

AO 243 (Rev. 09/17)

FILED

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

FEB 28 2022

|  |  |   |                           |  |
|--|--|---|---------------------------|--|
| <b>United States District Court</b>  |  | District  | WESTERN DISTRICT OF TEXAS | CLERK U.S. DISTRICT CLERK<br>WESTERN DISTRICT OF TEXAS |
| Name (under which you were convicted):   |  | CHARLES McALLISTER  |                           | Docket or Case No.:<br>1:18-CR-00016(1)                |
| Place of Confinement: Montgomery FPC - Maxwell AFB<br>1001 Willow St., Montgomery AL 36112 |  | Prisoner No.:<br>00222-480  |                           |  |
| UNITED STATES OF AMERICA<br>FEB 28 2022  |  | Movant (include name under which convicted)<br>V.<br>CHARLES McALLISTER |                           |  |

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY: [Signature] DEPUTY CLERK

MOTION (AMEND)

1:22 CV 0225, LY

- (a) Name and location of court which entered the judgment of conviction you are challenging:  
U.S. DISTRICT COURT - WESTERN DISTRICT OF TEXAS  
U.S. COURTHOUSE  
501 WEST 5th STREET AUSTIN TX 78701
- (b) Criminal docket or case number (if you know): 1:18-CR-00016-LY(1)
- (a) Date of the judgment of conviction (if you know): February 18th, 2020  
(b) Date of sentencing: February 13th, 2020
- Length of sentence: 120 Months
- Nature of crime (all counts):  
Count 1 - 18 U.S.C. §1343 and 18 U.S.C. §2  
AIDING AND ABETTING WIRE FRAUD  
Count 2 - 18 U.S.C. §1343 and 18 U.S.C. §2  
AIDING AND ABETTING WIRE FRAUD  
Count 3 - 18 U.S.C. §1957 Engaging in Monetary Transactions in  
Property Derived from Specified  
Unlawful Activity
- (a) What was your plea? (Check one)  
(1) Not guilty  (2) Guilty  (3) Nolo contendere (no contest)
- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?  
n/a

6. If you went to trial, what kind of trial did you have? (Check one) Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes  No

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8. Did you appeal from the judgment of conviction? Yes  No

9. If you did appeal, answer the following:

(a) Name of court: U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

(b) Docket or case number (if you know): 20-50141

(c) Result: Judgment Affirmed

(d) Date of result (if you know): February 2, 2021

(e) Citation to the case (if you know): 844 Fed. Appx696; 2021 U.S. App Lexis 2939

(f) Grounds raised:

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: n/a

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

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(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: n/a

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No

(2) Second petition: Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_

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- 12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE: Ineffective Assistance of Counsel (Claims 1-6)**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(SEE ATTACHED)

**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel claims are generally not cognizable on direct appeal. U.S. v. Patterson, 595 F3d 1324

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

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- (2) If you did not raise this issue in your direct appeal, explain why:  
Ineffective assistance of counsel claims are generally not cognizable on direct appeal. U.S. v. Patterson, 595 F.3d 1324

**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?

Yes  No

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

This is my first post-conviction proceeding. Ineffective assistance of counsel claims are generally raised in § 2255 Motions.

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**GROUND THREE:** n/a

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR:** n/a

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

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Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

n/a



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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: James M. Ardoin, III  
 Jones Walker LLP  
 811 Main Street STE 2900  
 Houston, TX 77002

(b) At the arraignment and plea: (same as above)

(c) At the trial: (same as above)

(d) At sentencing: James M. Ardoin, III  
 4900 Fournace Place STE 550  
 Houston, TX 77401

(e) On appeal: Kimberly S. Keller  
 234 W. Bandera Rd. STE 120  
 Boerne, TX 78006

(f) In any post-conviction proceeding: n/a

(g) On appeal from any ruling against you in a post-conviction proceeding: n/a

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

This motion is timely as was filed within one year of the final judgment which was the Denial of Appeal on February 2, 2021. The motion was postmarked on February 2, 2022 by the U.S. Post. The AMENDED MOTION replaces/amends the original motion filed as described above and is placed in the Prison Mail System on or before February 23, 2022.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:

Vacate or set aside the conviction; evidentiary hearing; appointment of counsel; judgment of acquittal; reduction of sentence; certificate of appealability

or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on February 22, 2022  
(month, date, year)

Executed (signed) on February 22, 2022 (date)

  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

CERTIFICATE OF SERVICE

I, Charles McAllister, certify that a copy of enclosed MOTION has been mailed to:

Daniel D. Guess and Keith Henneke  
United States Attorney's Office  
903 San Jacinto Boulevard STE 334  
Austin, Texas 78701

and was placed in Prison Mail System on or before 2/23/2022.

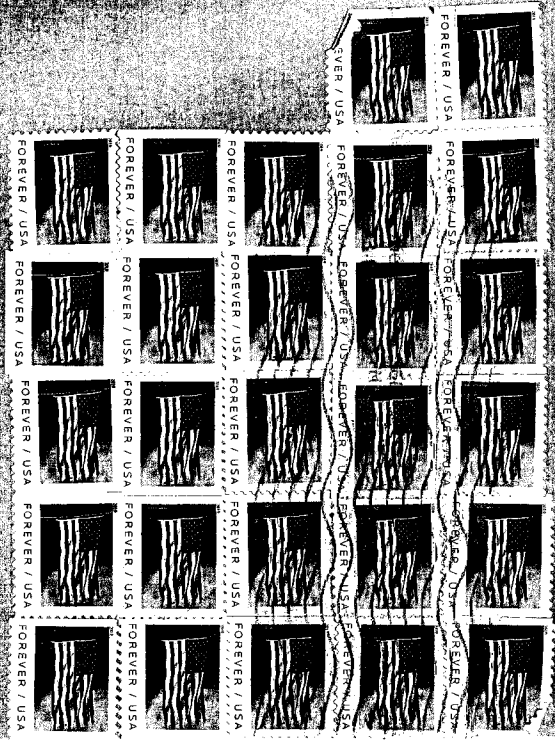
 2/22/2022  
Charles McAllister, Pro Se

CHARLES McALISTER  
#00222480  
Montgomery EPL  
1001 Willow St.  
Montgomery AL 36112

7014 2120 0004 3141 0248  
  
**CERTIFIED MAIL®**  
PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

*MS*

U.S. Courthouse  
U.S. DISTRICT COURT-WESTERN  
DISTRICT TX  
501 WEST 5TH STREET  
AUSTIN TX 78701





JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Charles McAllister

(b) County of Residence of First Listed Plaintiff Montgomery, AL (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

United States of America

County of Residence of First Listed Defendant Travis (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns for CONTRACT, PERSONAL INJURY, PERSONAL INJURY, LABOR, LABOR, SOCIAL SECURITY, OTHER STATUTES and rows for various legal categories like Insurance, Airplane, Assault, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28:2255

Brief description of cause: Motion to Vacate, Set Aside or Correct

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

TRULINCS 00222480 - MCALLISTER, CHARLES - Unit: MON-M-C

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FROM: 00222480

TO:

SUBJECT: 12. Grounds One: Intro

DATE: 02/22/2022 12:53:45 PM

12. Grounds One: Ineffective Assistance of Counsel at Pretrial/Trial

All claims include ineffective assistance of counsel grounds.

TRULINCS 00222480 - MCALLISTER, CHARLES - Unit: MON-M-C

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FROM: 00222480

TO:

SUBJECT: Claim 1A: investigate or perform...

DATE: 02/18/2022 10:26:27 PM

CLAIM 1:

McAllister was denied effective assistance of counsel because counsel failed to investigate or perform other pretrial functions in a financial fraud case. Counsel was given a lot of mitigating information and failed to investigate; subpoena witnesses and documents; hire an expert; or come to an understanding of the case.

Ardoin was retained in January 2018 at the time of McAllister's indictment. During the first client meeting, McAllister made Ardoin aware that the case involved complex financial matters related to the Company's 15-year operation. Among other things, McAllister specifically highlighted:

a) the highly flawed IRS financial analysis based incorrect assumptions that purported a "\$16M misappropriation of customer funds". McAllister provided copies of various parts of the report provided to McAllister in previous discussions with the Government that showed they ran various margin assumption scenarios instead of using actual exculpatory transaction data. [See Exhibit: B ]

b) the Company's Ch. 11 complex bankruptcy designation; the failures of the bankruptcy process and Creditor Committee; and the resulting harm to important and valuable intellectual property - all despite McAllister's cooperative efforts and outside his control. [See: Bullion Direct, Inc. Ch.11 Bankruptcy - Response to Motion to Convert to Ch. 7]

c) Randy Russell's possible motives for sabotaging the Company and his relationship with Julie Mayfield. Corbin Tuma's (Vault Manager) theft, his suspicious activities and the security camera DVRs containing possible evidence; Jason Otteson's suspicious activities and apparent newfound \$15M wealth. A detailed timeline of events and these player's involvement. [See AFFIDAVIT: Travis Irmey; Natasha Bernal; Bradley Plies] [See Exhibit: F ]

d) the Government's failure to retain the Company's exculpatory emails and documents hosted in the Microsoft and Google cloud-based programs; their lack of interest in unrestricted access to McAllister and the "Corbin Tuma DVRs".

e) the issues around the Company's Terms of Service including the "[metal] use clause" sourced through a high-level industry contact.

At an August 10th, 2018 PRe-Trial Motions Hearing, Judge Yeakel warned Ardoin that he (Ardoin) was "underestimating" the time required to prepare for a "complex financial case", and then granted Ardoin several months more than Ardoin requested. Up to that point and in the 12 months following Judge Yeakel's explicit warning, Ardoin did not hire an investigator or an expert witness; subpoena or interview defense witnesses; review or subpoena 3rd party emails, documents, or other evidence. [See: Docket Sheet #22 PRe-Trial Motions Hearings 8/10/2018]

In June 2019, with a trial scheduled for September, a concerned McAllister headed to Houston for the Summer to work with Ardoin at his office. Unexpectedly and upon arriving in Houston, Ardoin notified McAllister that he was taking the month of July off to take his young children on a "road trip out West". He explained that it was necessary and related to his ongoing child custody battle in a pending "messy" divorce. Upon Ardoin's return in late July, McAllister confronted him with a July 17th Houston Chronicle newspaper article implicating Ardoin in a county bribery and gambling scandal that Ardoin had not disclosed. Ardoin assured McAllister that the scandal was "nothing but a political misunderstanding", and "wouldn't be a distraction from the case". That later proved to be a mischaracterization because in early September, and just weeks before the trial, Ardoin's employer (a large prominent Houston law firm) was sued in relation to his actions. Ardoin eventually left the firm just a few months later and just weeks before McAllister's sentencing. [See: Ardoin v. Ardoin - cause no. 201864895] [See enclosed exhibit : July 17, 2019 Houston Chronicle article] [See: Bayou Social Club LLC (dba Prime Social) v. Jones Walker LLP - cause no. 201962900] [see exhibit: H]

In August 2019, just weeks before the trial, Ardoin scrambled to review the details of the case with millions of documents; to gain an understanding of the case; to hire an investigator; to hire an expert; and to open a corrupted QuickBooks file provided by the Government - all while navigating a bribery/gambling scandal, a child custody battle, and professional/legal issues with his employer.

Ardoin was unable to find an expert on 'short notice' and, in desperation, suggested hiring his "new girlfriend" because she had "a financial background". Ardoin finally hired an investigator - but hired one with a specialization in Sex and Human



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CLAIM 1 pg. 2

Trafficking cases. McAllister asked Ardoin to request a delay of trial from Judge Yeakel. Ardoin refused, citing the prior warning and multiple requests for a continuance already granted by the judge. [See: Docket Sheet - Continuance Order Granted #15 2/13/2018; #23 8/10/2018; #30 3/18/2019]

Later at trial, when defending his choice of investigators, Ardoin indicated that she "is really good at finding people". However, she was ultimately the only person that needed to be found - when she disappeared on vacation during the trial. Ardoin informed McAllister on one of the last days of the trial that he was unable to make contact with the investigator and was unable to secure any defense witnesses.

Ardoin's personal, professional, and his own legal issues and potential criminal charges had affected his ability to carry out his professional duties. Ardoin failed to investigate and perform other pretrial functions like reviewing and subpoenaing evidence; subpoenaing, interviewing and securing defense witnesses; performing an investigation; or hiring an expert witness. Had Ardoin fulfilled his professional duties, he would of gathered the available exculpatory evidence, secured it, understood it, organized it, and provided a meaningful challenge to the Government's assumption-based case. Clearly, Ardoin failed to heed Judge Yeakel's warning.

TRULINCS 00222480 - MCALLISTER, CHARLES - Unit: MON-M-C

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FROM: 00222480

TO:

SUBJECT: Claim 2A: hire expert witness and impeach...

DATE: 02/22/2022 12:56:43 PM

CLAIM 2:

McAllister was denied effective assistance of counsel because counsel failed to hire an expert witness to impeach Government witnesses and evidence including the IRS agent's assumption-based financial analysis claiming \$16M+ of "misappropriated customer funds". Counsel had not come to an understanding of the financial aspects of the case and failed to retain an expert to help him understand or make a meaningful challenge to the Government's case.

The foundation of the Government's case was a financial "Analysis of Misappropriated Customer Funds" presented by IRS Agent Michael Fernald claiming McAllister misappropriated \$16M of customer funds during the "relevant period" from 2009-2015. The agent testified that he and a team of financial and technical experts thoroughly investigated millions of transactions. According to Agent Fernald, the Government - even with all their experts and resources - was unable to access the actual transaction data because the database was "proprietary" and "difficult to operate". Instead, they simply used bank records and various assumptions to come to their conclusions. Contrary to their assumptions, available evidence and actual transaction data would have proven their claims were not at all true.

An expert witness would have testified that the database was not proprietary, but instead was a "commercially popular...and used by major organizations including the U.S. Government" according to Bradley Plies - the Company's Director of Technology. In fact, the Government could have reasonably accessed the transaction data independently using readily available commercial software, like Tableau. Or, it could have used the Company's "Admin" reports to view and download to an Excel spreadsheet. Furthermore, the Government never requested support from any number of former employees even though it was explicitly offered by at least McAllister and Plies. [See Affidavit: Bradley Plies ]

Agent Fernald testified their analysis "assumed" a 2% profit margin applied to the \$408M of Customer Funds deposited into the Company's bank accounts - and therefore assumed that the initial Customer Deposits equaled Total Sales Volume. Then they subtracted \$265M of outgoing funds determined to be "Payments to Wholesalers for Metals" and \$119M of outgoing funds to Customers misrepresented as "Customer Returns". Therefore, as their theory goes, whatever amounts could not be accounted for in the above amounts were "Misappropriated Customer Funds".

The formula was pretty simple:

\$408M (Customer Bank Deposits "assumed" to be Total Sales)  
- \$ 8M (at "assumed" 2% margin of \$408M, the Company's "sole revenue")  
- \$265M (Outgoing Payments to Wholesalers for metals)  
- \$119M (Outgoing Payments to Customers for metals misrepresented as "Customer Returns")  
= \$16M ("assumed" Misappropriated Customer Funds)

Agent Fernald testified that the 2% margin (derived from the 2% Clearing Fee on a minority of the Company's transactions) "was important because that was the amount of money that BDI had available...for their operational expenses" and represented their "sole revenue". When questioned about additional margins on Catalog and other transactions (a majority of the Company's transactions), Agent Fernald testified he was "not sure that there were margins". This was critical to the analysis because Agent Fernald used this (false) assumption "to determine what the loss of the customer was". An analysis by an expert for McAllister's defense, using actual transaction data in the time-stamped database or from the Summary and Margins Report and Transaction Detail Report, would have shown the agent's analysis was missing other revenue and nearly \$100M in transactions from additional transaction scenarios that were not considered. [See: Fernald Direct pg.9 798] [See: Company's "Admin" - Summary and Margins Report; Transaction Detail Report]

These additional scenarios and revenue not considered by the Government and not considered in their assumption-based analysis included:

- Customers that sent metals to the Company and Sold, then Purchased other metal
- Customers that actively bought AND SOLD metals multiple times using the Cash On Hand feature
- Millions of dollars of shipping and handling fees for delivered orders
- \$1.3M+ of proceeds from hedging activities

An actual transaction-based analysis, whether from available company reports or the time-stamped data in the database,

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CLAIM 2 - pg. 2

would show the Government's analysis was not just "highly flawed", as Counsel argued without presenting any evidence, but false. The Government's assumption-based analysis failed to consider the impact of a "two-sided market" business model; an additional ~\$100M of transactions; actual transaction margins that were higher than their assumption; physical deliveries of metals to and from customers; customer buy AND SELL activities; and a \$1.3M income from hedging activities presented in Government Exhibit: "Chart of Accounts". They failed to consider actual transaction data and available reporting like the "Summary and Margin Report" which the Government insisted didn't exist. The Government also failed to test their assumption against actual summary data. For example, using July 2015 pricing to compare "Customer Obligation Reports" to the Company's July 2015 bankruptcy filings showed little movement in Net Metal Customer Obligations thereby invalidating the \$16M Misappropriated Customer Funds assumption-based theory. Furthermore, when also considering the reported obligations in the bankruptcy filing were not actual claims from customers and included customers that had not paid for their order, then the improvement is more substantial. More importantly, the fact remains that the Customer Obligation was reduced by over \$12M in the last 4 years of the business under McAllister's complete operational control. [See Got Exhibit: "Chart of Accounts"] [See Affidavits: Natasha Bernal and Bradley Plies]

At trial, Counsel proclaimed he wasn't a "math guy" as he fumbled with important financial details. At one point, Counsel even erroneously bolstered the Government's claim that McAllister had not purchased metals with Customer Funds by referring only to the \$265M of metals bought from wholesalers and excluding the \$119M the Government had misrepresented as "Customer Returns"(which were actually metal purchases), not to mention the additional ~\$50M of purchases not considered in the Government's assumption-based analysis. Furthermore, the Government was allowed to go unchallenged with their assumption that McAllister had spent nearly \$10M of customer metals in the last years of the business from August of 2012 to July of 2015 when, in fact, these metals were delivered to customers.

[See Transcript: *MAYFIELD*  
*CROSS pg. 215:18*]

Even with the self-awareness that he wasn't a "math guy", Counsel failed to perform the most basic and necessary professional duty - to retain an expert witness to help come to an understanding of the case and to make a meaningful challenge the Government's case. An expert would have driven investigative efforts to gather, analyze, and present readily available exculpatory evidence, including actual transaction data, to contradict the Government's assumptions. In failing to hire an expert witness, Counsel allowed the Government's false assumption-based financial analysis go unchallenged which impacted the Verdict, Sentence, and Restitution. There is no strategic justification in failing to fulfill a basic professional duty like hiring an expert witness for a "complex" \$16M financial fraud case.

TRULINCS 00222480 - MCALLISTER, CHARLES - Unit: MON-M-C

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FROM: 00222480

TO:

SUBJECT: Claim 3A: interview/secure/call defense witnesses

DATE: 02/21/2022 11:16:48 AM

Claim 3:

At trial, McAllister was denied effective assistance of counsel because counsel failed to interview, secure, and call defense witnesses including the Company's Director of Technology, its Accounting Manager, and one of its Shipping and Vaulting Managers. Counsel also failed to interview, call, and secure an available industry expert as well as the Company's Chief Restructuring Officer.

As described in Claim 1, Counsel failed to interview and secure witnesses. Counsel made a late hire of an investigator mere weeks before the trial - a specialist in Sex and Human Trafficking cases. As previously claimed (see Claim 1), she was completely unavailable after jury selection resulting in Counsel not securing and calling a single defense witness to contradict the Government's case. Over the expanse of a 15-year operation of the Company, there were many possible defense witnesses readily available to testify to the workings of the Company; to McAllister's intentions from the founding of the Company all the way through the reorganization of the Company; and to challenge the Government's assumptions and material misrepresentations. These witnesses include:

Bradley Plies - see attached affidavit

Brad Plies was the Company's longtime Director of Technology. He was involved with the company from its first year until its last. He also assisted in the reorganization plan and could have testified regarding McAllister's efforts to salvage the valuable Intellectual Property that had been mismanaged and harmed by the bankruptcy process. His highly credible testimony and insight would have contradicted the Government's case, specifically in the following ways:

Brad would testified that the "database" was a commercially popular database used by large organizations, including the U.S. Government which would have contradicted the Government's claim that the database was "proprietary and very difficult to use" as their reasoning for not using the actual transaction data.

Brad would have testified regarding his formal offer to assist the Government and their lack of interest in getting technical help to access the data they claimed was so difficult to gain access to. Brad would also testify to the availability of third-party softwares that support reading data from the database. Furthermore, Brad would have demonstrated the availability of various reports and the ability to download the data into a Microsoft Excel spreadsheet with a click of a button.

Brad would have been able to present the Summary and Margins Report to prove its existence as well as the Transaction Detail report to show other revenue streams including significant shipping and handling fees. With actual transaction data, his testimony would have directly contradicted the Government assumption that Catalog orders had "zero margins". He would have also been able to give an overview of the comprehensive product management system in "Admin" that was used to set product margins and fee pricing.

Brad would have testified to various types of transaction scenario as recorded in the database and how "COH" (Cash on Hand) facilitated additional transactions outside of the banking system. He would have testified to transaction volumes and the availability of such data that could prove that approximately 99% of transactions were successfully completed and delivered - including the "last \$10M of metal in the vault" that the Government claimed had been spent by McAllister.

Natasha Bernal - see attached affidavit

Natasha would have provided testimony that directly contradicted the Government's theory of the events around the mishandling of the incoming wire, specifically disputing Counts 2 and 3 of the Indictment. By describing the banking functions of the Company, Natasha would testify that McAllister would not have been aware of the incoming wire and wouldn't have been the one to transfer money to the payroll account. She would have also described the fact that wires automatically hit the account and McAllister would not have received or viewed notifications since it was not part of his job function. Furthermore, Natasha would testify that it wouldn't have made sense for McAllister to instruct the accounting office in mid-June to not post any new incoming payments and to turn over payments to Mr. Bensimon or Mr. Martinec to handle as part of the bankruptcy process and not intend for an incoming wire to be handled by them as well - just as the stack of checks had been.

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CLAIM 3 pg. 2

Natasha would have testified regarding the Company's payroll service providers Insperity and Paychex. She would have confirmed the existence of reports when she left the company in July 2015 that showed substantial deductions from McAllister's payroll back to the Company including payments applied to the "\$500K Credit Card Loan".

Natasha would have testified regarding the "\$500K Credit Card Loan" project and how it was incomplete with many missing statements that were not reconciled to the detriment of McAllister, not the Company. Furthermore, she would have characterized the origins of the \$500K Loan created by Mayfield and Russell as a way to "paper up" and resolve the remaining amounts that were unreconciled. She would have testified that when she expressed her concern she was told by Mayfield that they needed to "move on" to more important issues.

Natasha would have testified to the timeline of McAllister's involvement with managing the bullion business versus Mr. Otteson's and Mr. Tuma's management.

Natasha would have testified to contradict much of the Government's enrichment slide ("McAllister benefited by") presentation. In addition to the \$500K Loan, she would have provided the rationale and justification for the final payroll and severance payment; contradicted the Government's claim McAllister "drove THREE Toyota Landcruisers, you know, the BIG SUV Type" and presented as new. For example, she would have testified confirming Travis County records that the only the only two Company vehicles McAllister drove was ONE used Toyota Landcruiser and a Honda CRV. She would have also been able to describe the legitimate use of vehicles and describe the difference in the operations when McAllister was in control.

Travis Irmen - see attached affidavit

Travis was prepared to testify on McAllister's behalf regarding his impressions of the investigative efforts by the FBI. He would have testified that although he had information regarding suspicious activities involving Jason Otteson and Travis Irmen, the investigators were not interested. The suspicious activities included Las Vegas trips by Corbin Tuma while Tuma was the Vault Manager and even an incident when Otteson and Tuma, good friends, left the rest of the team for the "high-rollers" room during a Las Vegas packaging conference.

Travis would have testified to the expensive gift of gold and platinum coins given to him by Tuma when being recruited by Tuma to work at the Company. Travis would have been able to testify to the difference in Company culture while working for Tuma and Otteson versus working for Mr. McAllister. Travis would have also testified to the timeline of when McAllister returned to takeover the precious metals business from Mr. Otteson and the operations and culture improved.

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FROM: 00222480

TO:

SUBJECT: Claim 4A: use important evidence to impeach Govt.

DATE: 02/22/2022 02:20:49 PM

**CLAIM 4:**

McAllister was denied effective assistance of counsel because counsel failed to use important evidence to impeach government misconduct and witnesses regarding the financial analysis and workings of the company and McAllister's actions.

1. Julie Mayfield's Letter

Julie Mayfield, the Company's longtime Controller, testified for the Government. On Cross Examination, Counsel asked Mayfield if she felt that McAllister had a "pure heart" regarding his intentions with the business like she had previously testified to the CFTC under oath. She said she did. She goes on to testify multiple times that she felt McAllister's heart was pure. But under ReCross, the Government got her to testify that she no longer felt that way after the 2012 meeting that resulted in her exit. However, Julie wrote a letter wishing McAllister well -after- her departure and even closed with "I do really hope you win!". Counsel failed to use this evidence that she was not being truthful or that the Government had put her under duress. [See Exhibit A]

2. 2%-3%-4% Margin Analysis

Agent Fernald testified that he did not consider or assume any other profit margins and considered only the 2% margin and believed it to be "quite generous". Counsel failed to use evidence that Agent Fernald was lying about this assertion. [See Exhibit: B ]

3. "No margin report"

Julie Mayfield, the company's controller, testified for the government. She was asked about the company's margin report and responded that the Company did not have one therefore did not know its margins. Multiple witnesses, including Brad Plies, Natasha Bernal, Charles McAllister, an expert witness and others, would have testified about the existence of the Summary and Margins Report. An example Margin Report can be obtained. Actual analysis can still be performed by an expert witness. [See Affidavits: Bradley Plies and Natasha Bernal; TX State Government Records - Franchise Tax Reports]

4. "No margins on Catalog orders"

Government witnesses testified there was no margins on Catalog orders "because you can't have margin on something you don't own". However, evidence from Company reports, even the raw data, show that the Company successfully fulfilled and delivered nearly 100% of its transactions totaling over \$1.6B. Also, Brad Plies or McAllister would have demonstrated the product management system and reporting to show the existence of margins on delivered and completed Catalog orders. They would have also demonstrated the margin configuration area of the product management system in "Admin".

5. "\$40M valuation" email - see attached exhibit

As claimed in the above Claims, the Government failed to save exculpatory emails from the Company's cloud-based email and document management providers, Google and Microsoft. McAllister was working with an investment banker to monetize the Intellectual Property assets of the Company. The email shows a discussion regarding a "\$40M Valuation" of an Industry License. The licensing deals, modeled after the TreMonti Report was originally being discussed with major industry parties. One such deal with a large industry partner was in a mature stage negotiations but was not completed in time for McAllister to continue operations. The contemplated "pre-money" price was \$10M. This starkly contradicts the Government's contention the value of the Intellectual Property was negligible when pointing to a profit-sharing agreement resulting from the bankruptcy process.

6. Pictures of "McAllister's house" erroneous and not the same house he lived in

To inflame the jury and judge, the Government showed a significant number of pictures of luxury house while frequently referring to it as "McAllister's house". However, the pictures including an Arial view, were not that of a house McAllister owned or lived in. Instead, it was that of a \$1.5M house with a custom pool and spa; a 1400 sq. ft. outdoor living area, and extravagant landscaping. [see Govt Exhibits] [See Exhibits: C1-C3]

7. Missing Statements from \$500K Credit Card Analysis

McAllister was accused by the Government of getting over-compensated more than \$500K on the Company's AMEX credit card. The issue was, in actuality, that McAllister had used his personal credit cards for approximately 10 years to pay company expenses until a Company AMEX card was obtained. As Natasha Bernal would have testified [See Affidavit] she was asked to perform a reconciliation for Julie Mayfield and Randy Russell. Although it was incomplete, she was taken off the task and a loan was created by Randy/Julie that McAllister reluctantly agreed to. A gap analysis shows that there are at least 120 missing statements and mostly likely 100s of thousands of dollars not applied to the detriment of McAllister. Exhibit D is an example of



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CLAIM 4 pg. 2

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missing statements.

Counsel failed to use the important evidence above to impeach the Government's case. He didn't object to or refute with evidence the Government's misconduct when it showed erroneous pictures of house that was materially different from the one McAllister lived in. He didn't use evidence of IRS Agent's lie that only a 2% margin was considered because it was quite generous even though he also ran the analysis at 3% and 4% margins. Counsel didn't refute the Government's ridiculous claim that there was no margin on Catalog orders and that there was not a Margin Report. Counsel didn't provide evidence of large valuations of the Company's assets to refute the Government's claims it was worth very little and show that McAllister had a legitimate belief he was operation with sufficient assets. Counsel even failed to use Julie Mayfield's own letter to refute her misrepresentation that she no longer felt McAllister's "heart" (intentions) were pure. Counsel didn't use any of the many examples of evidence to challenge the Government's case and expose their misconduct.

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FROM: 00222480

TO:

SUBJECT: Claim 5A: did not allow to testify on own behalf

DATE: 02/21/2022 11:18:23 AM

Claim 5:

At trial, McAllister was denied effective assistance of counsel because he was not allowed to testify on his own behalf.

As supported by all the exculpatory evidence presented above, it was McAllister's desire and intention, if needed, to testify on his own behalf. However, Ardoin's failure to prepare for trial (see Claim 1) and manage the trial schedule placed McAllister in an untenable position to testify.

McAllister was given 5 minutes during a mid-morning break to make a decision of whether to testify that afternoon. He had not been prepared by counsel, counsel had no supporting evidence or witnesses lined up, and by this point, McAllister realized Ardoin did not have a sufficient understanding of the case. This point was confirmed with an "!" when Ardoin, in Closing Arguments, made the false point for the Government that McAllister had not bought enough metals when he pleaded to the Jury "after all, McAllister purchased \$265M of metals", referring to the Government exhibit showing the Company had taken in \$408M of customer funds and purchased \$265M of metals from Vendors. The problem was that Ardoin failed to understand, even after being informed by McAllister before the trial, that the \$119M the Government showed as "customer returns" was also for metal purchases - FROM CUSTOMERS...not to mention the missing \$100M worth of additional transaction scenarios that were never entered into evidence.

Given the circumstances caused by Counsel's failures, it was not reasonable for McAllister to testify on his own behalf.



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FROM: 00222480

TO:

SUBJECT: Claim 6A: Cumulative Error at Trial

DATE: 02/21/2022 09:19:47 PM

Claim 6: Ineffective Assistance of Counsel because of cumulative error at trial.

At Trial, McAllister was denied effective assistance of counsel due to cumulative error because of the combined effect of the above claims.

(see Claims 1-5)

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FROM: 00222480

TO:

SUBJECT: 13. Grounds Two: Claim 7A

DATE: 02/21/2022 11:42:31 AM

13. Grounds Two: Ineffective Assistance of Counsel at Sentencing or Restitution Hearing

Claim 7: Ineffective assistance of counsel at Sentencing or Restitution Hearing due cumulative errors.

McAllister was denied effective assistance of counsel at Sentencing or Restitution Hearing due to cumulative errors. Counsel failed to challenge the Government's assumption-based financial analysis claiming "\$16M misappropriated customer funds".

(see Claims 1-6)

EXHIBITS

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FROM: Plies, Brad  
TO: 00222480  
SUBJECT: RE: AFFIDAVIT: Bradley Plies  
DATE: 02/22/2022 05:51:05 PM

My name is Bradley Plies. I have known Charles McAllister since sometime before the year 2000. I had served under Charles' employ at Bullion Direct for approximately fifteen years. During that employment I had served in numerous technical roles such as software developer, database administrator, as well as director of technology.

The database system used at Bullion Direct was PostgreSQL which is both a popular and conventional open source database system. PostgreSQL boasts of many integrations with premier enterprise analytical systems and is even conveniently available at the push of a button via Amazon Web Service's Relational Database Service (RDS).

Well before the trial of Mr. McAllister, I had provided a CD-ROM copy of the database including instructions for how to install and access the raw data to Dan Bensimon. I understand that this CD-ROM was later provided to federal investigators for their use in the case. I have no knowledge if this CD-ROM was ever utilized.

At one point I was interviewed by investigators in Charles' case who were seeking clarifications on certain aspects of the system. While I did find the investigators to be courteous and polite, I felt that we often talked in circles as they seemed unable to fully-comprehend my answers or required frequent correction of misunderstandings. Through my attorney I did offer to provide up to three voluntary hours of labor to assist them in accessing or understanding whatever they might need. Anything beyond those three hours would have needed to be compensated. To my relief and surprise I was never asked by the investigators for any further assistance at all.

The Bullion Direct application, which consumed the PostgreSQL database, contained numerous kinds of reports. Some key reports were the "Summary and Margins Report" and "Transaction Detail Report". Together these reports provided product margin analysis for Catalog and Exchange transactions. The Bullion Direct application allowed for extensive product management capabilities including the ability to directly affect margins.

At one point, I did attend a Nucleo Development Company luncheon where Randy Russell's development team announced the general availability of their new software platform that was intended to expand into other industries. Before the presentation even began I was completely baffled how they could possibly have produced anything with similar, sophisticated features without ever having any technical conversations with Bullion Direct's developers at all. I was both disappointed and underwhelmed by the demonstration of their software. It was incomprehensible how this software could possibly be portrayed as being in any state of readiness.

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TO: 00222480  
SUBJECT: Natasha Bernal - Affidavit  
DATE: 02/01/2022 01:21:04 AM

AFFIDAVIT

To Whom It May Concern:

I have known Charles McAllister for more than 21 years and worked with him for a total of 10 years. I was ready and prepared to testify on his behalf but was never call to do so. I knew Mr. McAllister to be honest, trusting, straightforward and a very caring boss to work with. I do believe Mr. McAllister made every effort to improve and get his company to run smoothly and efficiently and had zero intentions to harm anyone. After he filed bankruptcy and closed the company he asked us to continue to work with and help Mr. Bensimon and Mr. Martinec as much as possible on the reorganization efforts of the company. Mr. McAllister did advised me that there would be a lot of questions from various parties and to make sure that I made every effort to answer the questions truthfully and accurately to all.

Shortly after the bankruptcy filing, I was interrogated a few times by the FBI agent Mirella Rodriguez at my home and then I was subpoenaed by the U.S. commodity Futures Trading Commission on July 12, 2016 in a full day deposition with 7-8 people all at once asking me many questions non stop and yes I was surprised and confused that their questions were only about Mr. McAllister and not the other licensed professional managers running the company. They made it very clear they were only looking into Charles McAllister and nobody else during that deposition.

If I had been given an opportunity I would have testified for Mr. McAllister and, in particular, regarding:

Mr. McAllister was not involved in daily operations when I started back with the company in June 2009. Jason Otteson and Julie Mayfield had full control of the company including Daily operations & Accounting, Monthly Vault Inventory Audits & Obligation Reports.

Julie Mayfield (accountant) & Randy Russell (CPA) had me do a personal credit card reconciliation of all of Mr. McAllister credit cards from beginning of company start. The project took months and a very large Excel report. After months of work I was asked to hand over all reports to Julie Mayfield & Randy Russell including a file cabinet of reports and receipts organized to the best of my abilities. All statements and factors were not completed for lack of statements found or that could be obtained due to availability by banks and how many years are kept available. They said the reports turned over were complete enough and the project was removed from my To Do Tasks and projects, and they had other priorities to focus on. The ending balance was in the neighborhood of \$500,000 and Julie & Randy formalized this balance into a loan for Mr. McAllister to repay back into the company. At the time this loan was created, Mr. McAllister was adamant that this report was missing company charges and that gaps were in company incurred expenses on his personal credit cards. He always said large expenses were missing and overlooked during this reconciliation.

Paychex and Insperty were used as the company's payroll provider. Charles McAllister made significant payments back into the company that were in the form of deductions from his paycheck or bonuses, especially for the \$500K loan that was created as described above. Several times I setup auto deductions from his payroll to offset these loans.

Franchise Tax Reports, Quarterly Sales Tax Reports & Summary of Margin Reports were kept in digital form on the company's online server/cloud host and paper form in office accounting file cabinets with filing proof. These cloud hosts with all company documents were online for well over half a year after the close of the company. The accounting file cabinets were also onsite during my work with Mr. Bensimon. When completing the Franchise Tax Reports I had to run the Summary of Margin Report in order to get a % to use on the Franchise Tax Report. The Quarterly Sales Tax Reports also had all back up documents printed and included to get exact numbers and methodology of reporting.

Vehicles were an absolute necessity for the company. The only company cars Charles McAllister used was a used 2000 Toyota Land cruiser purchased in 2006 and a 2009 Honda CRV purchased in late 2008. These vehicles were used for daily post office trips to pickup and drop of packages was one of the main functions of these company cars. Meeting with vendors was also another function of the vehicle.

Mr. McAllister did not handle incoming wires nor was he involved with the payment process and posting of incoming wires. This function was not something he handled. He simply would not have been aware of an incoming wire. When I took

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over A/R tasks from Julie Mayfield and daily accounting operations we posted all incoming payments prior to the bankruptcy attorney and Trustee taking over. Nobody but the Trustee or the Bankruptcy attorney would have been aware of an incoming wire after June 14th because we were told by Mr. McAllister to stop posting incoming payments and metals on June 10th 2015. A stack of physical checks that arrived and were not posted were saved and turned over to the trustee or bankruptcy attorney.

As for the final payroll, the handling was unusual but this was because normally Insperity would simply deduct from the Nucleo Staffing account but they closed their service to us when Mr. McAllister advised them that the company was in the process of filing bankruptcy. They closed our payroll services down quickly. So instead, I prepared paper checks for the last payroll and had Mr. McAllister sign them. Mr. McAllister simply didn't handle anything in the payroll. For incoming wires, either myself or another employee that had access to the Wells Fargo banking site would have transferred the funds to the account. Mr. McAllister would not have been aware of the source of the funds. Staff and myself, were not aware of any new wires after June 14, 2015 because we were no longer posting payments. We fully expected the trustee to eventually direct all handling of metals and monies that was not already posted to accounts. If money or metal were not returned it would have been an oversight or mistake made during the bankruptcy process - a process that began before the filing weeks later. We had many processes in place to account for all monies and metals before the bankruptcy.

Again, if I was to be given an opportunity to testify on Charles McAllister behalf and discuss many topics and facts about the company and it's daily operations it would help clarify many assumptions that were made at trail.

Sincerely,

Natasha Bernal

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FROM: Irmen, Travis  
TO: 00222480  
SUBJECT: RE: Affidavit: Travis Irmen  
DATE: 01/31/2022 11:06:04 PM

To Whom It May Concern:

I started working with Bullion Direct in 2009 working in the shipping dept. I took over vault operations in late 2012 early 2013. I was recruited by Corbin Tuma with whom I worked with previously at Lowes. Shortly before being recruited to BD Mr Tuma came and took myself and another friend to lunch where he picked us up in his New Classic car he had purchased.. At lunch he gave Steve and i a gift. He handed each of us a coin. A one ounce Gold Eagle Coin and 1 one ounce Platinum Coin. He said that they were given to him by his boss Jason Otteson. When I interviewed with BD my meeting was with Jason and Corbin. I was led to believe that Jason was the boss and I didn't even know Chad existed until some time later. We attended a Shipping conference in Las Vegas where we stayed at the Venetian hotel and I remember Mr Tuma and Mr Otteson were booked in suites floors above us. They scheduled Massages and went to the high roller room. Jason had taken us to dinner that night and spoke about taking the company public and all of us being rich. Many things seemed off inside the vault when Mr Tuma was in charge. He would often pull into the shipping bay bypassing metal detectors and scans. He would leave early and arrive late as he was having a big house built in Lakeway. Often Mr Tuma would disappear early and go golfing and sometimes would take me with him and pay for everything. I remember when he bought our co worker Melissa a Classic Truck and then payed for her airline ticket to go pick up her new truck. Mr Tuma often handled his own ordering in the vault and ran his own inventory. I learned a lot in Mr Tuma's absence. One of the reasons I was even considered for Vault manager after Corbin's departure was that I was always there. Opening in the morning and often locking up at night and that was recognized by Julie Mayfield who recommended me to Chad who I didn't know well when I took over. After stepping into that role we began to cut costs and get our inventories in order and began to run like a very well oiled machine. I got to know Chad well during our time together when I took over operations. We opened a Vault operation in Delaware and downsized in Austin. I believed I was going to retire there as I felt Chad was taking the company in the right direction.

Sincerley,

Travis Irmen

01/31/2022

Hey Chad,

Because of the unusual circumstances surrounding our situation, I did not get a chance to thank you. I appreciate the opportunity and the years that we have worked together -13!. Although frustrating and tiring at times, I have thoroughly enjoyed your team of individuals and appreciate their tireless efforts to help me and BD through numerous changes and challenges.

You were not just my employer, but my friend and cannot imagine abandoning a friend in any other circumstances. Loyalty is very important to me. The scriptures say that if we vow a vow, we should pay it and I feel sick that I cannot continue to help you.

While it is scary for me to be without employment (especially at my age), I know that Jehovah will take care of me as he always has.

I do really hope you 'win'.

All the best to you and your family.

Thank you, again.



Julie

**EXHIBIT: A**



| Analysis of Misappropriated Customer Funds<br>(at 3% Commission)<br>01/01/2009 - 07/21/2015 |                         |
|---|-------------------------|
| Customer Deposits   | \$410,629,564.57        |
| less: (Adjustments)   |                         |
| <b>Net Customer Deposits</b>  | <b>\$408,454,830.28</b> |
| Commissions/Fees to BDI (at 3% of Net Customer Deposits)                                    | \$12,253,644.91         |
| Operational Expenses  | \$29,055,204.43         |
| less: (Returns/Refunds)   |                         |
| <b>Net Operational Expenses</b>   | <b>\$28,436,832.66</b>  |
| <b>Operational Expenses in Excess of Commissions</b>  | <b>\$16,183,187.75</b>  |

| Analysis of Misappropriated Customer Funds<br>(at 2% Commission)<br>01/01/2009 - 07/21/2015 |                         |
|---|-------------------------|
| Customer Deposits   | \$410,629,564.57        |
| less: (Adjustments)   |                         |
| <b>Net Customer Deposits</b>  | <b>\$408,454,830.28</b> |
| Commissions/Fees to BDI (at 2% of Net Customer Deposits)                                    | \$8,169,096.61          |
| Operational Expenses  | \$29,055,204.43         |
| less: (Returns/Refunds)   |                         |
| <b>Net Operational Expenses</b>   | <b>\$28,436,832.66</b>  |
| <b>Operational Expenses in Excess of Commissions</b>  | <b>\$20,267,736.05</b>  |

|   |                         |
|---|-------------------------|
| Customer Deposits                               | \$410,629,564.57        |
| less: (Adjustments)                             |                         |
| <b>Net Customer Deposits</b>                    | <b>\$408,454,830.28</b> |
| less:   |                         |
| Customer Returns                                | \$120,484,287.85        |
| less: (Check/Wire Returns)                      |                         |
| <b>Net Customer Returns</b>                     | <b>\$119,076,022.01</b> |
| Payments for Purchase of Metal(s)               | \$266,983,228.55        |
| less: (Returns)                                 |                         |
| <b>Net Payment to Wholesalers</b>               | <b>\$265,023,499.10</b> |
| Operational Expenses (2% Commission)            | \$8,169,096.61          |
| <b>Amount of Misappropriated Customer Funds</b> | <b>\$16,186,212.56</b>  |

**EXHIBIT: B**

# PID 563535 | 6320 SOTER PARKWAY

Property Summary Report | Year 2018  
Online Services | Travis Central Appraisal District

## Improvement

Improvement #1: 1 FAM DWELLING Improvement Value: \$ 1,035,658 Main Area: 4,345 sqft  
State Code: A1 Gross Building Area: 12,195 sqft

| Type | Description      | Class CD | Exterior Wall | Number of Units | EFF Year Built | Year Built | SQFT  |
|------|------------------|----------|---------------|-----------------|----------------|------------|-------|
| 1ST  | 1st Floor        | WP       |               | 0               | 2007           | 2007       | 2,742 |
| 2ND  | 2nd Floor        | WP       |               | 0               | 2007           | 2007       | 1,603 |
| 604  | POOL RES CONC    | *        |               | 1               | 2007           | 2014       | 1     |
| 041  | GARAGE ATT 1ST F | WP       |               | 0               | 2007           | 2007       | 786   |
| 410  | OUTDOOR KITCHEN  | G        |               | 1               | 2007           | 2014       | 1     |
| 095  | HVAC RESIDENTIAL | *        |               | 1               | 2007           | 2007       | 4,345 |
| 011  | PORCH OPEN 1ST F | *        |               | 1               | 2007           | 2007       | 332   |
| 447  | SPA CONCRETE     | *        |               | 1               | 2007           | 2014       | 1     |
| 522  | FIREPLACE        | *        |               | 1               | 2007           | 2007       | 1     |
| 450  | SPORT COURT      | A        |               | 1               | 2007           | 2014       | 1,024 |
| 591  | MASONRY TRIM SF  | A        |               | 1               | 2007           | 2007       | 808   |
| 612  | TERRACE UNCOVERD | *        |               | 1               | 2007           | 2014       | 464   |
| 414  | FOUNTAIN OUTDOOR | A        |               | 1               | 2007           | 2014       | 1     |
| 011  | PORCH OPEN 1ST F | *        |               | 1               | 2007           | 2007       | 81    |
| 251  | BATHROOM         | *        |               | 1               | 2007           | 2007       | 3     |

### Improvement Features

1ST Foundation: **SLAB** Roof Style: **HIP** Roof Covering: **TILE** Shape Factor: **I** Floor Factor: **1ST** Grade Factor: **A**

2ND Shape Factor: **I** Floor Factor: **2ND** Grade Factor: **A**

# EXHIBIT: C1

# PID 563535 | 6320 SOTER PARKWAY

Property Summary Report | Year 2018  
Online Services | Travis Central Appraisal District

## Improvement

Improvement #1: 1 FAM DWELLING Improvement Value: \$ 1,035,658 Main Area: 4,345 sqft  
State Code: A1 Gross Building Area: 12,195 sqft

| Type | Description      | Class CD | Exterior Wall | Number of Units | EFF Year Built | Year Built | SQFT  |
|------|------------------|----------|---------------|-----------------|----------------|------------|-------|
| 1ST  | 1st Floor        | WP       |               | 0               | 2007           | 2007       | 2,742 |
| 2ND  | 2nd Floor        | WP       |               | 0               | 2007           | 2007       | 1,603 |
| 604  | POOL RES CONC    | *        |               | 1               | 2007           | 2014       | 1     |
| 041  | GARAGE ATT 1ST F | WP       |               | 0               | 2007           | 2007       | 786   |
| 410  | OUTDOOR KITCHEN  | G        |               | 1               | 2007           | 2014       | 1     |
| 095  | HVAC RESIDENTIAL | *        |               | 1               | 2007           | 2007       | 4,345 |
| 011  | PORCH OPEN 1ST F | *        |               | 1               | 2007           | 2007       | 332   |
| 447  | SPA CONCRETE     | *        |               | 1               | 2007           | 2014       | 1     |
| 522  | FIREPLACE        | *        |               | 1               | 2007           | 2007       | 1     |
| 450  | SPORT COURT      | A        |               | 1               | 2007           | 2014       | 1,024 |
| 591  | MASONRY TRIM SF  | A        |               | 1               | 2007           | 2007       | 808   |
| 612  | TERRACE UNCOVERD | *        |               | 1               | 2007           | 2014       | 464   |
| 414  | FOUNTAIN OUTDOOR | A        |               | 1               | 2007           | 2014       | 1     |
| 011  | PORCH OPEN 1ST F | *        |               | 1               | 2007           | 2007       | 81    |
| 251  | BATHROOM         | *        |               | 1               | 2007           | 2007       | 3     |

### Improvement Features

1ST Foundation: **SLAB** Roof Style: **HIP** Roof Covering: **TILE** Shape Factor: **I** Floor Factor: **1ST** Grade Factor: **A**

2ND Shape Factor: **I** Floor Factor: **2ND** Grade Factor: **A**

# EXHIBIT: C1

# PID 563535 | 6320 SOTER PARKWAY

Property Summary Report | Year 2018  
Online Services | Travis Central Appraisal District

## Taxing Units

Owner: DUNN D NICK & LUANN M  
% Ownership: 100 %  
Total Value: 1,367,009

| Unit | Description                       | Tax Rate | Net Appraised | Taxable Value | Estimated Tax |
|------|-----------------------------------|----------|---------------|---------------|---------------|
|      | AUSTIN ISD                        | 1.192000 | 1,367,009     | 1,342,009     | 15,996.75     |
|      | CITY OF AUSTIN                    | 0.440300 | 1,367,009     | 1,230,308     | 5,417.05      |
|      | TRAVIS COUNTY                     | 0.354200 | 1,367,009     | 1,093,607     | 3,873.56      |
|      | TRAVIS CENTRAL APP DIST           | 0.000000 | 1,367,009     | 1,367,009     | 0.00          |
|      | TRAVIS COUNTY HEALTHCARE DISTRICT | 0.105221 | 1,367,009     | 1,093,607     | 1,150.70      |
|      | AUSTIN COMM COLL DIST             | 0.104800 | 1,367,009     | 1,353,339     | 1,418.30      |

**TOTAL TAX RATE: 2.196521**

**\* ESTIMATED TAXES WITH CURRENT EXEMPTIONS: 27,856.36**

**\* ESTIMATED TAXES WITHOUT EXEMPTIONS: 30,026.65**

\* DO NOT PAY FROM THIS ESTIMATE. This is only an estimate provided for informational purposes and may not include any special assessments that may also be collected. Please contact the tax office for actual amounts.

EXHIBIT C

**GENERAL INFO**

**ACCOUNT**

Property ID: 563535  
 Geographic ID: 0105280107  
 Type: R  
 Zoning:  
 Agent:  
 Legal Description: LOT 22 BLK B GAINES RANCH SUBD  
 PHS 2  
 Property Use:

**OWNER**

Name: DUNN D NICK & LUANN M  
 Secondary Name:  
 Mailing Address: 6320 SOTER PKWY AUSTIN TX 78735-6111  
 Owner ID: 1557288  
 % Ownership: 100.00  
 Exemptions: HS - Homestead

**LOCATION**

Address: 6320 SOTER PARKWAY TX 78735

Market Area:  
 Market Area CD: N4020  
 Map ID: 010237

**PROTEST**

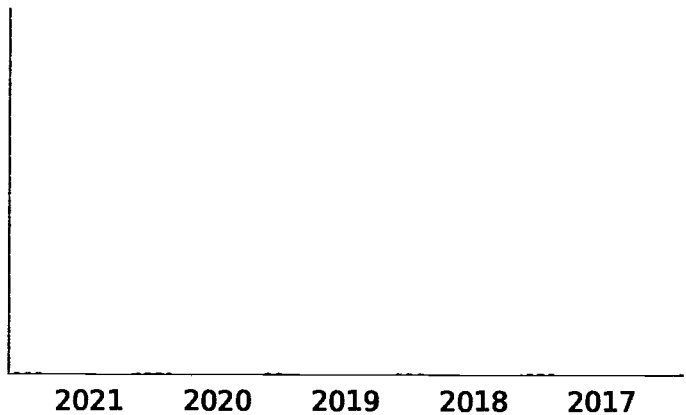
Protest Status:  
 Informal Date:  
 Formal Date:

**VALUES**

**CURRENT VALUES**

Land Homesite: \$475,000  
 Land Non-Homesite: \$0  
 Special Use Land Market: \$0  
 Total Land: \$475,000  
 Improvement Homesite: \$1,026,361  
 Improvement Non-Homesite: \$0  
 Total Improvement: \$1,026,361  
 Market: \$1,501,361  
 Special Use Exclusion (-): \$0  
 Appraised: \$1,501,361  
 Value Limitation Adjustment (-): \$0  
 Net Appraised: \$1,501,361

**VALUE HISTORY**



**VALUE HISTORY**

| Year | Land Market | Improvement | Special Use Exclusion | Appraised   | Value Limitation Adj (-) | Net Appraised |
|------|-------------|-------------|-----------------------|-------------|--------------------------|---------------|
| 2021 | \$475,000   | \$1,282,432 | \$0                   | \$1,757,432 | \$105,935                | \$1,651,497   |
| 2020 | \$475,000   | \$1,026,361 | \$0                   | \$1,501,361 | \$0                      | \$1,501,361   |
| 2019 | \$475,000   | \$1,026,361 | \$0                   | \$1,501,361 | \$0                      | \$1,501,361   |
| 2018 | \$475,000   | \$1,035,658 | \$0                   | \$1,510,658 | \$143,649                | \$1,367,009   |
| 2017 | \$200,000   | \$1,042,735 | \$0                   | \$1,242,735 | \$0                      | \$1,242,735   |

**EXHIBIT: C2**

**GENERAL INFO**

**ACCOUNT**

Property ID: 563535  
 Geographic ID: 0105280107  
 Type: R  
 Zoning:  
 Agent:  
 Legal Description: LOT 22 BLK B GAINES RANCH SUBD  
 PHS 2

**OWNER**

Name: DUNN D NICK & LUANN M  
 Secondary Name:  
 Mailing Address: 6320 SOTER PKWY AUSTIN TX 78735-6111  
 Owner ID: 1557288  
 % Ownership: 100.00  
 Exemptions: HS - Homestead

Property Use:

**LOCATION**

Address: 6320 SOTER PARKWAY TX 78735

Market Area:  
 Market Area CD: N4020  
 Map ID: 010237

**PROTEST**

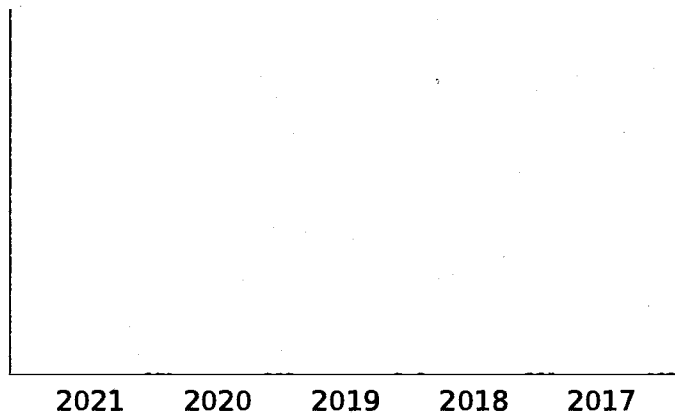
Protest Status:  
 Informal Date:  
 Formal Date:

**VALUES**

**CURRENT VALUES**

Land Homesite: \$475,000  
 Land Non-Homesite: \$0  
 Special Use Land Market: \$0  
 Total Land: \$475,000  
  
 Improvement Homesite: \$1,026,361  
 Improvement Non-Homesite: \$0  
 Total Improvement: \$1,026,361  
  
 Market: \$1,501,361  
 Special Use Exclusion (-): \$0  
 Appraised: \$1,501,361  
 Value Limitation Adjustment (-): \$0  
  
 Net Appraised: \$1,501,361

**VALUE HISTORY**



**VALUE HISTORY**

| Year | Land Market | Improvement | Special Use Exclusion | Appraised   | Value Limitation Adj (-) | Net Appraised |
|------|-------------|-------------|-----------------------|-------------|--------------------------|---------------|
| 2021 | \$475,000   | \$1,282,432 | \$0                   | \$1,757,432 | \$105,935                | \$1,651,497   |
| 2020 | \$475,000   | \$1,026,361 | \$0                   | \$1,501,361 | \$0                      | \$1,501,361   |
| 2019 | \$475,000   | \$1,026,361 | \$0                   | \$1,501,361 | \$0                      | \$1,501,361   |
| 2018 | \$475,000   | \$1,035,658 | \$0                   | \$1,510,658 | \$143,649                | \$1,367,009   |
| 2017 | \$200,000   | \$1,042,735 | \$0                   | \$1,242,735 | \$0                      | \$1,242,735   |

**EXHIBIT: C2**

## TAXING UNITS

| Unit | Description                       | Tax Rate  | Net Appraised | Taxable Value | Estimated Tax |
|------|-----------------------------------|---|---------------|---------------|---------------|
| 01   | AUSTIN ISD                        | 1.122000  | \$1,501,361   | \$1,476,361   | \$16,564.77   |
| 02   | CITY OF AUSTIN                    | 0.443100  | \$1,501,361   | \$1,351,225   | \$5,987.28    |
| 03   | TRAVIS COUNTY                     | 0.369293  | \$1,501,361   | \$1,201,089   | \$4,435.54    |
| 0A   | TRAVIS CENTRAL APP DIST           | 0.000000  | \$1,501,361   | \$1,501,361   | \$0.00        |
| 2J   | TRAVIS COUNTY HEALTHCARE DISTRICT | 0.105573  | \$1,501,361   | \$1,201,089   | \$1,268.03    |
| 68   | AUSTIN COMM COLL DIST             | 0.104900  | \$1,501,361   | \$1,486,347   | \$1,559.18    |
|      |                                   | <b>TOTAL TAX RATE:</b>                          | 2.14486       |               |               |
|      |                                   | <b>ESTIMATED TAXES WITH CURRENT EXEMPTIONS:</b> |               |               | \$29,814.80   |
|      |                                   | <b>ESTIMATED TAXES WITHOUT EXEMPTIONS:</b>      |               |               | \$32,202.18   |

DO NOT PAY FROM THIS ESTIMATE. This is only an estimate provided for informational purposes and may not include any special assessments that may also be collected. Please contact the tax office for actual amounts.

## IMPROVEMENT

Improvement #1: 1 FAM DWELLING Improvement Value: \$1,028,361 Main Area: 4,345.5  
 State Code: A1 Gross Building Area: 12,195

| Type | Description      | Class CD | Exterior Wall | Number of Units | EFF Year Built | Year | SQFT    |
|------|------------------|----------|---------------|-----------------|----------------|------|---------|
| 1ST  | 1st Floor        | WP       |               | 0               | 2007           | 2007 | 2,742   |
| 2ND  | 2nd Floor        | WP       |               | 0               | 2007           | 2007 | 1,603.5 |
| 604  | POOL RES CONC    | *        |               | 1               | 2007           | 2014 | 1       |
| 041  | GARAGE ATT 1ST F | WP       |               | 0               | 2007           | 2007 | 786     |
| 410  | OUTDOOR KITCHEN  | G        |               | 1               | 2007           | 2014 | 1       |
| 095  | HVAC RESIDENTIAL | *        |               | 1               | 2007           | 2007 | 4,345.5 |
| 011  | PORCH OPEN 1ST F | *        |               | 1               | 2007           | 2007 | 332.5   |
| 522  | FIREPLACE        | *        |               | 1               | 2007           | 2007 | 1       |
| 447  | SPA CONCRETE     | *        |               | 1               | 2007           | 2014 | 1       |
| 450  | SPORT COURT      | A        |               | 1               | 2007           | 2014 | 1,024   |
| 591  | MASONRY TRIM SF  | A        |               | 1               | 2007           | 2007 | 808     |
| 612  | TERRACE UNCOVERD | *        |               | 1               | 2007           | 2014 | 464     |
| 414  | FOUNTAIN OUTDOOR | A        |               | 1               | 2007           | 2014 | 1       |
| 011  | PORCH OPEN 1ST F | *        |               | 1               | 2007           | 2007 | 81      |
| 251  | BATHROOM         | *        |               | 1               | 2007           | 2007 | 3.5     |

### Improvement Features

1ST Foundation: SLAB, Roof Style: HIP, Roof Covering: TILE, Shape Factor: I, Floor Factor: 1ST, Grade Factor: A  
 2ND Shape Factor: I, Floor Factor: 2ND, Grade Factor: A

## LAND

| Land | Description | Acres | SQFT   | Cost per SQFT | Market Value | Special Use Value |
|------|-------------|-------|--------|---------------|--------------|-------------------|
| LAND | Land        | 0.552 | 24,045 | \$19.75       | \$475,000    | \$0               |

## DEED HISTORY

| Deed Date | Type | Description | Grantor/Seller | Grantee/Buyer | Book ID | Volume | Page | Instrument |
|-----------|------|-------------|----------------|---------------|---------|--------|------|------------|
| 10/3/21   | WD   | WARRANTY    | DUNN D NICK &  | AYLOR STEPHEN |         |        |      | 2021245636 |

**EXHIBIT C**

### PID 563535 | 6320 SOTER PARKWAY

Property Summary Report | Year 2018  
Online Services | Travis Central Appraisal District

#### Land

| Land | Description | Acres | SQFT      | Cost per SQFT | Market Value | Special Use Value ⓘ |
|------|-------------|-------|-----------|---------------|--------------|---------------------|
| LAND | Land        | 0.55  | 24,045.00 | 19.75         | 475,000      | 0                   |

#### Deed History

| Deed Date  | Type | Description           | Grantor/Seller          | Grantee/Buyer          | Book ID | Volume | Page | Instrument   |
|------------|------|-----------------------|-------------------------|------------------------|---------|--------|------|--------------|
| 2013-01-20 | WD   | WARRANTY DEED         | NBD HOLDINGS LLC        | DUNN D NICK & LUANN M  |         |        |      | 2013010127TR |
| 2011-04-18 | SW   | SPECIAL WARRANTY DEED | ESCONDIDA FAMILY TRUST  | NBD HOLDINGS LLC       |         |        |      | 2011079682TR |
| 2009-11-16 | WD   | WARRANTY DEED         | RME ENTERPRISES INC DBA | ESCONDIDA FAMILY TRUST |         |        |      | 2009191684TR |

Powered by <True Prodigy>

# EXHIBIT: C3



March 03, 2001

CHARLES H MCALLISTER  
2028 E BEN WHITE BLVD  
#240  
AUSTIN TX 787416931

First USA Bank, NA  
P.O. Box 8650  
Wilmington DE 19899-8650

Re: 4417113875901068

Dear CHARLES H MCALLISTER:

Thank you for your recent inquiry concerning your credit card account.

Enclosed you will find a copy of the credit card statement(s) you  
requested for the month(s) of:

02/2000      04/2000      07/2000      11/2000

Unfortunately we have been unable to locate the statement(s) for the  
following month(s):

01/2000      03/2000      05/2000      06/2000  
08/2000      09/2000      10/2000

We are continuing our research and will provide you with an update  
within the next 2 weeks.

We appreciate the opportunity to be of assistance. We take pride in  
providing exceptional quality service and look forward to continuing  
to service your credit card needs.

Sincerely,

Cardmember Services

**EXHIBIT: D**

|                                 | <b>AU</b>         | <b>AG</b>        | <b>PA</b> | <b>PL</b>    | <b>CU</b>       |                |
|---------------------------------|-------------------|------------------|-----------|--------------|-----------------|----------------|
| <b>Portfolio-IRA-Active</b>     | 3326.45           | 140573           |           | 371.3        | 108.7           | 0              |
| <b>Portfolio-Regular-Active</b> | 3127.2985         | 226907.865       |           | 144          | 123.8895        | 548.32         |
| <b>Portfolio-Regular-New</b>    | 90.4693           | 5102.9           |           | 0            | 0.1             | 0              |
| <b>Ship-IRA-Active</b>          | 253.05            | 13855            |           | 44           | 23              | 0              |
| <b>Ship-Regular-Active</b>      | 4268.0257         | 234120.125       |           | 84           | 286.6822        | 1657.84        |
| <b>Ship-Regular-New</b>         | 35.25             | 3461             |           | 0            | 0               | 0              |
| <b>TOTALS</b>                   | <b>11100.5435</b> | <b>624019.89</b> |           | <b>643.3</b> | <b>542.3717</b> | <b>2206.16</b> |

**EXHIBIT: E**

# Jason Otteson Net Worth

in Richest Business > Executives



## Gold Rush

Net Worth: \$15 Million

### Jason Otteson Net Worth: \$15 Million

Jason Otteson net worth: Jason Otteson is an American executive who has a net worth of \$15 million dollars. The head of Noble Mining and Noble Buillion, Jason Otteson was featured on the second and third seasons of the Discovery Channel show, "Gold Rush Alaska". Prior to founding Noble Mining, he ran the largest online precious metals retailer in the world.

# EXHIBIT: F



**EXHIBIT: G**

54.191.98.247/members/showAccountStatus/portfolioDetail.do

Home » My Account » Portfolio

| Portfolio           | Open Trades +       | Dues | Order Status         | Order History +       |
|---------------------|---------------------|------|----------------------|-----------------------|
| <b>Account Name</b> | [REDACTED]          |      | <b>Trading Power</b> | <b>REQUEST CHANGE</b> |
| <b>Pend. Cash</b>   | \$0.00              |      | <b>Avail. Cash</b>   | <b>CASH DRAW</b>      |
| <b>Account #</b>    | 870353467           |      | <b>Amount Due</b>    | <b>VIEW &amp; PAY</b> |
| <b>Time</b>         | 2019-10-02 12:05:47 |      | <b>Product Due</b>   | <b>VIEW</b>           |

**SUMMARY PORTFOLIO**

| Product                         | Available | Unshipped Draw | Reserved for Sale | Unpaid | Total |
|---------------------------------|-----------|----------------|-------------------|--------|-------|
| GCAE100                         | 0         | 0              | 0                 | 20     | 20    |
| <b>Facility: BD-Undelivered</b> |           |                |                   |        |       |
| Product                         | Available | Unshipped Draw | Reserved for Sale | Unpaid | Total |
| GCAE100                         | 0         | 0              | 0                 | 20     | 20    |

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Tools

Representatives of a private southwest Houston game room paid \$250,000 to a consultant for Harris County District Attorney Kim Ogg and two other men who promised to secure passage of a city ordinance protecting gambling establishments only to discover the pitch was a scam, their attorneys said Wednesday.

Neither the mayor's office or city council ever proposed or debated such an ordinance. The Prime Social Poker Club's representatives grew suspicious after inquiring about the ordinance's progress in a December meeting with a city official who responded that he had no idea what they were talking about. After months of waiting, the Prime Social team grew impatient and pressed the consultant for updates.

Weeks later, Prime Social and another members-only game room, the Galleria-area Post Oak Poker Club, were raided in a probe led by the district attorney's office on May 1. Nine people, including employees and the business owners, were arrested and charged with money laundering, engaging in organized criminal activity and gambling promotion.

Ogg dismissed all charges against all of the poker room defendants on Tuesday, citing a potential conflict of interest with a former contract employee and political fundraiser. She asked the FBI to investigate the case and pledged to return more than \$200,000 police seized in the busts.

Attorneys for the poker clubs praised Ogg for withdrawing the charges and suggested she had been deceived by one of her own consultants.

"We believe we were the victims of a fraud, much as I believe the DA's office was also a victim," said Joseph Magliolo, attorney for Prime Social.

Three attorneys who represent clients from the poker rooms identified the consultant as Amir Mireskandari, a major contributor to Ogg's campaigns and a consultant under contract to her office. Mireskandari orchestrated the scheme with Houston private investigator Tim Wilson and attorney Jimmy Ardoin, they said.

Magliolo said the consultant, whom the other attorneys said was Mireskandari, directed Prime Social representatives to make thousands of dollars in contributions to his political action committee, Texans for Fairness and Justice.

Mireskandari and Wilson did not respond to requests for comment Wednesday. Ogg since Tuesday has refused to answer questions about the case.

A spokeswoman for Ardoin's law firm, Jones Walker, said neither Ardoin nor anyone else at the firm had done anything wrong. Contracts between Harris County and Mireskandari show Ogg hired the consultant to help her office prosecute complex financial crimes for a monthly fee of \$1,100. Mireskandari joined the office in January 2017, shortly after Ogg was inaugurated, and his current contract runs until February 2020. It was unclear whether he had a role in investigating the poker clubs.

Mireskandari and his wife have been among Ogg's most generous political donors. Between 2016 and 2017, the couple gave \$14,475 in monetary and in-kind contributions.

The Mireskandaris' \$3.2 million Memorial-area home also has hosted two Ogg fundraisers. At one, Amir Mireskandari paid a \$5,475 catering tab, according to Ogg's campaign finance reports. An advertisement for an April 2017 event lists him as the chair of the campaign's finance committee.

Prime Social attorney Zachary Fertitta said the only reason his clients agreed to pay the \$250,000 to help pass a city gambling ordinance was because someone employed as a local law enforcement consultant had offered to help.

"Without the legitimizing presence of a DA's office representative, my clients wouldn't have engaged in this," Fertitta said.

Chip Lewis, who represents Post Oak Poker Club defendants, said Mireskandari and Wilson also offered to help that establishment win passage of a gambling ordinance for an identical fee. He said his clients considered paying the \$250,000 out of fear Mireskandari would retaliate through his relationships with law enforcement if they did not, but ultimately concluded the pitch was a scam.

"They understood that what was being sold was akin to snake oil," Lewis said.

Lewis said Post Oak did hire Wilson's firm to provide security for the club.

Lawyers for Prime Social and Post Oak said they remain baffled why the clubs were targeted in the gambling investigation and raids. Magliolo said Prime Social principals met with elected officials to ensure their operations were legal.

"Not one of the many leaders, including other county DA's, people in the Houston hierarchy believed they were acting in an illegal manner," he said.

Magliolo said at one point, Houston Police Department officers were allowed to work second jobs providing security for the club hardly the kind of employees an organized criminal operation would seek, he said.

Each club operated for more than a year before the raids. Post Oak opened its doors at 1801 Post Oak Blvd. in August 2017. Prime Social, at 7801 Westheimer, followed in February 2018.

## EXHIBIT: H

The clubs operated by charging for memberships and requiring players to pay a fee for time spent at a poker table. Unlike casinos, which typically take a cut of the pot, called a rake, Lewis said the clubs earned no revenue from the poker games.

Magliolo said Prime Social's owners hope to reopen the club soon.

The clubs still face civil lawsuits by Harris County Attorney Vince Ryan, who is seeking to shut down the clubs as a nuisance.

First Assistant County Attorney Robert Soard said Tuesday the county has yet to decide whether to withdraw the suits.

zach.despart@chron.com

**Obligations per Admin**Cash 7,041,333.26

Total Ounce Obligation - 08/31/11

| Metal     | Paid       | Current Spot Price | Total in Obligations | Inventory on Hand in Ounces |
|-----------|------------|--------------------|----------------------|-----------------------------|
| Silver    | 728,768.35 | 41.553             | 30,282,511.25        | 194,461.83                  |
| Gold      | 13,502.25  | 1824.23            | 24,631,202.22        | 1,608.70                    |
| Platinum  | 555.175    | 1855.5             | 1,030,127.21         | 112.56                      |
| Palladium | 1,085.30   | 786.5              | 853,588.45           | 574.00                      |

Total Ounce Obligation - 08/31/11 \$56,797,429.13 196,757.10

Actual Inventory on Hand 11,450,599.66

Obligation less inventory 45,346,829.47

**Total Ounce Obligation + Cash - 08/31/11 \$52,388,162.73****IRA Obligations**Cash \$1,241,957.96

Total Ounce Exposure - 08/31/11

| Metal     | Total      | Current Spot Price | Total in Obligations |
|-----------|------------|--------------------|----------------------|
| Silver    | 206,427.00 | 41.553             | 8,577,661.13         |
| Gold      | 5,290.00   | 1824.23            | 9,650,176.70         |
| Platinum  | 157.25     | 1855.5             | 291,777.38           |
| Palladium | 517.3      | 786.5              | 406,856.45           |

Total IRA Ounce Obligation - 08/31/11 \$18,926,471.66

Total IRA Ounce Obligation + Cash - 08/31/11 \$20,168,429.62

**Obligations excluding IRA**

Cash \$5,799,375.30

| Metal     | Paid      | Current Spot Price | Total in Obligations |
|-----------|-----------|--------------------|----------------------|
| Silver    | 522,341.4 | 41.553             | 21,704,850.12        |
| Gold      | 8,212.2   | 1824.23            | 14,981,025.52        |
| Platinum  | 397.9     | 1855.5             | 738,349.84           |
| Palladium | 568.0     | 786.5              | 446,732.00           |

Total Ounce Obligation w/o IRA - 08/31/11 \$37,870,957.47

Total Ounce Obligation + Cash w/o IRA - 08/31/11 \$43,670,332.77



**Obligations per Admin**

Cash 4,623,662.34

Total Ounce Obligation - 08/31/12

| Metal                                    | Paid       | Current Spot Price | Total in Obligations | Inventory on Hand in Ounces | Difference |               |
|--|------------|--------------------|----------------------|-----------------------------|------------|---------------|
| Silver                                   | 744,780.72 | 31.745             | 23,643,063.80        | 204,712.88                  | 540,067.84 | 17,144,453.42 |
| Gold                                     | 12,572.73  | 1691.8             | 21,270,539.54        | 1,681.98                    | 10,890.74  | 18,424,959.55 |
| Platinum                                 | 601.872    | 1544               | 929,290.37           | 251.27                      | 350.60     | 541,324.43    |
| Palladium                                | 1,017.30   | 627.04             | 637,887.79           | 575.00                      | 442.30     | 277,339.79    |
| Total Ounce Obligation - 08/31/12        |            |                    | \$46,480,781.50      | 207,221.14                  |            | 36,388,077.19 |
| Actual Inventory on Hand                 |            |                    | 9,980,541.68         |                             |            |               |
| Obligation less inventory                |            |                    | 36,500,239.82        |                             |            | (112,162.63)  |
| Total Ounce Obligation + Cash - 08/31/12 |            |                    | \$41,123,902.34      |                             |            |               |

**IRA Obligations**

Cash 534,940.70

Total Ounce Obligation - 08/31/12

| Metal  | Total      | Current Spot Price | Total in Obligations |
|--|------------|--------------------|----------------------|
| Silver                                       | 213,589.00 | 31.745             | 6,780,382.81         |
| Gold   | 5,100.95   | 1691.8             | 8,629,787.21         |
| Platinum                                     | 217.15     | 1544               | 335,279.60           |
| Palladium                                    | 540.30     | 627.04             | 338,789.71           |
| Total IRA Ounce Obligation - 08/31/12        |            |                    | \$16,084,239.33      |
| Total IRA Ounce Obligation + Cash - 08/31/12 |            |                    | \$16,619,180.03      |

**Obligations excluding IRA**

Cash 4,088,721.82

| Metal  | Paid      | Current Spot Price | Total in Obligations |
|--|-----------|--------------------|----------------------|
| Silver   | 531,191.7 | 31.745             | 16,862,680.99        |
| Gold   | 7,471.8   | 1691.8             | 12,640,752.33        |
| Platinum   | 384.7     | 1544               | 594,010.77           |
| Palladium  | 477.0     | 627.04             | 299,098.08           |
| Total Ounce Obligation w/o IRA - 08/31/12        |           |                    | \$30,396,542.17      |
| Total Ounce Obligation + Cash w/o IRA - 08/31/12 |           |                    | \$34,485,263.99      |

