That Mr. Bensusan be awarded prejudgment interest pursuant to Tenn. Code Ann. § 47-14-123;

7. That all court costs be taxed against Defendants, jointly and severally;

8. That Mr. Bensusan recover from the Defendants all of his discretionary costs arising from this litigation;

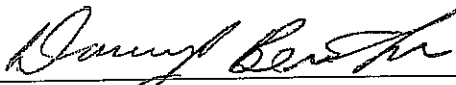
9. That Mr. Bensusan be awarded his reasonable attorneys' fees and the costs of this action from the Defendants as provided for in the Promissory Note;

10. That the Court award Mr. Bensusan such other general and special relief to which he may be entitled, as the Court deems appropriate, and as justice and equity require.

[Verification on Next Page]

VERIFICATION


I, Danny Bensusan, the party plaintiff in the above action, hereby verify under oath that the preceding allegations set forth in this Complaint are true and correct to the best of my knowledge, information, and belief.



Danny Bensusan

STATE OF NEW YORK)
COUNTY OF New York)

Sworn to and subscribed before me,
this the 11th day of February, 2009.



Notary Public

MICHAEL FRISCH
Notary Public, State of New York
No. 02FR6118037
Qualified in New York County
Commission expires _____

My Commission expires:
11/1/12

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.

[Signatures of Counsel on Next Page]

Respectfully submitted,

CHAMBLISS, BAHNER & STOPHEL, P.C.

By: Hugh J. Moore, Jr.
Bruce C. Bailey, Tenn. BPR No. 011217
Hugh J. Moore, Jr., Tenn. BPR No. 000883
Thomas Greenholtz, Tenn. BPR No. 020105
1000 Tallan Building, Two Union Square
Chattanooga, Tennessee 37402
Phone: (423) 756-3000
Fax: (423) 508-1235

Counsel for Plaintiff

OF COUNSEL:

SHUKAT ARROW HAFFER WEBER & HERBSMAN, LLP

Peter S. Shukat, Esq.
Dorothy M. Weber, Esq.
111 West 57th Street, Ste 1120
New York, New York 10019
Phone: (212) 245-4580
Fax: (212) 956-6471

STILLMAN, FRIEDMAN & SHECHTMAN, P.C.

Nathaniel Z. Marmur, Esq.
425 Park Avenue
New York, New York 10022
Phone: (212) 223-0200
Fax: (212) 223-1942

From: jprebul@aol.com
Sent: Sunday, January 15, 2006 9:24 PM
To:
Cc: jeepcpa@prebulautogroup.com
Subject: TSE and CMA
Follow Up Flag: Follow up
Flag Status: Flagged

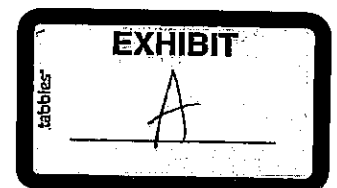
Tsion,

Any reserve dollars in TSE should be invested in the CMA account with David Dalton. The rate of return last month was bringing 6% or better. Please don't let these funds sit around and draw 3% when we have the instrument in place to draw double the going rate.

With regards,

Joe Prebul
Prebul AutoGroup
2120 Chapman Road
Chattanooga, TN 37421

Office: 423-855-1166 ext. 102
Cell:
e-mail: Jprebul@aol.com



Elizabeth Morales

From: "David Dalton" <leebccpa@prebulautogroup.com>
To: <Andy@>
Sent: Thursday, November 30, 2006 4:03 PM
Subject: RE: 117 Seventh Acct#

The balance is now \$325,807.53. This is prior to the interest earnings for November however. This will be added in the next few days.

Thanks

DAVID DALTON JR., CPA
CFO
PREBUL AUTO GROUP
2120 CHAPMAN RD
CHATTANOOGA, TN 37421
423-598-4848 EXT 4848
423-855-1855 FAX

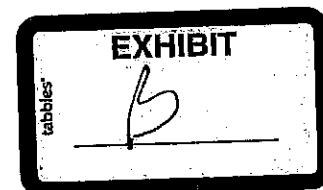
From: Andrew Fedde [mailto:Andy@]
Sent: Thursday, November 30, 2006 2:31 PM
To: 'CPA David Daulton Jr.'
Subject: 117 Seventh Acct

Mr. Daulton,

I appreciate the call to confirm that you had received the wire from us. I don't mean to be too much of a bother, but I was hoping you could give me that account balance after the \$300,00.00 deposit. Thank you in advance.

Andrew Fedde
Controller
Bensusan Restaurant Corp.
dba The Blue Note
131 W. 3rd. St.
New York, NY 10012
Andy@

The information contained in the electronic mail transmission may be privileged and confidential, and therefore, protected from disclosure. If you have received this communication in error, please notify us immediately by replying to this message and deleting it from your computer without copying or disclosing it.





Business High Performance Money Market

WACHOVIA

PREBUL JEEP
2120 CHAPMAN RD
CHATTANOOGA TN. 37421

CB

Business High Performance Money Market

11/01/2006 thru 11/30/2006

Account number:
Account owner(s): PREBUL JEEP

Account Summary

Opening balance 11/01	\$15,506.32
Deposits and other credits	80.89
Interest paid	13.19
Closing balance 11/30	\$15,600.40

Deposits and Other Credits

	Amount	Description
08	80.89	AE ADJCASE# TO POST INTEREST ADJUSTMENT FOR PERIOD BEGINNING 09/30/2006 TO 10/31/2006 PER VICKI LOWERY
11/30	13.19	INTEREST FROM 11/01/2006 THROUGH 11/30/2006
Total	\$94.08	

104 INT
(603)
NOV INT EARNED
180106DJ10

Interest

Number of days this statement period	30
Annual percentage yield earned	1.04%
Interest earned this statement period	\$13.19
Interest paid this statement period	\$13.19
Interest paid this year	\$37,630.22

Daily Balance Summary

Dates	Amount	Dates	Amount
11/08	15,587.21	11/30	15,600.40

MAC Bensusan's \$300.00 was not deposited into
the Wachovia account



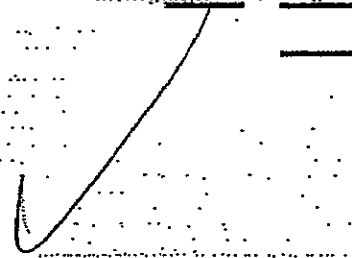
Business High Performance Money Market

WACHOVIA



PREBUL JEEP
2120 CHAPMAN RD
CHATTANOOGA TN 37421

CB



Business High Performance Money Market

12/01/2006 thru 12/29/2006

Account number:
Account owner(s): PREBUL JEEP

Account Summary

Opening balance 12/01	\$15,600.40
Deposits and other credits	76.90 +
Interest paid	12.81 +
Closing balance 12/29	\$15,690.11

010107053

Deposits and Other Credits

Date	Amount	Description
12/29	76.90	AE ADJCASE# TO POST INTEREST ADJUSTMENT FOR PERIOD BEGINNING 11/01/2006 TO 11/30/2006 PER VICKI LOWERY
12/29	12.81	INTEREST FROM 12/01/2006 THROUGH 12/29/2006
Total	\$89.71	

104 INT
<603>
DEC INT earned

Interest

Number of days this statement period	29
Annual percentage yield earned	1.04%
Interest earned this statement period	\$12.81
Interest paid this statement period	\$12.81
Interest paid this year	\$37,719.93

Daily Balance Summary

Dates	Amount	Dates	Amount
12/12	15,677.30	12/29	15,690.11

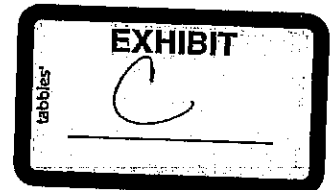
117 7th Ave South Account

260A

Account Balance as of 12/31/05

\$474,019.88

<u>MONTH</u>	<u>INTEREST EARNED</u>	<u>Date \$ In/Out</u>	<u>Money In/Out</u>	<u>TOTAL</u>	<u>CURRENT RATE</u> (Libor+2.82)	<u>STD CMA RATE</u> (Libor+1.65)
Jan '06	\$12,188.63	1/1/2006	\$1,500,000.00	\$1,986,208.61	7.27	6.10
Feb '06	\$11,351.32		\$0.00	\$1,997,559.82	7.45	6.28
Mar '06	\$12,741.15		\$0.00	\$2,010,300.97	7.51	6.34
Apr '06	\$12,739.25		\$0.00	\$2,023,040.22	7.71	6.54
May '06	\$1,753.67	5/4/2006	(\$2,000,000.00)	\$24,793.89	7.91	6.74
May '06	\$145.07		\$0.00	\$24,938.97	7.91	6.74
June '06	\$163.98		\$0.00	\$25,102.85	8.00	6.83
July '06	\$175.66		\$0.00	\$25,278.63	8.24	7.07
Aug '06	\$178.20		\$0.00	\$25,456.83	8.30	7.13
Sept '06	\$171.99		\$0.00	\$25,628.82	8.22	7.06
Oct '06	\$178.71		\$0.00	\$25,807.52	8.21	7.04
Nov '06	\$309.11	11/28/2006	\$300,000.00	\$326,116.63	8.21	7.04
Dec '06	\$2,282.28		\$0.00	\$328,398.91	8.24	7.07
Jan '07	\$2,292.67		\$0.00	\$330,691.58	8.22	7.05
Feb '07	\$5,566.39	2/12 & 2/16	\$1,167,975.00	\$1,504,232.98	8.21	7.04
Mar '07	\$10,488.83		\$0.00	\$1,514,721.81	8.21	7.04
Apr '07	\$10,362.41	4/27/2007	\$199,975.00	\$1,725,059.22	8.21	7.04
May '07	\$12,028.63		\$0.00	\$1,737,087.84	8.21	7.04
June '07	\$11,721.77		\$0.00	\$1,748,809.62	8.21	7.04
July '07	\$12,194.23		\$0.00	\$1,761,003.85	8.21	7.04
Aug '07	\$12,458.74		\$0.00	\$1,773,462.59	8.33	7.16



Alliance Investment Group, LLC

(EMAIL TO @)

Record to 11/

Initial Investment on 5/30/07: \$3,000,000.00

<u>MONTH</u>	<u>INTEREST EARNED</u>	<u>Date \$ In/Out</u>	<u>Money In/Out</u>	<u>TOTAL</u>	<u>CURRENT RATE</u> (Libor+2.82)
May '07	\$1,349.59		\$0.00	\$3,001,349.59	8.21
June '07	\$20,252.94		\$0.00	\$3,021,602.53	8.21
July '07	\$21,069.26		\$0.00	\$3,042,671.79	8.21
Aug '07	\$21,562.90	8/7/2007	\$850,000.00	\$3,914,224.70	8.33
Sept '07	\$25,616.62	9/12/2007	\$300,000.00	\$4,239,841.31	7.95
Oct '07	\$22,825.90	10/3/2007	\$500,000.00	\$4,762,667.22	7.54
		10/15/2007	(\$1,700,000.00)	\$3,062,667.22	
Nov '07	\$19,206.70		\$0.00	\$3,081,873.92	7.63
Dec '07	\$34,698.86	12/17/2007	\$5,000,000.00	\$8,116,572.78	7.42
Jan '08	\$41,981.58		\$0.00	\$8,158,554.36	6.09
Feb '08	\$39,476.23		\$0.00	\$8,198,030.59	6.09
Mar '08	\$37,934.60	3/13/2008	(\$250,000.00)	\$7,985,965.18	5.54
Apr '08	\$37,085.51		\$0.00	\$8,023,050.69	5.65
May '08	\$45,080.13	5/2/2008	\$1,699,975.00	\$9,768,105.83	5.52
June '08	\$44,317.76		\$0.00	\$9,812,423.59	5.52
		7/23/2008	(\$1,550,000.00)	\$8,262,423.59	
		7/29/2008	(\$3,000,000.00)	\$5,262,423.59	

PROMISSORY NOTE

\$7,641,362.48

Chattanooga, Tennessee
August 1, 2008

FOR VALUE RECEIVED JOE PREBUL (the "Maker"), hereby promises to pay to the order of DANNY BENSUSAN or his designee (the "Payee") whose address is c/o Blue Note Night Club, 131 West 3rd Street, New York, New York 10012, the principal sum of Seven Million Six Hundred Forty One Thousand Three Hundred Sixty-Two and 48/100 Dollars (\$7,641,362.48), together with compounded interest from July 1, 2008 at the rate of ten percent (10.00%) per annum on the unpaid principal balance.

This Promissory Note shall be payable to Payee on demand.

The undersigned Maker may pay the principal amount outstanding hereunder, or any portion thereof, together with all accrued interest hereunder, at any time without penalty. All payments shall be first applied to interest and the balance to principal.

If the undersigned Maker shall fail to make payment on demand for payment, then this Promissory Note shall, without notice or demand for payment (the same being expressly waived), be and become immediately due and payable for all purposes, at the option of the holder of this Promissory Note.

This Promissory Note shall become due and payable if any one or more of the following events shall occur:

- 1) Application for or consent to the appointment of a receiver, trustee, or liquidator for the Maker or any of his property;
- 2) Sale of any of the Maker's assets;
- 3) General assignment by the Maker for the benefit of creditors; or
- 4) Filing by the Maker a voluntary petition of Bankruptcy or a petition to or answer seeking reorganization or arrangements with creditors.

If this Promissory Note shall be placed in the hands of an attorney for collection by suit or otherwise or to protect any security given for its payment, or to further secure the same, all makers and endorsers agree to pay all costs of collection and litigation, together with a reasonable attorney's fee.

All payments hereunder shall be made to the address set forth above or such other address as may be designated by the Payee.

The Maker shall remain fully bound hereunder until this Promissory Note shall be fully paid and waives demand presentment and protest and all notices thereto, and further agrees to remain bound, notwithstanding any extension, renewal, modification, waiver, or other indulgence by the Payee or any subsequent holder of this Promissory Note. No modification or indulgence by Payee or any subsequent holder hereof shall be binding unless in writing signed by the Payee or any

EXHIBIT

tabbles

D

subsequent holder hereof; and any indulgence on any one occasion shall not be an indulgence for any other future occasion.

This note shall be governed by and construed in accordance with the laws of the State of New York.

The venue of any legal proceedings with respect to this Promissory Note shall be solely and exclusively, at the option of the Payee, in the Supreme Court of the State of New York County of New York or the Federal District Court for the Southern District of New York, located in New York County.

This note is made this 1st day of August, 2008.



Joe Prebul, Maker

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

09 MAG 321

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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

----- x
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.

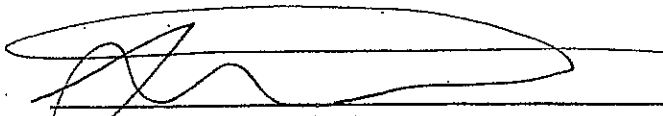
17. Based on my review of a consensually recorded conversation between Victim-1 and JOSEPH PREBUL, the defendant, in or about August 2008, and my conversation with Victim-1, I have learned that PREBUL met with Victim-1 in New York, New York in or about August 2008, and that PREBUL admitted during that 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

4. 401 Brady Point Road, Signal Mountain, Tennessee 37377, being more fully described as Tax Parcel 107K-J-008;
5. 2138 Amnicola Highway, Chattanooga, Tennessee 37406, being more fully described as Tax Parcel 136C-B-001-09;
6. 7354 East Brainerd Road, Chattanooga, Tennessee 37421, being more fully described as Tax Parcel 158L-B-001;
7. 2830 Amnicola Highway, Chattanooga, Tennessee 37406, being more fully described as Tax Parcel 127K-B-012;
8. 1040 Stuart Street, Chattanooga, Tennessee 37406, being more fully described as Tax Parcel 127K-B-013.02;
9. 5969 Brainerd Road, Chattanooga, Tennessee 37411, being more fully described as Tax Parcel 157E-A-004; and
10. 5915 Brainerd Road, Chattanooga, Tennessee 37411, being more fully described as Tax Parcel 157E-A-010.