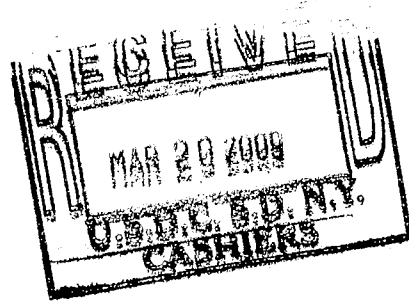


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

Danny Bensusan,
Plaintiff,

09 CIV _____

v.

Joseph Prebul and Julius Greenwald
Defendants.

COMPLAINT

-----X

Plaintiff Danny Bensusan ("Bensusan") by his attorneys, The Law Offices of Gerald J. McMahon and Shukat Arrow Hafer Weber & Herbsman, LLP, for his Complaint, alleges, upon knowledge with respect to his own acts and upon information and belief with respect to the acts of all others, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332. This is an action, *inter alia*, for declaratory judgment arising under the Declaratory Judgment Act, 28

U.S.C. §2201 and 2202, and for claims, inter alia, of breach of contract and fraud. The matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. There is complete diversity between the Plaintiff and Defendants.

2. Venue lies in the Southern District of New York pursuant to 28 U.S.C. §1391.

PARTIES

3. Plaintiff Danny Bensusan is a citizen and resident of the City of New York, State of New York.

4. Defendant Joseph Prebul is a citizen and resident of Tennessee.

5. Defendant Julius Greenwald is a citizen and resident of Tennessee.

NATURE OF THE ACTION

6. This action arises out of a broad pattern of fraudulent conduct by which Defendants engaged in a series of schemes and artifices to defraud the Plaintiff of his money.

BACKGROUND FACTS

7. 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.

8. Defendant Prebul had a massive automotive empire. He operated, owned and managed several 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 and Dalton, Georgia and in Dayton, Tennessee. Defendant Prebul is the sole shareholder and controlling force of each of the corporations involved in the schemes.

THE FRAUDULENT SCHEMES

A. Investments in the Chrysler Cash Management Account:

9. In 1996, Defendant Prebul offered Mr. Bensusan the opportunity to invest cash in a Chrysler Cash Management Account (“Chrysler CMA”).

10. 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.

11. 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.

12. 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.

13. In reality, however, the Chrysler CMA did not actually pay interest to any person or entity that deposited money [Defendant Prebul, Prebul Jeep or to any other person or entities.] Instead, the interest earned on monies deposited into the Chrysler CMA was automatically used to pay down loans owed by Defendant Prebul and/or Prebul Jeep to Chrysler.

14. 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 through Defendant Prebul.

15. 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.

16. At various times from and after 2005, Mr. Bensusan, both personally and through various operating entities, invested approximately \$15,497,925.00 in the Chrysler CMA through Defendant Prebul.

17. Mr. Bensusan, or those working on his behalf, would wire or send investments through overnight carrier to Prebul or his employees for investment by Defendant Prebul in the Chrysler CMA. When the investment monies were to be transferred by Mr. Bensusan by wire, Prebul Auto Group CFO, David Dalton ("CFO 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.

18. 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.

19. 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.

20. For example, on January 15, 2006, Defendant Prebul urged Tsion Bensusan, Mr. Bensusan's son, to invest in the Chrysler CMA through CFO 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.

21. In addition, on January 23, 2006, Defendant Prebul recommended both to Tsion Bensusan and to Steven Bensusan, who is also Mr. Bensusan's son, 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).

22. 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."

23. 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.

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

24. 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.

25. 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, CFO Dalton or successor CFO, Deana Johnston, would confirm receipt of the monies and deposits as directed.

26. For example, on November 30, 2006, Mr. Fedde requested that CFO 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.

27. That same day, on November 30, 2006, David 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, David 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. David 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."

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

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

36. In addition to failing to make approximately \$3,450,000.00 in deposits as agreed, Defendant Prebul 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.

37. The monies improperly taken from the Chrysler CMA by Defendant Prebul were used solely for the use and benefit of the Prebul dealerships and 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.

38. On April 12, 2006, Defendant Prebul 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. Defendant Prebul acted to keep the fact of the withdrawal secret from Mr. Bensusan or others associated with him.

39. On June 11, 2007, Defendant Prebul 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. Defendant Prebul acted to keep the fact of the withdrawal secret from Mr. Bensusan or others associated with him.

40. On June 27, 2007, Defendant Prebul 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. Defendant Prebul acted to keep the fact of the withdrawal secret from Mr. Bensusan or others associated with him.

41. On June 16, 2008, Defendant Prebul 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. Defendant Prebul acted to keep the fact of the withdrawal secret from Mr. Bensusan or others associated with him.

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

43. 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.

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

45. 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.

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

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

47. 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.

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

49. Rather, these fictitious and fraudulent statements sent by Johnston 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 all of his financial dealings.

50. Deana Johnston would also send a copy of these fictitious and fraudulent statements to Defendant Prebul at his email address of jprebul@carolex.com.

51. 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 Johnston and Dalton.

52. 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.

53. Representative copies of these fictitious and fraudulent account statements are attached to this Complaint as Exhibit B, including the fictitious and fraudulent account statement showing the "deposit" of the \$300,000.00 on or about November 28, 2006.

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

54. 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.

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

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

57. 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 more than \$2,000,000.00 for deposit into the Chrysler CMA, Mr. Bensusan reasonably believed that sufficient funds were present in the Chrysler CMA at the time the withdrawal was requested.

58. However, because Defendant Prebul had already withdrawn \$1,000,000.00 from this account improperly and without authority, Defendant Prebul 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. Defendant Prebul did not inform 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.

59. 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 controlled by Defendant Prebul, not from the Chrysler CMA as requested.

60. 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 controlled by Defendant Prebul, not from the Chrysler CMA as requested.

61. 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 controlled by Defendant Prebul, not from the Chrysler CMA as requested.

62. 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 controlled by Defendant Prebul, not from the Chrysler CMA as requested.

63. With respect to each of the above requests for withdrawals from the Chrysler CMA, Defendant Prebul knew that, because of his prior actions, the Chrysler CMA did not have sufficient funds available to satisfy the requested withdrawal by Mr. Bensusan.

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

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

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

66. The fictitious and fraudulent statements of balances in the Chrysler CMA provided to Mr. Bensusan by Defendant Prebul 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.

67. 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 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, Defendant Prebul only transmitted approximately \$3,000,000.00 of the funds requested to Mr. Bensusan.

68. 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 his employees who were 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].”

69. 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.”

70. 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.

71. 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.

72. 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.”

73. 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.”

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

75. 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 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.

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

77. 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.

78. On or about February 9, 2009, Defendant Prebul was arrested by agents of the Federal Bureau of Investigation and 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 D.¹

G. ***The Greenwald Conspiracy:***

79. In furtherance of an Agreement dated June 23, 1999 as amended July 16, 2001 (the “Agreement”), Danny Bensusan, Joseph Prebul and Gary Chazen agreed to repayment of a loan, which was represented as being a loan from Defendant Julius Greenwald.

80. The sum of \$1,500,000.00 was guaranteed by Prebul, Chazen and Bensusan (the “Greenwald Loan”) under the express terms and conditions of the Agreement based on the fraudulent representation.

81. The repayment obligations for the Greenwald Loan are set forth in the Agreement.

82. On or about July 16, 2001 (in the Amendment to the Original Operating Agreement), Prebul, Chazen and Bensusan entered into a written agreement whereby they personally guaranteed certain payments to Julius Greenwald. Pursuant to the Agreement, it was expressly agreed that the principal and interest would be paid only in the event there was liquidation or sale of the LLC or B.B. Kings (the “Repayment Event”). The agreement was modified to the extent that Prebul, Chazen and Bensusan agreed that TSE, on behalf of each of the individuals, would make monthly interest payments to Greenwald prior to the Repayment Event. The interest payments began in March, 2002.

83. On or about October, 2008 Plaintiff discovered that the money purportedly paid by Greenwald was in actuality Danny Bensusan’s money. Unbeknownst to the Plaintiff,

¹ There was a civil suit initially brought in Tennessee. That suit was discontinued (Order of the Honorable Marie Williams, in the Circuit Court, Hamilton County, Tennessee, Division III, 09-C-239, dated March 2, 2009).

Greenwald fraudulently represented, aided and abetted by Prebul, that the monies paid to TSE Group, LLC were deposited by Greenwald.

84. But for the fraud, Plaintiff would not have agreed to pay Greenwald interest and would not have been party to the Agreement.

AS AND FOR A FIRST CLAIM AGAINST DEFENDANT PREBUL

(Fraud)

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

86. 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 as 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 or any other account;
 - 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.

87. 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.

88. 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.

89. 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.

90. 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.

91. To further the deception and to hide his 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.

92. To further the deception and to continue hiding his 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.

93. 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.

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

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

AS AND FOR A SECOND CLAIM AGAINST DEFENDANT PREBUL

(Breach of Fiduciary Duty)

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

97. 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.

98. 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.

99. 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.

100. 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.

101. 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.

AS AND FOR A THIRD CLAIM AGAINST DEFENDANT PREBUL

(Negligent Misrepresentation)

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

103. 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.

104. 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.

105. 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.

106. 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.

107. 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.

108. 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.

109. 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.

AS AND FOR A FOURTH CLAIM AGAINST DEFENDANT PREBUL

(Conversion)

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

111. Defendant Prebul, intentionally took, for his 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 him, and without permission to do so from Mr. Bensusan or persons acting on behalf of Mr. Bensusan.

112. In each of the actions alleged under this Count, the Defendant Prebul 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.

113. Defendant Prebul was not was entitled to exercise control over any money invested in the Chrysler CMA without the authorization, permission, and knowledge of Mr. Bensusan.

114. At all times relevant, Defendant Prebul was aware that his 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.

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

AS AND FOR A FIFTH CLAIM AGAINST DEFENDANT PREBUL

(Breach of Contract)

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

117. 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.

118. 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.

119. 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.

120. 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.

AS AND FOR A SIXTH CLAIM AGAINST DEFENDANT PREBUL

(Promissory Estoppel)

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

122. 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.

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

124. 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.

125. 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.

126. 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.

**AS AND FOR A SEVENTH CLAIM AGAINST
DEFENDANT GREENWALD**

(Declaratory Judgment)

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

128. In furtherance of an Agreement dated June 23, 1999 as amended July 16, 2001 (the "Agreement"), Danny Bensusan, Joseph Prebul and Gary Chazen agreed to repayment of a loan, which was represented as being a loan from Defendant Julius Greenwald.

129. The sum of \$1,500,000.00 was guaranteed by Prebul, Chazen and Bensusan (the "Greenwald Loan") under the express terms and conditions of the Agreement based on the fraudulent representation.

130. The repayment obligations for the Greenwald Loan are set forth in the Agreement.

131. On or about July 16, 2001 (in the Amendment to the Original Operating Agreement), Prebul, Chazen and Bensusan entered into a written agreement whereby they personally guaranteed certain payments to Julius Greenwald. Pursuant to the Agreement, it was expressly agreed that the principal and interest would be paid only in the event there was liquidation or sale of the LLC or B.B. Kings (the "Repayment Event"). The agreement was modified to the extent that Prebul, Chazen and Bensusan agreed that TSE, on behalf of each of the individuals, would make monthly interest payments to Greenwald prior to the Repayment Event. The interest payments began in March, 2002.

132. On or about October, 2008 Plaintiff discovered that the money purportedly paid by Greenwald was in actuality Danny Bensusan's money. Unbeknownst to the Plaintiff, Greenwald fraudulently represented, aided and abetted by Prebul, that the monies paid to TSE Group, LLC were deposited by Greenwald.

133. But for the fraud, Plaintiff would not have agreed to pay Greenwald interest and would not have been party to the Agreement.

134. Bensusan seeks a declaration of his rights and obligations under the Agreement. Greenwald has threatened, by letter dated March 16, 2009, to invoke the terms of the Agreement.

135. Thus an actual controversy has arisen as to the rights and obligations under the Agreement and the identity of the proper person to whom the loan and interest monies are due.

136. Plaintiff has no adequate remedy at law.

AS AND FOR AN EIGHTH CLAIM AGAINST DEFENDANT GREENWALD

(Misappropriation and Conversion)

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

138. Defendant Greenwald, through fraud and deception, deprived Plaintiff of his possession and ownership of money rightfully belonging to Plaintiff, thereby misappropriating and converting Plaintiff's money and property to their own use and benefit.

139. The actions of Defendant Greenwald described above were done maliciously and with intent to harm Plaintiff, entitling Plaintiff to additional punitive damages in the amount of \$2,000,000 and costs, including attorneys' fees and interest as permitted by law.

AS AND FOR A NINTH CLAIM AGAINST DEFENDANT GREENWALD

(Unjust Enrichment)

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

141. As a direct result of their fraudulent conduct, misrepresentations, and conversion, Defendant Greenwald have been unjustly enriched in an amount of not less than \$573,559.73 at the expense of Plaintiff, the precise amounts of which will be proved at trial, as well as costs, including attorneys' fees and interest as permitted by law.

AS AND FOR A TENTH CLAIM AGAINST DEFENDANT GREENWALD

(Restitution)

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

143. As a result of their wrongful actions, Defendant has been unjustly enriched in the amount if not less than \$573,559.73, at the expense of Plaintiff, the precise amount of which will be proved at trial, and a corresponding benefit has been conferred upon them by Plaintiff. Defendant therefore owes a duty, in equity and good conscience, to make full restitution to Plaintiff of all amounts wrongfully earned through his deceptive and wrongful actions.

AS AND FOR AN ELEVENTH CLAIM AGAINST DEFENDANT GREENWALD

(Constructive Trust)

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

145. Defendant Greenwald has improperly received, directly or indirectly, and continues to possess or benefit from, directly or indirectly, sums rightfully belonging to Plaintiff.

146. By reason of the foregoing, Plaintiff is entitled to the imposition of a constructive trust protecting all monies in Defendant's possession, and in the possession of Defendants' agents or persons acting in concert with the, which properly belongs to Plaintiff.

AS AND FOR A TWELFTH CLAIM AGAINST BOTH DEFENDANTS

(Fraud)

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

148. Beginning in or about 2000, Greenwald and Prebul represented to Bensusan that the monies being loaned to TSE and guaranteed by TSE and Prebul, Chazen and Bensusan were monies belonging to Greenwald.

149. On or about October, 2008, Plaintiff demanded that Greenwald provide documentation to prove he was the source of the monies purportedly wired on his behalf by "Prebul Jeep R". Despite such demand no response was forthcoming.

150. On information and belief, such monies never were contributed by Greenwald.

151. On information and belief, the loan interest payments guaranteed by Plaintiff were in fact funds belonging to Plaintiff. Therefore, over \$500,000 in interest was improperly paid to Greenwald.

152. Such material representation constituted in a fraud on Bensusan.

153. As a result of the aforesaid conduct, Plaintiff has suffered substantial damages and will continue to suffer additional damages. These damages are presently estimated to be in excess of \$2,000,000.

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

1. That judgment is entered against each of the Defendants as set forth in each claim for compensatory damages in an amount to be proven at trial;
2. That judgment be entered against Defendant Prebul 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;
3. That Plaintiff recovers from the Defendants all of his discretionary costs arising from this litigation;
4. That Plaintiff be awarded his reasonable attorneys' fees and the costs of this action from the Defendants as provided for in the Promissory Note;
5. 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.

Respectfully submitted,

LAW OFFICES OF GERALD J. MCMAHON

By: 

Gerald J. McMahon (GM 4314)
26 Broadway, 18th Floor
New York, NY 10004
(212) 797-1877

**SHUKAT ARROW HAFFER WEBER
& HERBSMAN, LLP** 

Peter S. Shukat (PSS 8078)
Dorothy M. Weber (DMW 4734)
111 West 57th Street, Ste 1120
New York, New York 10019
Phone: (212) 245-4580
Fax: (212) 956-6471
Attorneys for Plaintiff

Exhibit A

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

Exhibit B

117 7th Ave South Account

250A

Account Balance as of 12/31/05

\$474,019.88

MONTH	INTEREST EARNED	Date \$ In/Out	Money In/Out	TOTAL	CURRENT	
					RATE (Libor+2.82)	STD CMA RATE (Libor+1.65)
Jan '06	\$12,188.53					
Feb '06	\$14,951.32	1/11/2006	\$1,500,000.00	\$1,986,208.51	7.27	6.10
Mar '06	\$12,741.15		\$0.00	\$1,997,559.82	7.45	6.28
Apr '06	\$12,739.25		\$0.00	\$2,010,300.57	7.51	6.34
May '06	\$1,753.57	5/4/2006	\$0.00	\$2,023,040.22	7.71	6.54
June '06	\$145.07		(\$2,000,000.00)	\$24,793.89	7.91	6.74
July '06	\$163.98		\$0.00	\$24,838.97	7.91	6.74
Aug '06	\$175.88		\$0.00	\$25,102.95	8.00	6.83
Sept '06	\$178.20		\$0.00	\$25,278.63	8.24	7.07
Oct '06	\$171.99		\$0.00	\$25,455.83	8.30	7.13
Nov '06	\$178.71		\$0.00	\$25,628.82	8.22	7.05
Dec '06	\$309.11	11/28/2006	\$0.00	\$25,807.52	8.21	7.04
Jan '07	\$2,282.28		\$300,000.00	\$326,116.63	8.21	7.04
Feb '07	\$2,292.67		\$0.00	\$328,398.91	8.24	7.04
Mar '07	\$6,598.39	2/12 & 2/16	\$0.00	\$330,691.56	8.22	7.07
Apr '07	\$10,488.83		\$1,157,975.00	\$1,504,232.98	8.21	7.05
May '07	\$10,352.41		\$0.00	\$1,514,721.81	8.21	7.04
June '07	\$12,028.53	4/27/2007	\$199,975.00	\$1,725,059.22	8.21	7.04
July '07	\$11,721.77		\$0.00	\$1,737,087.84	8.21	7.04
Aug '07	\$12,194.23		\$0.00	\$1,748,809.62	8.21	7.04
	\$12,458.74		\$0.00	\$1,761,003.85	8.21	7.04
				\$1,773,462.59	8.33	7.16

Alliance Investment Group, LLC

(EMAIL TO @)

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

Record to 1E

<u>MONTH</u>	<u>INTEREST EARNED</u>	<u>Date \$ In/Out</u>	<u>Money In/Out</u>	<u>TOTAL</u>	<u>CURRENT RATE</u> <u>(Libor+2.8%)</u>
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	\$21,089.26		\$0.00	\$3,042,671.79	8.21
Aug '07	\$21,552.90	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
Nov '07	\$19,206.70	10/15/2007	(\$1,700,000.00)	\$3,062,667.22	
Dec '07	\$34,898.86		\$0.00	\$3,081,873.92	7.63
Jan '08	\$41,981.58	12/17/2007	\$5,000,000.00	\$8,118,572.79	7.42
Feb '08	\$39,476.23		\$0.00	\$8,158,554.36	6.09
Mar '08	\$37,934.80		\$0.00	\$8,198,090.59	6.09
Apr '08	\$37,085.51	3/15/2008	(\$250,000.00)	\$7,985,995.18	5.54
May '08	\$45,080.13	5/12/2008	\$1,699,875.00	\$9,768,105.83	5.65
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	

Exhibit C

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

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

Exhibit D

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

----- x

09 MAR 11 321

UNITED STATES OF AMERICA :

Sealed Complaint

-v.- :

Violations of
18 U.S.C. §§ 1343 and 2

JOSEPH PREBUL, :

COUNTY OF OFFENSE:

Defendant. :

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.

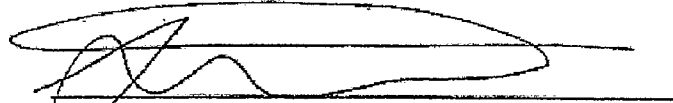
17. Based on my review of a consensually recorded conversation between Victim-1 and JOSEPH PREBUL, the defendant, in or about August 2008, and my conversation with Victim-1, I have learned that PREBUL met with Victim-1 in New York, New York in or about August 2008, and that PREBUL admitted during that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

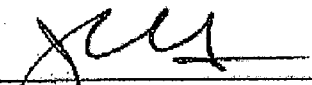
20. Based on my conversations with Victim-1, my review of consensually recorded conversations between Victim-1 and JOSEPH PREBUL, the defendant, and my review of bank records, I know that, as of the date of this Complaint, PREBUL had not returned Victim-1's money in the amount of approximately \$7,641,000.

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 00 2009

Sworn to before me this
___ day of February 2009


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