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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF TEXAS
TYLER DIVISION

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ALLEN PETTY, JR., a.k.a. AL PETTY,

14 Defendant.

Case No. 6:02CR45

NOTICE OF FILING AND RECEIVER'S
APPLICATION TO THE COURT
REQUESTING APPROVAL OF
PROPOSED DISTRIBUTION PLAN OF
FORFEITED FUNDS TO 1,869
INVESTORS

Date: [No Hearing Set]

Time:

Place: Courtroom

Eastern District Court

Tyler Division, TX

Judge Leonard E. Davis

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19 NOTICE OF FILING: TO THIS HONORABLE COURT AND TO ALL
20 INTERESTED PARTIES

21 PLEASE TAKE NOTICE that Pursuant to the Order of this Honorable Court of May 27, 2009
22 appointing Robb Evans of Robb Evans & Associates LLC as Receiver in the above captioned
23 case, we hereby file our Notice and Receiver's Application Requesting for Approval of Proposed
24 Distribution Plan of Forfeited Funds to 1,869 Investors.

25 Dated: April 21, 2010

RESPECTFULLY SUBMITTED

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Linda J. Candler
Counsel to Receiver

Robb Evans
Receiver
In the Matter of
United States of America v. Allen Petty, Jr., a.k.a. Al Petty
11450 Sheldon Street
Sun Valley, CA 91352-1121
Facsimile (818) 768-8802

BACKGROUND

Pursuant to the Order Appointing Receiver, signed by Honorable United States District Court Judge Leonard Davis on May 27, 2009 (Exhibit A), the Receiver hereby submits this Application for a proposed distribution in connection with the administration of the additional funds turned over by the United States District Court Clerk's Office.

The Receiver verified with the Clerk's Office that the funds of \$943,523.72 (the remaining forfeited funds) reported as of February 26, 2009 by the Clerk's Office, are part of the forfeited items ordered to be paid as restitution. On July 14, 2009, the Receiver requested that the funds, plus the \$1,046.72 collected by the Clerk's Office in payments made by Petty while incarcerated at the Federal Bureau of Prisons, be turned over to the Receiver for disbursing the funds to the previously-identified victims on a pro-rata basis. The Receiver received \$944,813.96 remaining forfeited funds, including additional accrued interest, and the \$1,046.72 payment on September 28, 2009.

DISRIBUTION FEES AND EXPENSES & DISTRIBUTION TO INVESTORS

The Receiver is currently holding \$944,813.96. The costs of distribution of the checks and other costs of administrating the funds total \$34,133.50, including estimated Receiver fees of \$11,333.50. Other costs include the cost of issuing Cashier's Checks. The Receiver proposes to distribute \$910,000.00, on a *pro rata* basis, to approved claimants with last known good addresses.

In February 2005, the Receiver made the first distribution of \$1,943,500 to 2,072 approved claimants with good known addresses. The bank records showed that 1,883 checks were cleared as of March 2008. The Receiver made the final distribution in April 2008 to approximately 250 investors whose claims totaled \$50 or more and were among the 1,883 claimants. About 25 or 10% of the distribution notices & cashier's checks were returned. Based on the Receiver's address search, some of the investors passed away and approximately 10 of the investors still could not be located.

The Receiver proposes to make this single distribution to 1,869 investors, who represent the 1,883 investors with a claim amount of \$100 or more (see detailed discussion below), excluding

those who passed away or could not be located. The Receiver anticipates that many checks will be returned as the investors might have moved since the Receiver's First Distribution in February 2005. The estimate of Receiver's costs includes address search fees of approximately \$5,000.00 (= \$5 times 1,000).

The Receiver proposes that distributions not be made to victims whose claims are less than \$100.00, as this is not cost-effective. There are 3 victims in this category. The Receiver seeks approval to make a distribution to those victims whose claims total \$100.00 or more. There are 1,869 victims who would receive funds in this category. Total claims for these claimants totaled \$ 9,588,186.72.

The Receiver further proposes issuing Cashier's checks to each investor for this single distribution because the recipients will have three years to negotiate the checks. This thus eliminates the need to keep the Receivership estate open for six months or longer until any uncleared checks are negotiated or remain un-negotiated. The three-year period will ensure that the checks remain valid and payable for a longer period of time, in the event that investors have moved and mail is forwarded. The Receiver estimates the cost of distribution will include approximately \$16,000.00 in bank charges for issuing Cashier's checks at \$8.00 per check. The Receiver has examined other options for a final distribution, including the use of stored-value credit cards for each investor, but the cost of issuing such cards would be more expensive as the individual data for each investor would have to be loaded onto the card by the issuing bank.

After the distribution fees and expenses of approximately \$34,000, each investor with an approved claim of \$100.00 or more would receive a final distribution of 9.49% of his or her allowed claim (= \$910,000.00 distribution amount divided by \$9,588,186.72 total claim amount). The Receiver proposes to pay the costs and expenses associated with this distribution of the \$944,813.96 funds held by the Receiver.

CONCLUSION

The Receiver respectfully requests that the Court approve (1) the proposed distribution/disbursement plan and (2) the Receiver's administrative fees and expenses, which shall be paid out of the funds turned over by the United States District Court Clerk's Office.

Respectfully submitted,

/s/

Robb Evans
Receiver

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA §
 §
V. § NO. 6:02CR45
 § (Judge Davis)
ALLEN PETTY, JR., a.k.a. AL PETTY §

ORDER APPOINTING RECEIVER

The Court has considered the Government's Motion for Order Regarding Receiver and makes the following findings:

1. On October 30, 2002, the jury in this case found Defendant Allen Petty, Jr., a.k.a. Al Petty, guilty of all 98 counts of the Second Superseding Indictment. Thereafter, the same jury returned a Special Verdict forfeiting the Defendant's interest in the following property to the United States of America:

ACCOUNTS, CHECKS AND MONEY ORDERS

- a. Approximately \$1,257,794.98 in United States currency credited to account number 1421255 in the name of Independence 2000 America, Inc., d.b.a. TeleCom 2000 Network, located at Southside Bank, Tyler, Texas;
- b. Approximately \$33,732.96 in United States currency credited to account number 1422294 in the name of Face to Face Ministries, located at Southside Bank, Tyler, Texas;
- c. Approximately \$17,125.66 in United States currency credited to account number 1406175 in the name of Allen Petty, Jr., d.b.a. TeleCom 2000 Network, located at Southside Bank, Tyler, Texas;
- d. Approximately \$49,633.42 in United States currency credited to account number 635106982 in the name of Significant Lifestyles LLC, located at Bank One, Tyler, Texas;
- e. Approximately \$1,800,000.00 in United States currency initially credited to account numbers 63377, 15884, 65504, 22358, 16378, 12052, 17423, and 65503 and later

credited to account number 66432 in the name of X-Change Reciprocal Services, LLC located at Evocash;

f. Approximately \$1,523,863.93 in United States currency initially credited to account numbers 34982, 60636, 35924, and 13210 at Evocash;

g. Approximately \$437,862.48 in United States currency in the form of checks and money orders found in packages addressed to Allen Petty, Jr., a.k.a. Al Petty or TeleCom 2000 Network located at Federal Express, Longview, Texas;

h. Approximately \$89,957.11 in United States currency in the form of checks and money orders found in packages addressed to Allen Petty, Jr., a.k.a. Al Petty or TeleCom 2000 Network located at United Parcel Service (UPS) Longview, Texas; and

i. Approximately \$97,999.04 in United States currency in the form of checks and money orders found in packages addressed to Allen Petty, Jr., a.k.a. Al Petty or TeleCom 2000 Network located at the offices of TeleCom 2000 Network, Overton, Texas.

CONVEYANCES

a. One 2002 Mercedes-Benz S600V Sedan, Texas License P62GLG, VIN WDBNG78J22A246731; and

b. One 2002 Chevrolet Tahoe Sports Utility Vehicle, Texas License 6YZR96, VIN 1GNEK13Z12R199789.

COMPUTER EQUIPMENT

a. Ten IBM Deskstar hard drive identification numbers A4G018WA, A4G01A9A, TXJ50529, TXRJ6897, TXSF1292, TX383425, TXRK0870, TXJ71468, TXSF1246, TXSF1295;

b. One Quantum Fireball LCT hard drive serial number 054109653214;

c. Three Windows 2000 Professional 1-2 central processing units identification numbers B23-02438, 169-2000-8050-X and X06-21543;

d. Three Family Model PR 2000 central processing units identification numbers X05-33582-D, 169-2000-8075-X, and 169-2000-8049-X;

e. One Compaq Presario 5000 central processing units identification number X06-21543;

f. One Windows 2000 server 1-4 central processing unit identification number C11-

01872;

g. One Studio Works monitor serial number 011DI00799; and

h. One computer keyboard and mouse.

REAL PROPERTY

All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located in the Joseph Campbell Survey A-243, Smith County, Texas, more particularly described as:

Tract 1:

All that certain 10.0 acre tract or parcel of land situated in the J. CAMPBELL SURVEY, Abstract 243, Smith County, Texas; located about 2 miles West of Overton and being a part of a called 25 acre tract of land conveyed to William Harvey, et ux by Finance Washington, et ux in Deed dated August 5, 1948 and recorded in Volume 600, Page 618 of the Deed Records of Smith County, Texas; metes and bounds as follows:

BEGINNING at a ½ inch Iron Pipe set at fence corner being the occupied Northeast Corner of said 25 acre tract;

THENCE North 86 degrees 18 minutes West, along occupied North Boundary Line of said 25 acre tract, 373.4 feet to a one inch Iron Pipe from which a double aluminum pipe bears North 86 degrees 18 minutes West 25.3 feet and a 12 inch Elm North 86 1/4 West 3.6 feet;

THENCE South 0 degrees 26 minutes West, along marked line, 1219.96 feet of a steel spike in center of a county oiled road being the occupied South Boundary Line of said 25 acre tract from which a 1/4 inch Iron Rod bears North 0 degrees 26 minutes East 30.3 feet;

THENCE along center of said road as follows:
South 87 degrees 52 minutes East 36.9 feet to a steel spike;
North 74 degrees 54 minutes East 348.55 feet to a steel spike set on the occupied East Boundary Line of said 25 acre tract;

THENCE North 0 degrees 26 minutes East, at 27.3 feet a ½ inch Iron Pipe, and in all along the occupied 25 acre East Boundary Line

1106.4 feet to the place of beginning, CONTAINING 10.0 acres of land.

Tract 2:

All that certain lot, tract or parcel of land being a survey of a 10.00 acre portion of that called 25 acre tract Deeded by Finance Washington and wife, Clema Lee Washington to William Harvey and wife Lessie Harvey, on August 5, 1948, Deed recorded in Volume 600, Page 617, Deed Records of Smith County, Texas, being a part of the Joseph Campbell Survey, Abstract 243, Smith County, Texas, and more fully described as follows:

BEGINNING at spike in county oiled road at the Southeast Corner of this tract from which a ½ inch iron Pin in North right-of-way fence bears North 0 degrees 22 minutes 45 seconds East 19.6 feet, also being the Southwest Corner of that 10.0 acre tract deeded by Lessie Harvey to Matthew Caldwell, Jr., on July 11, 1977, Deed recorded in Volume 1630, Page 816, Deed Records of Smith County, Texas and being on the South line of the Joseph Campbell Survey;

THENCE North 88 degrees 46 minutes 53 seconds West 418.95 feet along county oiled road and South line of said Joseph Campbell Survey to spike at corner from which ½ inch Iron Pin in fence corner bears North 02 degrees 29 minutes 31 seconds East 28.8 feet, being at the Southeast Corner of that called 2.5 acre tract deeded by Lessie Harvey to Marvil Powell and wife Alice Powell on February 17, 1972, Deed filed at No. 2345, 1972 series, Smith County Clerk's office;

THENCE North 02 degrees 29 minutes 31 seconds East along fence to a total distance of 550.42 feet to ½ inch Iron Pin in fence corner at the Northeast Corner of the Marvil Powell 2.5 acre tract;

THENCE North 86 degrees 03 minutes 35 seconds West 44.37 feet along fence to one inch pipe at corner;

THENCE North 0 degrees 33 minutes 38 seconds West 436.55 feet to one inch Pipe set in fence at corner being on the South line of the Spencer Powell 2.0 acre tract deeded to Spencer Powell by Lessie Harvey on December 2, 1973, Deed filed at No. 19641, 1973 series, Smith County Clerk's office;

THENCE North 86 degrees 49 minutes 52 seconds East 411.45 feet along fence to one inch aluminum pipe found in fence corner at the Southeast corner of the Spencer Powell 2.0 acre tract;

THENCE North 01 degrees 30 minutes 24 seconds East 192.44 feet along fence to double aluminum pipe found in fence corner at the Northeast corner of the Spencer Powell 2.0 acre tract;

THENCE South 89 degrees 24 minutes 17 seconds East 35.61 feet along fence to one inch pipe found at corner being the Northeast Corner of this tract and also being the Northwest Corner of that 10.0 acre tract deeded to Matthew Caldwell, Jr. by Lessie Harvey in July 1977;

THENCE South 0 degrees 22 minutes 45 seconds West 1213.17 feet to the Place of Beginning, CONTAINING 10.00 acres of land.

[hereinafter the "property"].

2. The Government did not seek to finalize the forfeiture of the property to the United States of America, but requested that the property be utilized as restitution to the approximately 3,000 victims of Defendant's fraudulent conduct. Based upon the determination that the assets forfeited from Petty should be used as partial restitution for Petty's victims, Judge Hannah entered an order appointing Robb Evans & Associates, LLC, as Receiver, in accordance with 18 U.S.C. § 3664, on January 27, 2003. The Receiver was ordered to prepare a plan for the administration and distribution of the forfeited assets and to accept and evaluate claims from potential victims. The Receiver subsequently filed the proposed plan on February 26, 2003.

3. On March 25, 2003, the United States filed a Notice Pursuant to 18 U.S.C. § 3664(d)(5), advising Judge Hannah that, based upon information provided by the Receiver, individual victims' losses could not be ascertained by the date of sentencing. Therefore, the court deferred entry of a restitution order in accordance with 18 U.S.C. § 3664(d)(5).

4. On April 10, 2003, Petty was sentenced to a total of 292 months in prison, three years supervised release, and a \$9,800 special assessment. Judge Hannah deferred entry of a restitution order.

5. On July 1, 2003, the United States filed a Motion for Entry of Restitution Order, which included the Receiver's evaluation of the victims' losses, and Judge Hannah entered a restitution order on July 3, 2003. In the order, the court determined that 3,186 people invested in Petty's scheme. Judge Hannah further found that 2,216 of the 3,186 investors suffered actual losses in the total amount of \$12,244,607.53 and ordered Petty to pay restitution to the listed victims in that amount.

6. The Receiver performed the duties he had been ordered to complete and filed quarterly reports advising the Court of his progress. On December 14, 2004, the Receiver moved for approval to distribute the proceeds to TeleCom 2000 victims. The Court entered an order on February 2, 2005, approving distribution of \$1,943,500.00 on a pro rata basis to victims with approved claims. The Receiver filed his final report and accounting and was discharged by order of the Court on May, 27, 2008.

7. The United States Clerk's Office recently advised that it is holding funds in the registry of the Court that appear to be items forfeited in this case or proceeds from the sale thereof. The Clerk's Office received funds in the amount of \$823,932.78 from November 6, 2002, until October 27, 2003, which were deposited into the registry of the Court. It appears that most of the funds were turned over to the Court after the trial and were sent by Evocash. (See items "e." and "f." on pages 1-2 above.) As of February 26, 2009, the Clerk's Office reported that the principal and accrued interest amounted to \$943,523.72. Additionally, the Clerk's Office has collected

\$1,046.72 in payments made by Petty while incarcerated at the Federal Bureau of Prisons.

8. Verifying that these funds are property that should be used for restitution and distributing the funds to the previously-identified victims will be a time consuming and laborious task. In that the Court and the United States Clerk's Office are not staffed or funded to accomplish such work, the Court finds that the most timely and efficient means to accomplish restitution in this case is appointment of the previous Receiver– who is familiar with the case and has information regarding the identity of the victims and the appropriate portion each should recover– pursuant to 18 U.S.C. § 3664. Accordingly, the Court after considering the Government's Motion for Order Regarding Receiver, finds it has merit and should be **GRANTED**.

It is, therefore, **ORDERED** that Robb Evans of Robb Evans & Associates LLC, 11450 Sheldon Street, Sun Valley, California is appointed as the Receiver in this matter. This appointment is limited to the administration of the above-described funds currently held by the Clerk's Office. Specifically, the Receiver shall verify that the funds currently held in the registry of the Court are part of the forfeited items ordered to be paid as restitution. The Receiver shall disburse those funds to the previously-identified victims in the proportions used in the first disbursement. The Receiver's administrative fees and expenses shall be paid out of the funds. Before the disbursement, the Receiver will provide a letter describing the proposed disbursement and fees and expenses. After the Court notifies the Receiver that it approves of his plan, the Receiver shall make the disbursement and advise the Court by letter that he has completed the task. The Receiver shall then be discharged. The Receiver shall return any funds related to uncashed checks to the Court.

It is further **ORDERED** that the Receiver shall be provided access to documents, records, and other materials currently in the possession of the United States District Clerk's Office that are necessary to complete his assigned duties.