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7 T002-2011-000306

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF PIMA**

10 **STATE OF ARIZONA,**

11 **Plaintiff,**

12 **v.**

13 **HERBERT KAY,**

14 **Defendant.**

Cause No. CR 2014-0165-001

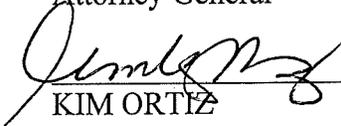
**STATE'S SENTENCING
MEMORANDUM**

Hon. Javier Chon-Lopez [Div. 15]

16 The State of Arizona, through undersigned counsel, submits that the aggravators in this
17 case outweigh mitigators, and that any mitigators are not sufficiently substantial to justify a lesser
18 term if the court imposes imprisonment as a sentence. *See* A.R.S. § 13-701(F). If the Court
19 follows the recommendation of the Presentence Report and imposes prison sentences, A.R.S. 13-
20 116 presumes that multiple sentences of imprisonment shall run consecutively. The State submits
21 to the court to determine whether prison or probation is an appropriate sentence.
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23 RESPECTFULLY SUBMITTED this 27th day of March, 2015.

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25 **MARK BRNOVICH**
Attorney General

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27 **KIM ORTIZ**
Assistant Attorney General
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SENTENCING MEMORANDUM

I. Plea Agreements Eliminate Litigation Risk to the Victims

Financial fraud cases are complex, difficult for juries to comprehend, and arduous to present at trial. Litigation risk can be high with no guarantees of guilty verdicts. Convictions by pleas allow the State to focus on presenting compelling evidence supporting aggravation to a sophisticated audience capable of understanding manipulative and exploitative sociopaths who prey on people's vulnerabilities and hopes of returns on investments. That sophisticated audience is an educated, trained and experienced judge.

Convictions by probation-available pleas do *not* telegraph any message to the court that the State believes probation is warranted. Instead, convictions by pleas in complex financial fraud cases completely eliminate litigation risk to the victims. Convictions by pleas place with the court the trust of both the victims and the citizens of Arizona to impose justice by holding criminals accountable for the financial harm inflicted on victims. The often-minimized emotional harm and physical toll of relentless financial stress to fraud victims caused by white collar defendants is disheartening to victims and perplexing to society at large. While the harm caused by violent crimes is more readily apparent, financial crimes cause no less mental and emotional violence to its victims and should be treated by the court with equal regard.

II. Defendant's Fraud Against Investors: Pre-Taxon LLC (Count 2) and Post-Taxon LLC (Amended Count 4)

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Defendant pleaded guilty to two distinct frauds against investors with his various business enterprises. The State's memorandum differentiates the Defendant's continuous fraud as Pre-Taxon LLC and Post-Taxon LLC conduct. Taxon LLC is enterprise #16 of 23 enterprises affiliated with the Defendant during the relevant time period. These 23 enterprises were listed in

1 Attachment A to the Indictment. Count 2 runs from 2000 – 2013 and Amended Count 4 runs from
2 2000 – 2013.

3 **A. Highlights of Defendant’s Fraud Against Investors: Pre- and Post-Taxon**

- 4 • Kay did not disclose to investors that he was banned from selling securities in
5 2004 and continually sold securities to new investors.
- 6 • Kay did not disclose to new Taxon LLC investors that Kay had stopped paying
7 interest payments on existing investor loans when soliciting new investor money
8 for Taxon.
- 9 • Kay did not disclose to new Taxon LLC investors that Pre-Taxon investors’ notes
10 from Kay’s pre-Taxon business failures were being rolled into Taxon LLC
11 (dilution)
- 12 • Kay did not disclose to new Taxon LLC investors that their new investments
13 would be used to pay pre-Taxon LLC investors’ notes rolled into Taxon LLC
14 (“robbing Peter to pay Paul”)
- 15 • Although Taxon promissory notes stated that if Taxon were to dissolve the
16 investments were due back to the investors, Kay without investor consent rolled
17 Taxon investments into two new enterprises, Green Nicotine and/or Warrior
18 Mist.
- 19 • Kay’s projected income statements - \$136,963,353.00 in gross sales in year 5 –
20 wildly misrepresented actual product sales. The business plan and press release
21 provided to Post-Taxon investors misstated gross sales of \$3.2 million, which was
22 later modified to \$2 million, but was actually only \$815,000. Additionally, Kay
23 also failed to disclose that much Taxon product sold was returned due to customer
24 dissatisfaction.

25 Herbert Kay is a serial financial predator. He targeted his victims, gaining their trust and
26 making them feel valued and important to the investment strategy, and presented a façade of
27 amazing venture capital opportunities. All the while, he falsely exaggerated his professional
28 accomplishments, embellished his celebrity associations, and aggrandized his investment products
to lure his prey. All the while, he misled investors into believing they were on this wild financial
rollercoaster together, that the big pay day was just around the corner, and the next corner, and the
next corner, and that Kay was willing to slay Goliath with his bare hands to get returns on

1 investments for investors who he loved. His words: "I love you guys. I take your trust and
2 patience very seriously. I will not rest until this [repayment of investment is done]." (See Exhibit A,
3 page 18, email on 11/06/12, from Representative Sampling of Emails to Investors).

4 But when investors periodically tried to confront Kay about getting back their investments
5 (and returns on investments) after non-payment and failure to pay interest, he would bully and
6 threaten them. When faced with investor pressure, Kay would threaten to file bankruptcy telling
7 investors they never would get any money back that way: "I also feel very comfortable in saying
8 that had I been sued, which thankfully none of you have done, it would likely have ended in wither
9 mediation where you would be lucky to get 10% and more likely, we would have ended up in
10 bankruptcy and you would have gotten nothing at all." (See Exhibit A, page 15, email on 9/03/12).

11 He also tells investors that he cannot value the partnership assets "as it is really a scientific
12 wild guess in particular as it pertains to the Mexican assets. It goes without saying that the assets
13 are very depressed and not worth the original acquisition..." He then tells the investors that he
14 wishes to pay 100% of the original investment for the repurchase, but that there will be no interest
15 nor profit of any kind, and that he intends to completely buy them out in about 12 months. He
16 unilaterally reaches a 50/50 income split writing: "As for the 50/50 split of my income it will be
17 fast and still leave me with incentive to perform. In case some of you ask, "why not commit the
18 whole enchilada?" the answer is, why would I try hard or worse, why would my heirs try hard, to
19 pay you off if there is nothing to be gained for us? The best plan to my mind is one that provides
20 for us both..." (See Exhibit A, page 13, email dated 9/03/12). His overwhelming concern was for
21 himself.

22 Simultaneously, as he positioned himself as judgment proof, he would "roll-over" victims'
23 investments by saying if they didn't continue investing into his latest venture scheme to make it
24 successful, they would get nothing: "Beginning with the value of the assets, my best guess is the
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1 true value is 10-20% of the original price. This is possibly high as at the present time there is no
2 real market for real estate assets in Mexico.” (*Id.*) Then in an email two months later, he told
3 investors of yet another scheme: “[W]e have formed a new LLC called “pay Back LLC” to
4 facilitate the buy out of your interests.” (*See Exhibit A, page 16, email on 11/05/12*). But the
5 Defendant never even provided even a 50/50 income split to victims of revenue generated from his
6 scheme *de jour* of Warrior Mist/Energy/Sleep – which totaled (according to Kay’s written
7 calculations), \$272.51. In his email of May 17, 2013, he told victims “Now, I made a promise to
8 distribute no matter what, but I didn’t really sit down to figure out until now that would mean the
9 majority of you would get checks, if it were possible, of less than a penny and the largest would be
10 about \$2.00. But, a promise is a promise, so I am going to carry over the royalties to next month
11 when the \$29.95 balances start to kick in and the larger ad budget makes an impact to send you a
12 real check UNLESS you want the tiny amount now. Further, I am waiving my share this month
13 and the whole amount of my gross share will roll over as well. I feel dumb taking \$27 and
14 change.” (*See Exhibit A, page 34, email on 5/17/13*).

17 From just the forensic analysis of Taxon LLC, what the Defendant did not feel “dumb”
18 about was taking \$1,019,107 (20.9% of investor contributions) in payments from Taxon to Herb
19 Kay, where investors received \$326,185 (6.7% of investor contributions). Even worse, revenue to
20 Taxon generated by the miraculous, one-of-a-kind product itself was \$815,690.00 (revenue
21 actually was far less due to product returns by dissatisfied customers). For Taxon LLC, Herb Kay
22 took for himself more than total product sales (less product returns) and investment returns
23 combined.
24

25 **B. Background**

26 Before starting multiple companies in which he actively recruited investors, Defendant
27 Herbert Kay was a licensed investment broker in Arizona. Defendant Kay had established
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1 himself as an investment resource by hosting his own investment advice radio show. He wrote a
2 financial advice column for the Arizona Daily Star, proclaimed himself to be an expert witness
3 for securities fraud cases, and told investors he was on national TV. Contrary to this image as a
4 successful investor and financial guru, Defendant Kay's business acumen was negligible and his
5 successes were rare, if not non-existent. Many of his failed enterprises hinged on
6 misrepresentations and omissions to solicit new investors. Essentially, he built a "Ponzi" scheme
7 of businesses in which subsequently created business LLCs helped pay for pre-existing business
8 debts, obligations, and investors' investment rights. The FBI's investigation begins with Amigo
9 I, LLC.
10

11 *Pre-Taxon Enterprise: Amigos I*

12 Sometime in 2000, Defendant Kay and partner Mark Shinn started Amigos I, LLC.
13 Amigos I, LLC was marketed and sold to investors as a residential and commercial development
14 in Puerto Penasco, Sonora, Mexico (Rocky Point). Partner Shinn was the developer of the project
15 while Defendant Kay was the financier responsible for soliciting and obtaining investor capital to
16 fund the development. The residential properties were sold to home buyers looking for vacation
17 homes in Rocky Point and the home prices were priced between \$645,000 and \$1,400,000.
18

19 For Amigos I, LLC to become operational, Defendant Kay needed investors to purchase
20 the raw land in Rocky Point and provide the necessary capital to begin construction. Defendant
21 Kay, thus, solicited his former clients at his past employer. In 2000, Defendant Kay sold 290
22 units to 24 investors, raising approximately \$2,900,000. Defendant Kay used this newly acquired
23 money to buy approximately 10 acres of Rocky Point coastal land for \$2,100,000. Defendant
24 Kay—as he does throughout all his business enterprises—issued equity ownership securities
25 ranging from \$10,000 to \$50,000 per security. Defendant Kay, as a selling tool, told investors
26 that he was also investing his personal finances in the project adding additional credibility to the
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1 future would-be success of the project. Rocky Point land was purchased, graded, and later further
2 subdivided into 87 potential vacation home lots. Defendant Kay pre-sold homes raising
3 approximately \$13,000,000.00 which was held in escrow.

4 Neither Defendant Kay nor partner Shinn had any experience developing or managing
5 commercial real estate. Defendant Kay and partner Shinn were to receive as compensation: (1)
6 an "organization and acquisition fee" of \$300,000; (2) a monthly property management fee of
7 \$16,677.67; and (3) five percent commission from the sale of each home built on the property.
8 From a private memorandum document, Defendant Kay and partner Shinn stood to make
9 substantial profits even if the project was unsuccessful. (private memorandum CX-2
10 pp1,8,9,14,15,16,17). Eventually Defendant Kay and partner Shinn had a dispute and the
11 partnership ended. Even though Defendant Kay had raised enough money to purchase the raw
12 land, he was unable to raise additional investments to fund the development of the properties and
13 build the homes. Amigos I, LLC folded and the land was sold. By April 2007, all investors were
14 paid back their investments and all pre-sold home funds were returned to the prospective buyers.
15

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17 Pre-Taxon Enterprises: Sonoran Lending Group, Inc.; Sonoran Capital Corporation,
18 Inc.; HKE Enterprises; LLC, HKE Management Company, LLC.; The Office Company;
19 LLC, H&M Partners, LLC

20 In 2004, as Amigo I, LLC began to unravel, Defendant Kay was soliciting new investors
21 for new business ventures. Defendant Kay opened several additional enterprises including, but
22 not limited to, Sonoran Lending Group, Inc.; Sonoran Capital Corporation, Inc.; HKE
23 Enterprises, LLC; HKE Management Company, LLC; The Office Company, LLC; and H&M
24 Partners, LLC.

25
26 Importantly, proceedings to revoke the Defendant's securities trading license began in
27 September 2004 and the license revocation became final on October 22, 2004. Still, Defendant
28 Kay continued to raise money by issuing securities for these enterprises which neither survived

1 nor generated a single dollar in sales. All investors queried by the F.B.I. stated they *never* would
2 have invested new money with the Defendant had they known of the NASD securities ban.

3 *Pre-Taxon Enterprise: Amigos II*

4 In March, 2005, Defendant Kay created another enterprise called Amigos II, LLC which
5 was used to buy 10 acres near the Rocky Point airport. As before, Defendant Kay solicited new
6 investors and issued securities to investors even though Defendant Kay was banned from the sale
7 or distribution of securities. The project was a flop and the investors presumably lost their
8 investments; however, Defendant Kay told investors that their investment rights were merely
9 transferred to yet another new business called HKE Enterprises, LLC. Defendant Kay continued
10 to send correspondences to investors advising that “he has a buyer” for the property but “due to
11 legal issues clouding the title, [he] can’t complete the sale.” He has never repaid the investments
12 back to the investors.
13
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15 Unfortunately, traditional investigative tools were unable to determine how much
16 investment was raised, the purchase price for the property adjacent to the Rocky Point airport (if,
17 in fact, it was ever purchased), how much the property eventually sold for, or if the property was
18 even developed, due to the fact that funds were deposited into Mexican banks and Mexico does
19 not have an equivalent to a county recorder that would track the transfer of real property.
20

21 *Pre-Taxon Enterprise: HKE, LLC*

22 In October 2004, the same month that his securities trading license was revoked,
23 Defendant Kay incorporated HKE, LLC, an umbrella entity to include Amigos II, LLC, Clear
24 Blue Ventures, LLC, Desert Growth, LLC, Sonoran Lending, LLC, and HK Turnaround, LLC.
25 Defendant Kay informed all investors in all of these enterprises that their investment rights had
26 been transferred—without their permission—to HKE Enterprises, LLC. The investments into all
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1 the previous enterprises were “bridge loans” and were converted to HKE Enterprises’ “rights.”

2 Defendant Kay told all investors that it was easier to control one enterprise and a single

3 Enterprise: HK Turnaround LLC & Taxon

4 In October 2006, Defendant Kay formed Taxon, LLC., which was an enterprise selling a
5 financial self-help remedy product called “SOS”—essentially an economic survival package.

6 During the time when Taxon, LLC. was formed, Defendant Kay raised \$4.8 million in new capital
7 investment via promissory notes guaranteeing yearly interest. Defendant Kay started Taxon, LLC.
8 with approximately \$142,000—with money rolled-over from HK Turnaround, LLC. Defendant
9 Kay continually told investors they could immediately have their money returned even though
10 Defendant Kay’s bank records indicated that there were zero funds available for any refund.
11

12 HK Turnaround, LLC was described in articles of incorporation as a business focused on
13 “investment advice, research, and business services.” Defendant Kay solicited new investors,
14 unrelated to investors in any previous enterprise, and failed to inform investors of his past debt
15 obligations, business failures, securities ban, and complaints which had been filed with the Better
16 Business Bureau. When Defendant Kay transferred HK Turnaround, LLC. investors’ rights to
17 Taxon, LLC, he provided Taxon LLC investors (“rollover” investments from HK Turnaround,
18 LLC and new investors) spreadsheets and crude financials misrepresenting current sales, account
19 receivables, and projected new markets for future sales. After years of essentially no activity,
20 Defendant Kay provided sale projections by sending investors an opaque business plan showing
21 Taxon’s gross sales of over \$3.2 million.
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23
24 On November 5, 2010, in an effort to appease current investor questions, Defendant Kay
25 issued a press release claiming that Taxon had an “extremely favorable” rating with the Better
26 Business Bureau and the SOS product line had gross sales of “\$3,200,000 in just the first twelve
27 months,” although this number later was adjusted downward to \$2 million. No bank records or
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1 business documents substantiate any sales remotely close to either number. To the contrary,
2 forensic review shows gross sales of approximately \$815,000. Additionally, while the press
3 release indicated that existing customers who purchased the SOS product were “very satisfied,”
4 Kay withheld from investors that much of the SOS product was returned for a full refund due to
5 customer dissatisfaction.

6 Defendant Kay also told new investors that HK Turnaround, LLC emerged “victorious”
7 from a “battle” over the land that was sold in 2007 under Amigos I, LLC, and that HK
8 Turnaround, LLC was similar to a private equity firm like Bain Capital, which specializes in
9 turning failing companies around. Defendant Kay misrepresented that HK Turnaround, LLC
10 saved Amigos I LLC from failure. In fact, HK Turnaround, LLC did not even exist when
11 Amigos I LLC was paying investors back their investment from the sale of the raw land.
12 Additionally, Defendant Kay failed to tell these investors that he was the owner of the business
13 that failed.
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16 Essentially, the Defendant built a “Ponzi” scheme in which unwitting investors in newly-
17 created business ventures helped pay for pre-existing business debts, obligations, and prior
18 investors’ investment rights. Eventually, the house of cards collapsed, and by the time the dust
19 settled Defendant Kay had defrauded his investors of millions of dollars, as detailed in the
20 Presentence Report.
21

22 **III. Aggravating Factors**

23 The length of any sentence must be determined by the presence of aggravating and
24 mitigating factors. A.R.S. § 13-702(C). The appropriate aggravating factors are the following:

- 25 • A.R.S. § 13-701(D)(6) – The defendant committed the offense as consideration for the
26 receipt, or in the expectation of the receipt, of anything of pecuniary value.

27 The Defendant deliberately and maliciously preyed upon his victims in order to
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1 accumulate millions of dollars for his personal pleasure and to enhance his lifestyle.

- 2 • A.R.S. § 13-701(D)(9) – The victim or, if the victim has died as a result of the conduct of
3 the defendant, the victim's immediate family suffered physical, emotional or financial
4 harm.

5 All of the victims suffered substantial financial harm because of the Defendant's conduct.
6 Some of the victims lost all of their life savings and retirement funds. Several of them
7 suffered emotional harm and are being treated for depression and/or anxiety. Three of the
8 defendants died having received no financial or emotional closure.

- 9 • A.R.S. § 13-701(D)(13) – The victim of the offense is at least sixty-five years of age or is
10 a disabled person as defined in section 38-492, subsection B.

11 At least twelve identified victims are 65 years of age or older, and at least one victim is
12 known to be disabled.

- 13 • A.R.S. § 13-701(D)(24) – Any other factor that the state alleges is relevant to the
14 defendant's character or background or to the nature or circumstances of the crime.

15 The Defendant exploited his victim and manipulated them into believing in him and his
16 fraudulent schemes. The epitome of a charming snake oil salesman, he had no shame in stealing
17 his victims' life savings, home equity, and inheritances. He frequently went back to pressure his
18 victims for even more money, warning that all they had invested would be lost if they couldn't
19 scrape up another few thousand dollars. The Defendant's utter disregard for the financial future
20 of those who trusted him is reprehensible. Having demonstrated no compassion for his most
21 vulnerable victims – some of whom he has left virtually penniless – this Court should have little
22 compassion for him.

23 **IV. Arizona law disfavors rewarding Defendants who commit multiple crimes with
24 concurrent sentences.**

25 Public policy strongly disfavors interpreting sentencing statutes to give a defendant “a
26 discount card to commit as many crimes as he might desire without incurring any additional
27 penalty because all the crimes were committed at the same place and within the same time
28 frame.” *State v. Henry*, 152 Ariz. 608 (Ariz. In Banc 1987). In *Henry*, the Supreme Court

1 decided that an event on one day resulting in convictions for robbery and rape was to be treated as
2 one felony conviction for purposes of mandatory statutory sentencing enhancement, but that the
3 court's ability to sentence the robbery and rape consecutively "provides trial judges . . . with the
4 weapons necessary to deal with 'crimes committed by the bushel'". *Id.*; see *State v. Noble*, 152
5 Ariz. at 288, 731 P.2d at 1232.

6 Here, unlike the facts in *Henry*, the Defendant's serial and repeated victimization of
7 investors occurred over 13 years. The Defendant made weekly, if not daily, decisions to
8 victimize investors and financially injured numerous victims, one after the other. He could have
9 stopped anytime, but never did because he wanted the money to keep rolling in so he could
10 finance his lifestyle.

11 **V. Conclusion**

12 The Defendant submitted one letter from Michael Hanley, President of Bank of Tucson.
13 When contacted by the AGO and FBI to confirm the letter's authenticity, Mr. Hannley (who was
14 in Ireland) readily provided the second letter Defendant Kay withheld from the sentencing packet
15 filed in court. In that letter, Mr. Hannley wrote the words the Defendant did not want the court to
16 read: "...[I] sure cannot see you making restitution on what you will be hit with for sure way too
17 much money even if you have the Mexican property, as it still would require a significant amount
18 capital [sic] which you for sure cannot obtain.... You pled guilty Herb, man I don't get it and
19 think your explanations are flawed." (See Email Thread, attached as State's Exhibit B).

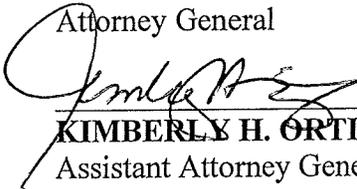
20 Also, in response to the information in the defense sentencing package, to better assess the
21 Defendant's stake in foreign assets, on March 27, 2015, the State requested the name of
22 Defendant Kay's corporation, LLC or whatever Mexican business entity of which Herb Kay is
23 managing member, the members of investment group, title documents of properties, fair market
24 value of properties, and appraisals of properties from John Sells. The State waited until 3:00 p.m.

1 and as of this filing, Mr. Sells has not produced the information he agreed to provide to the FBI.

2 The State submits that the aggravators in this case substantially outweigh any mitigators,
3 and that mitigators, if any, are not sufficiently substantial to justify a lesser term if the court
4 decides to impose imprisonment as a sentence. See A.R.S. § 13-701(F). As submitted previously,
5 and consistent with Arizona law and public policy disfavoring concurrent sentences, should the
6 court sentence the defendant to prison, A.R.S. § 13-711 (F) provides for the separate harms to
7 distinct victim classes in Count 2 and Amended Count 4 to be treated separately and sentenced
8 consecutively.

9
10 RESPECTFULLY SUBMITTED this 27th day of March, 2015.

11
12 **MARK BRNOVICH**
13 Attorney General

14 
15 **KIMBERLY H. ORTIZ**
16 Assistant Attorney General

17 A copy of the foregoing document
18 delivered this 27 day of
19 March, 2015, to:

20 Hon. Javier Chon-Lopez
21 Pima County Superior Court

22 A copy of the foregoing document
23 emailed this 27 day of
24 March, 2015 to:

25 Tatiana Struthers
26 Office of the Pima County Public Defender
27 33 North Stone Avenue, Suite 2100
28 Tucson, Arizona 85701
tatiana.struthers@pima.gov

by: 

Allison Bradford

State v Kay
CR 2014-0165

EXHIBIT A

November 15, 2007

Hi All!

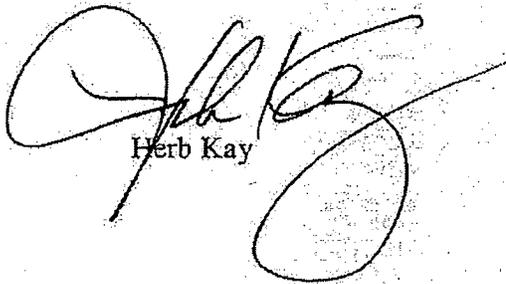
I just thought it was time to take a moment to bring you up to date on a number things and fill you in regarding a few changes that you will notice around the office. Let's start with the most exciting news of all; Yvette has given birth to twin girls, Erica and Dakota. They were a few weeks early but are in fine health and should be home shortly. As a result of this happy event, Yvette will be on maternity leave until the beginning of next year. Anticipating this, we set her up at home with a remote office and she is in constant contact with us and her fill-in for the time being, Nancy (our bookkeeper normally). If you want to wish Yvette happy times, her cell is 520-270-0997. I know that she would love to hear from you!

You will also notice when you call our offices you will be greeted with "HK Turnaround". This is my new company formed to do business turnaround. You can find out more about it at www.hkturnaround.com. I am very excited at the prospect and as most of you have long ago figured out, I enjoy new challenges.

In other news, I am in the final stages of documenting a global settlement with Mark Shinn in relation to all the entities where he was a part of management. As some of you may already know, this has been a longstanding issue that needed resolution and is in my view a very positive development.

Well, that is it for now. As we go into the holiday season I want to wish you all the very best and as always we are here and ready to assist you at any time.

Warmest Regards,



Herb Kay

Memo to all HKE and AII Investors

From: Herb Kay

February 5, 2008

Hello to all of you and I hope that this note finds you well. I thought that I would take a few moments to fill you in on what is new here. What's new is, well, nothing. As I have predicted in the past, recession is upon us and in particular in the real estate sector which makes up the bulk of our assets. The bad news is that this is no time to sell anything. The good news is that we don't have to. Our carrying costs are nominal i.e. real estate taxes and professional fees, so we will just soldier on.

In the case of our non-real estate assets which are comprised of venture related companies, liquidation events could happen at any time. However, one cannot predict which and when, so again, we wait.

Next, many of you visiting me have noticed the new sign on the door for HK Turnaround. This company came into being as a result of the long battle from which we emerged successful that involved Amigos 1 and related companies. If you feel curious, take a look at www.hkturnaround.com. Whether by luck or by intention, and I suspect it is a little of both, our timing appears good. I am always interested in your input.

As we grow, I have some staff announcements to make. First, as you all know by now, Yvette has had her healthy and wonderful twin girls Dakota and Erica. Now rested and ready, she has returned to the office and I have promoted her to be the head of investor services. Taking her place at the front desk is Pat Wilson. Pat brings experience and is going to be a welcome addition to the team. When you have a chance, stop by and get to know her.

That's it for now. As always, I remain at your service and appreciate your continued support. Inevitably the current downturn will pass. Meanwhile we wait and are here for you.

Warmest Regards,

Herb Kay

Desert Growth Partners, LLC

5151 E. Broadway Blvd. Suite 1500
Tucson, AZ 85711
(520) 750-1111

July 2, 2008

To: AssetMark Investors

From: Herb Kay

Well, the Bear Market of 2008 is upon us caused by the very things that I spoke to you about individually at the beginning of the year. However, I was taken by surprise by the stubbornness of the drop after the Federal Reserve's action earlier this year in safeguarding the financial system from the mortgage problem. It is scary to encounter this kind of market, so I thought that I would share with you my thoughts which we can further discuss at the upcoming quarterly reviews.

First, this like all bear markets will pass. The over-arching reason for this drop has been energy but unlike the politicians, I don't blame speculators as much as I do the weak dollar for the price run-up. Simply, there are so many dollars in circulation worldwide that when the developing world goes to use them to buy oil it is simply taking more and more as the dollar falls in value relative to not just oil but most commodities that are traded on the futures exchanges.

As always, I reject doom and gloom scenarios for \$200 oil coming our way and believe that it is far likelier that we will see \$70 oil first. This is because the price is set in the future and there is a current disconnect between supply and demand. Again simply put, with prices this high steps are being taken worldwide to reduce consumption which reduces demand while at these levels supply is being rushed to the market to take advantage of the current price by producers. Add to this that the government has finally begun to get serious in defending the dollar, though not as much as I would like, I think it very likely that there will be an oil price bust at some point in the future. If pressed for when, I would say by the end of this year though only time will tell.

All of that is nice if it is true, but what if it isn't and what is AssetMark doing to defend? Earlier this year I recommended to most of you to reduce your risk levels in your accounts and as a result while values are dropping, it is not as much as the broader markets. I think that there is a misunderstanding by some investors of what AssetMark does. They do not get in and get out, what professionals call market timing, because there has never been a successful market timer in history. Sure, you can look back and see if you got out and got back in on certain days in the past you would have made more money, but the problem is that this is hindsight. No one has actually done it as there are too many variables to quantify. AssetMark manages with the best team possible within risk tolerances, which can be adjusted. They do not and never will drink from the hemlock of market timing.

The question could then be asked, wouldn't it be better if we got out now and got back in later even if we miss the actual turn to the upside? Answer: No. You see, in historic terms about 90% of the gain in a major rally happen during the first 14 days. Along the way there are going to be some "sucker rallies" where the market goes up and down a few times so how would we know the real thing? And if we miss our guess and wait to see if it is the real thing, well all we really would have accomplished is freezing our losses in place and make it much harder to earn them back.

July 2, 2008

So, depending on your individual situation it may be best to do nothing at all. This is not a depression, thank God, and the market will rally at some point down the road. When we meet for your quarterly review we can discuss readjusting your risk tolerance. I want to warn you all to not start chasing "new ideas" or other foolish things offered by lots of charlatans that only want to get their hands on your money. We have known each other for a long time, please believe that I only have your best interests at heart and will continue to be here for you especially when things are tough. Thank you for your continued trust, and I look forward to seeing each of you at your upcoming quarterly review.

Sincerely,

Herb Kay

Desert Growth Partners, LLC

5151 E. Broadway Blvd. Suite 1500
Tucson, AZ 85711
(520) 750-1111

February 20, 2009

To: AssetMark Investors

From: Herb Kay

Dear Investors:

As some or most of you know if you have already had your quarterly review with me, I am recommending a significant shift in strategy for your AssetMark/Genworth accounts. Simply my recommendation is to sell all holdings in all accounts and replace them with a position 100% in TIPS (Treasury Inflation Protected Securities), a US government security. We will make the changes at no commission to you and effective immediately I will stop all of my firm's management fees being charged to your account. Genworth's .45% custodial fee will continue to be charged as usual discounted depending upon your total assets under management. Further should conditions improve down the road, the option will remain to move your assets back into a traditional asset mix. Simply contact Yvette to do the paperwork at your earliest convenience.

I am making this recommendation for the simple reason that I do not believe that a financial recovery is likely this year or next, and if I am being totally frank I don't think it will come for perhaps many years. I believe that this is a recession unlike any that we have faced in our lifetime, government fixes will serve only to exacerbate the situation, and I strongly urge you to take this defensive action. TIPS are designed to adjust their principal balance at a rate equal to the CPI (Consumer Price Index). As the government is printing paper money at record rates, a trend that shows no sign of abating, I believe that significant inflation is the likely result. Printing too much money is the primary cause of inflation. These treasury securities will protect you against that potential.

It should be noted clearly here that TIPS can also lose principal value with deflation, but in my opinion that is not likely. Of course anything is possible and this is entirely your decision. I could be wrong in my assessment. However if you take this advice and I am wrong, the worst thing likely to happen is that you miss some part of a rally in the financial markets while you take time to get back in. On the other hand if I am right, then you protect yourself against potential disaster. Given those two possibilities I think being safe is the only smart choice, but again, I am totally at your disposal and will abide by any decision you make.

I am making this recommendation because you are my friends, and in many cases, are the age of my parents and grandparents. I asked myself what I would recommend if you were my family, and I came to this conclusion.

Finally, as I enjoy each and every one of you very much regardless of collecting fees I will be here for you to talk to you whenever the mood strikes. Just pick up the phone and I will be available as always. Hopefully at some point down the road this crisis will pass and we can resume being more aggressive. For now I believe that this change is vital.

Also, effective April 30th my lease here is up and I am not going to renew. As my business ventures have taken the form of lots of outsourcing in a 21st Century business model, this huge space is just

February 20, 2009

unnecessary. I am setting up an electronic network to maintain my staff but from their own homes while I set up my own home office. The term for this is a "Virtual Office". I will be available for meetings or we can have lunch or dinner. I just see no reason to continue this enormous expenditure.

I understand that change is unsettling in many ways and never more so than in an economic upheaval such as this one. However, a refusal to think in new ways and make necessary changes is a recipe for failure. By being proactive and taking action the likely result will be less worry, stress, or sleepless nights. Right now, that is the best possible outcome. Thank you for your continued trust and support.

Warmest Regards,

Herb Kay

To: Taxon Investors

From: Herb Kay

Re: Update

Hi All:

Just to keep you informed, the Canadian investment fund that I have mentioned in previous memos has finally closed. To review, we have been waiting for this event in order for the sister fund to complete its due diligence and invest in Taxon. I am told that funding of the \$2 million we are expecting should come either just before Thanksgiving or right afterward. This is very good news indeed.

Once that funding is complete, a second investor group from Tucson is standing in the wings to invest a like amount as well bringing our total funding to approximately \$4 million. This is more than enough to fund our ongoing expansion both of our marketing plan and product enhancement.

I am of course fully aware of back interest payments due as well as short term obligations. We will take care of all of that upon funding.

In the meanwhile, enjoy your holiday and loved ones and as always, don't hesitate to call me with questions. I remain at your service and greatly appreciate your input and understanding. I know that this process has taken much longer than any of us would have liked.

Herb

October 6, 2010

Dear Taxon Note Holder:

As you are no doubt aware, we have not sent out interest checks in September and now the first of October. This note is to assure you that nothing significant is wrong. Here is the situation: We are receiving a new investment of \$2 million from a venture capital fund headquartered in Salt Lake City. The investment in our company comes from the second of two tandem funds. The first fund is made up of money from a single large investor of about \$200 million, and the second fund, equally large, is made up of smaller institutional investors like the States of Utah and Indiana with some of their pension funds. Our investment comes from the second fund.

Now the catch is that the second fund relies on the first fund's due diligence to close and that process has not completed. Though I am told that the closing is imminent, we have no control. Lawyers and accountants run on their own schedules and as a small part of fund 2, we have no leverage to expedite the process and in fact to start making a lot of noise would only serve to undermine the effort to close.

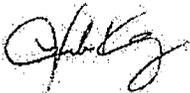
The managers of the fund investing in us told me yesterday that closing could happen at any moment. Meanwhile as interest checks are due, I was faced with making a decision. Borrow money to pay interest or be patient and wait. I chose the latter course, but me being me, made a Plan B as well. I have spent the last month raising more capital, as much as another \$2 million, that I will get the bulk of next week. Regardless of whether the venture fund closes, we will be able to pay out interest at that time, and therefore I ask just a little more patience.

Why, you may ask, are we having this kind of problem with interest checks? Is something wrong? Are we hitting our goals? The answer is nothing is wrong and we are in fact exceeding our goals. For example, we projected about \$220,000 in sales in August and we hit \$225,000. In September we projected \$320,000 and hit \$325,000. So why, if we sold so much, are we having a cash flow crunch? Because after a customer orders, they are not billed until the 45th day after shipping under the terms of their contract with us. So orders in August don't see our account until at the earliest the middle of October and those in September hit in November. Add to that some are what we call "multi pays" meaning that they pay us in installments of \$79.50 spread over 6 months. This also impacts cash flow. So we are in the position of doing great but having to wait a while for the cash flow, hence our current predicament.

The good news is that once the new funds are in, we will have no further need for any new investments again. Cash flow will be enough to cover all expenses we estimate in November regardless. This is just a growing pain, to use a common analogy.

Things are indeed booming here at Taxon, I appreciate your patience and understanding, and rest assured, all is well. And of course, don't hesitate to call me with questions.

Regards,



Herb Kay

January 11, 2011

To: Taxon Group Investors

From: Herb Kay

Re: Funding

Hello!

This is an update as to where we are in our process of funding. I am happy to announce that the Venture Capital fund that we were waiting to fund us has finally closed. If you recall from previous communications, this was the hold up in obtaining the \$2 million in new financing promised to us by them since last July! A series of delays in their closing took place since then and this is the cause of our short term cash flow issues. These delays are now over and our funding is at last imminent.

The process to close has begun. We received a list of last requirements like updated financials along with giving them a draft of our usual investment agreement which they have asked for. Their attorneys are redlining the document to fit their specifications. We will have the updated numbers to them by the end of business tomorrow. We expect to close in the next 7-14 days. Needless to say, I am relieved.

This has been an arduous process to be sure. Given the economic climate, it has been a greater trial than at any other time in my career, but all is well that ends well! I will send you an update upon receiving the funds and starting interest payments.

In closing, thank you for the trust and patience that you have shown. I truly am thankful for it and now it is time to make good things happen. Feel free to call me at anytime with questions.

Herb

Filbert, Brian D.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Thursday, May 31, 2012 8:42 AM
To: McKinney, Christopher A.
Cc: Filbert, Brian D.
Subject: Fwd: Update

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Thu, May 31, 2012 at 7:20 AM
Subject: Update
To: herb@warriormist.com

Good Morning:

As I write this, I am preparing to leave for San Diego and the Rock and Roll Marathon there. This is not just another event. This is the second largest of all the Rock and Roll events after Las Vegas, but most importantly for us, it is the official launch of Warrior Energy. We believe that this product is the game changer. In case you don't remember what Warrior Energy is, it is a topical roll on energy product to compete with the likes of 5 Hour Energy or Red Bull.

Unlike it's competition, you don't have to swallow it thereby avoiding what most people find is the vile taste of particularly 5 Hour Energy, it goes directly into the bloodstream through the skin so the jolt of energy is immediate, and since we avoid the digestive track altogether, we use a much lower dose of caffeine and other ingredients and therefore the product is much safer to use. Also, the cost per use is 90% less than the competition. For all of these reasons, we expect the product to rocket to the front of the pack.

Also, apart from the benefits, lots of sponsors want to work with us on the launch. This product is much anticipated in the advertising community thanks to the work of our CEO and his connections in the industry. By early next week, Warrior Energy will all over the airwaves, Internet, radio, and print. To give you some idea of the potential here, 5 Hour Energy sells 5 billion bottles of that stuff per year. That's right, 5 billion bottles and they are just a part of the market.

Additionally, we launched a national mobile ad campaign for Warrior Mist that involves text messages being sent to smart phones all over the country inviting people to call to order the product. We expected in the initial test to have 50 calls come in and close 70% of them in this small test sample. We had over 500! It literally overwhelmed the call center! We have since added two more call centers and today are pouring it on!

So, thank you to all of you sending in the paperwork that I requested showing how much you have invested in Herb Kay related companies.

Things are going as planned so far, and I expect to make a detailed buy out offer to all of you no later than the fall and perhaps sooner.

Things are going that well. Of course I quickly add that anything can happen, the entire country could easily slip back into recession or worse, but all of that sort of thing is beyond our control, so why worry about it? And remember that I am a minority partner in Warrior so I cannot just dictate what I want and make it so. It is a team effort and the money to buy all of you out will come from my share of the profits which at this point is just a guess. But, it is a good guess, things are looking strong, and I am very confident that at long last I will be able to funnel some liquidity your way. Keep your fingers crossed!

As always, I appreciate how cool all of you have been in this long and arduous process. It has been quite a battle, and happily so far looks like victory. I will not let up or relent until all of this is hard reality, on that much you can be sure. If you have learned nothing else from this experience, I hope it is that I take my responsibilities very, very seriously and never let hardship keep me down for long. I thank you for "having my back" as I fight the fight day to day.

Warmest Regards,

Herb Kay

Filbert, Brian D.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Friday, August 17, 2012 12:06 PM
To: McKinney, Christopher A.
Cc: Filbert, Brian D.
Subject: Fwd: Announcement

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Fri, Aug 17, 2012 at 7:32 AM
Subject: Announcement
To: herb@warriormist.com

Good Morning!

Things are rolling right along but the reason for this email is not a detailed update but an announcement. For some time we have been trying to find a celebrity endorser for Warrior Health who might do for us what George Foreman did for griddles. We had to be realistic about who we can afford, up front fees, etc. At the same time, we wanted a person who is clean and above reproach but could appeal across a broad demographic. Ideally, we wanted someone who could believably endorse and use all three products and convey that to the public. We believe that we have found and made a good deal with that person: Evander Holyfield.

He's charming, has a perfect reputation, and cuts across a lot of demographic barriers and has a name known by all but the very youngest. So, go Evander! We will be making TV and radio with him shortly. Exciting stuff!!

Have a great weekend!

--
Herb Kay
Chairman

www.warriorhp.com
520-977-0514

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

Filbert, Brian D.

From: Judith sayre [pacificbeach18@gmail.com]
Sent: Tuesday, September 04, 2012 9:49 AM
To: McKinney, Christopher A.
Cc: Filbert, Brian D.
Subject: Fwd: Details

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Mon, Sep 3, 2012 at 3:12 PM
Subject: Details
To: herb@warriormist.com

Happy Labor Day!

In this email, I am going to explain in detail how much and why I determined the repurchase price for your interests in HKE, Amigos 2, and Taxon. Then I will explain my separate reasoning in determining how I plan to handle Clear Blue Ventures.

To begin, in deciding how much to repurchase shares for I took several points into consideration:

How much are any assets in the partnerships worth. This is no easy feat as it is really a scientific wild guess in particular as it pertains to the Mexican assets. It goes without saying that the assets are very depressed and not worth the original acquisition cost let alone the any profit as we saw in Amigos 1. We got lucky on that one and got all the money back to all investors, but these companies are not so simple.

How much is my realistic cash flow? That will determine the amortization of the repurchase notes.

What is my ethical responsibility to each entity.

So let's look at these one by one. Beginning with the value of the assets, my best guess is the true value is 10-20% of the original price. This is possibly high as at the present time there is no real market for real estate assets in Mexico. This value is important as someday I would like at least my heirs to recover what I am laying out. I say my heirs because I think it likely that the value will not return to what it was for many, many years. I doubt that I will live long enough.

Next, my cash flow is now at least somewhat predictable but still the company I now jointly operate is still in its infancy. So what kind of amortization can I commit to so that I can live, have an incentive to perform, and still pay you the repurchase price in a timely fashion is a guess.

The third consideration, my ethical responsibility, is the easiest for me to determine. To put your minds, hopefully, at ease, I have decided that I wish to pay 100% of the original investment for the repurchase. Let me be very clear about this. My thinking is that I benefited at least at first from the formation of these companies, though I have not in any way been benefited for years. That said, I think 100% of the original principal is very fair, even remarkable in light of the usual outcome of a business failure which would be zero.

As I have said from the beginning, if you gave me the time to perform, I would. So, while there will be no interest nor profit of any kind, you will be made whole.

Why no profit? Because obviously there was none. Further, I am not the FDIC and in the original offering documents for all companies all risks were disclosed. That said, I have no intention of relying upon legalisms. We failed. I bear some responsibility for that, and really, regardless of who else might be to blame, the buck stops here.

So I believe making you whole particularly in light of the continuing truly awful economic conditions we live in, is a fantastic outcome. I hope that you agree.

As for amortization, I plan the following: I will determine at the time I send out the notes and agreement to repurchase to you my bottom line personal needs for myself and my family. That will be a realistic and nominal amount. Then I will split the excess I earn from Warrior Health Products with you (collectively) 50/50 until the full amount of your note is repaid. This has the disadvantage of being somewhat non-specific insofar as the timeline is concerned, but that is balanced with what will likely be a much faster repayment than a fixed schedule would provide. This is because if I am forced to name a specific amount it will have to be by necessity very conservative so that I can be sure to honor the deal each month. Doing it this way, if our internal pro forma is to be believed, will make the approximate time to completely buy you out about 12 months.

As I have pointed out in the past, the current company is not mine alone nor am I the controlling partner. My interest is a minority one so I cannot do anything that I want. My payments to you must be from my share alone. This is still a substantial number in any case so buying you out should prove no problem. As for the 50/50 split of my income it will be fast and still leave me with the incentive to perform. In case some of you ask, "Why not commit the whole enchilada?" the answer is, why would I try hard or worse, why would my heirs try hard, to pay you off if there is nothing to be gained for us? The best plan to my mind is one that provides for us both. I think this plan does this.

Now the third point, as to ethical responsibility, is a tricky question. On one hand it may seem simple, but only if you look at it like a saver and not an investor. If I were a bank and you had bought a CD, then a full guarantee would be automatic. However, in a small business which each of these are, there are no guarantees, the risks were as I said fully disclosed in detail, and none of us are naive.

However, it has been my experience that people remember what they want to, and will understandably remember things in a way most amenable to their self interest. So, how to balance all of this? To my mind, if I benefited in any way, I am going to make you whole. So HKE, Amigos 2, and Taxon all benefited me and therefore I came to the conclusion that I did.

Clear Blue Ventures (Desert Growth Partners) is another story. There are no assets to recover as this was a venture lender and the loans were bad causing the company's failure. Further, I was not involved in any way with the company's operations or loan process. That was done by the manager who is not the kind of person to feel an ethical obligation that overrides a legal one, so he is not losing sleep like I am about how to take care of these investors. So any money that I pay for a share of CBV is in effect throwing good money after bad. I have no hope of recovery.

That said, I have decided to pay 30% of the original invested amount for the interests in this entity. I decided that whether or not I had any hand in the failure, I raised the money from you and you trusted my judgment which was clearly flawed. So, I am making a substantial amount good but not all of it. I think this is a fair price to pay for you, totally unfair for me (and my counsel has pointed this out repeatedly), but all of that said, this makes me sleep well knowing that I gave it a shot. I hope that you agree.

So that is it in a nutshell. I hope that you agree with my reasoning.

If not, I ask you consider that in my over 30 years experience I have never even heard of anyone doing what I am doing. I feel very comfortable in saying that the overwhelming

majority of syndicators of a failed deal just walk away shielded by the legal docs each investor signed. I also feel very comfortable in saying that had I been sued, which thankfully none of you have done, it would likely have ended in either mediation where you would be lucky to get 10% and more likely, we would have ended up in bankruptcy and you would have gotten nothing at all.

I know that this is not a perfect result, but I believe it is a very, very good one. I hope that you agree and as always, I am open to discussion and hearing from any of you with your thoughts.

Warmest Regards,

Herb Kay

Chairman

www.warriorhp.com

520-977-0514

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: Jette, Michael [Michael.Jette@azag.gov]
Sent: Monday, November 05, 2012 12:48 PM
To: McKinney, Christopher A.
Subject: Re: buy out

On Nov 5, 2012, at 12:21 PM, "McKinney, Christopher A." <Christopher.McKinney@ic.fbi.gov> wrote:

>
>
> ----- Original Message -----

> From: judith sayre <pacificbeach18@gmail.com>
> To: McKinney, Christopher A.; Filbert, Brian D.
> Sent: Mon Nov 05 14:17:28 2012
> Subject: Fwd: buy out

>
> ----- Forwarded message -----
> From: Herbert Kay <herbyk57@gmail.com>
> Date: Mon, Nov 5, 2012 at 12:11 PM
> Subject: buy out
> To: herb@warriormist.com

>
>
> Good Morning!

>
> Okay here is where we are. On advice from my counsel, Joseph
> Richardson of Gammage Burnham in Phoenix, we have formed a new LLC
> called "Pay Back LLC" to facilitate the buy out of your interests. As
> opposed to the note that I previously had talked about, you will
> receive an equity interest in the new LLC. Your contribution will be
> your original interests in the Herb Kay related entities that you now
> own. I will contribute my entire interest in Warrior Health Products
> LLC. The pay out will be 50/50 as I discussed with you but I have
> decided to eliminate the monthly income component of \$20,000 per
> month. The split of all profits coming in will be pure in that
> regard.

>
> The reason for this change in how we operate is to provide a faster
> pay out to you of your interests. If we had used the note formula,
> the profits would have been after tax as I received them, which would
> have meant a 40% (approximate) reduction or more. Pay Back LLC is a
> pass through entity meaning that all of my share of profits before tax
> will be coming in and that means a much faster pay back to you. As
> this is the entire reason for me doing this, the faster the better for
> all of us, I am sure that you agree.

>
> I will have the draft agreement ready for signature before the end of
> today according to Mr. Richardson. I will forward it on to you for
> review and your signature right away. If it meets your approval, you
> will sign and return it to me for my signature. I will then provide

> you a copy for your records and we are on our way. I cannot tell you
> how happy I am to get this done, as I know that you are too. If you
> have any questions after reviewing the document, just give me a call.
> Otherwise, we are right where we ought to be.
>
> Thanks and you will be hearing from me again later today.
>
>
> Regards,
>
> --
> Herb Kay
> Chairman
> www.warriorhp.com
> 520-977-0514
> Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

Filbert, Brian D.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Tuesday, November 06, 2012 2:03 PM
Subject: Fwd: Exchange
Attachments: Herb_s Exchange Letter to Investors.DOCX

----- Forwarded message -----
From: Herbert Kay <herbyk57@gmail.com>
Date: Mon, Nov 5, 2012 at 5:28 PM
Subject: Exchange
To: herb@warriormist.com

Good Afternoon:

Okay gang, here it is. Now this is going to be confusing for a lot of you, so I will cover a few points here and then I strongly urge you to seek your own counsel for review before signing the acceptance.

First, since I am blanket emailing this to everyone, the amounts are not filled in for the total of your investments. Yes, I have that information and will fill it in for you, but I would be totally agreeable to you doing it yourself. That is just a detail and after all of this time, I am NOT going to try and short change anyone. That said, I encourage you to fill it in yourself.

Second, many of you have asked what the timeline would be to full repayment. I have avoided hard dates given the unknowns of business, but to give you some idea and I think a realistic one, you can expect to be fully repaid in 12-24 months. This is based upon our current projections which are in turn based upon actual results to date.

Third, I am treating everyone the same and so all will be fully paid out at the same time.

Fourth, while I encourage you to seek your own counsel, I am not going to renegotiate terms or conditions. This is because, well, attorneys are expensive and every dollar that I waste on legal fees is one less dollar that I have to pay you and get this done sooner rather than later. The bottom line is that if I was looking to cheat anyone, I would already be long gone. I think it is safe to say that I have been engaged with all of you from the first day that disaster struck and have been working hard ever since to get to this day. Personally, I consider it a small miracle we have gotten this far. For those of you involved in Amigos 1, Sonoran Lending, and Sonoran Capital you know that I have a proven track record of repaying investors, so I hope that you can believe that this will go the same way. Every investor in those past deals got every penny they had invested and then some in spite of the beating that I took from my former co-manager in trying to stop me. Barring some unforeseen disaster striking, I am going to get this done. Period.

In closing, I love you guys. I take your trust and patience very seriously. I will not rest until this is done. I thank you from the bottom of my heart for giving me the time to get it done. And if you have problems filling things in or that you don't understand, of course I want you as I said to seek counsel, but I am here too if you wish to talk.

Warmest Regards,

Herb

McKinney, Christopher A.

From: Judith sayre [pacificbeach18@gmail.com]
Sent: Monday, February 04, 2013 10:14 AM
Subject: Fwd: update

----- Forwarded message -----
From: Herbert Kay <herbyk57@gmail.com>
Date: Mon, Feb 4, 2013 at 11:45 AM
Subject: update
To: herb@warriormist.com

Good Morning!

I know that you are all likely curious as to what is happening in Warrior, so here is where we are:

The ads we are running are performing consistently well. They are up to this point 1:20's and beginning today we are testing our new :60 second spot. If you are curious to see it, it is running on Fox Business, Fox News, Discovery ID, Fox Sports, and FX.

The really exciting news is that our results have caught the eye of a major player in the world of Direct Response marketing who has contacted us, and we are meeting in LA on Wednesday (he is flying to meet us from Providence, RI) to form a partnership whereby they pay for a huge media run up and we share proceeds. This would really speed up the profit picture if it comes to fruition, and this is not hyperbole when I say that they are all in and it is up to us to decide if we want to proceed with them. I am waiting to be really excited until after we review terms and conditions of the contract. I will let you know at the end of the week. FYI, they are the same group running the Joe Theisman ads for Super Beta Prostate and also Ageless Male.

What this would mean is, and this is according to them, we would immediately increase our media purchase from the current \$20,000 per week to \$250,000 with a commensurate, it is hoped, increase in revenue and profits. It is very exciting, but we don't want to be blinded to a bad deal by greed, so I am keeping a wait and see attitude. Like I said, I shall report back.

Have a wonderful week!

--
Herb Kay
Chairman

www.warriorhp.com
520-977-0514

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Thursday, February 21, 2013 9:11 AM
Subject: Fwd: update

----- Forwarded message -----
From: Herbert Kay <herbyk57@gmail.com>
Date: Thu, Feb 21, 2013 at 11:01 AM
Subject: update
To: herb@warriormist.com

Good Morning!

I want to bring you guys up to date on where we are and where I see this going since now it is in all of your and my interest to have this effort succeed.

First, if you have been watching primarily Fox News or Fox Business Channel you likely have already seen our ads. They are pulling successfully, so much so that we have been approached, met with, and reached verbal agreement on a deal with one of the largest Direct Response marketing companies in the world on becoming partners in a huge national media launch.

Now, I signed an NDA (non-disclosure agreement) so I cannot share any details until we have a final contract, an event I expect any day now, but suffice it to say that it will immediately push our media budget alone from \$20,000 per week to \$250,000 per week. This would, needless to say, greatly increase our cash flow and as a result get all of you paid much faster than I originally thought. What a nice outcome!

Pardon me for being deliberately vague, but I don't want to ruin the deal of a lifetime by opening my big mouth at this point. It would be like fumbling on the 1 foot line. I will update again when the deed is done. Until then, keep your fingers crossed!

Warmest Regards,

--
Herb Kay
Chairman

www.warriorhp.com
520-977-0514

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Tuesday, February 26, 2013 12:52 PM
Subject: Fwd: update

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Tue, Feb 26, 2013 at 10:40 AM
Subject: update
To:
Cc: herb@warriormist.com

Good Morning!

And it is a great morning! I have just completed a conference call with our new strategic partners that I had mentioned in my last update. It went perfectly. Now, under the terms of our NDA (non-disclosure agreement) I cannot discuss any sort of specifics with you at this time, but the bottom line is we are very happy with the terms of the deal, and they are taking over right away. The anticipated timeline to major ramp up of TV is 1-2 weeks.

All that I have to say is Thank God! Have a great day. I will update more later when the NDA is no longer an issue and the contract is signed (which should be no later than Friday, but with the exigencies of the modern world it could be Monday, but really, who cares?). I am tickled with all of it, and what this will mean to all of you is a much faster pay out than I originally anticipated.

Thanks for all your continuing friendship and support and God willing the creek don't rise, we are finally where we need to be. Yay!

Regards,

--
Herb Kay
Chairman

www.warriorhp.com
520-977-0514

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Monday, March 18, 2013 12:07 PM
Subject: Fwd: update

----- Forwarded message -----
From: Herbert Kay <herbyk57@gmail.com>
Date: Mon, Mar 18, 2013 at 1:31 PM
Subject: update
To: herb@warriormist.com

Good Morning!

The big deal that we have been waiting for is signed! This is it, folks. The deal that will make you whole.

Now, here are the logistics and particulars:

The deal is a royalty deal, meaning that we don't have to wait long for our money. We are essentially another expense for our strategic partners to pay each month as opposed to a net deal where we would have to wait quite a while longer to recover initial outlays on the part of our strategic partner. They will increase the media spend to \$1 million per month starting now from our current level of approximately \$50,000. This will, obviously, create a lot of cash flow.

By my calculations, and this is a projection not a promise and only time will tell, you should all be whole by the middle of 2016 at the latest. The initial amounts will be small and then grow very fast.

The reason for this is that our business plan is based upon something called "Continuity", which means a certain percentage, in our case 80%, of customers elect to have a bottle of product shipped to them every 60 days automatically in return for a slightly discounted price and waived shipping charges.

On the first sale, we don't make any money because the big cost of media comes out first. So, on the first purchase by a customer, deducting cost of media and shipping and goods, there is a loss.

However, then the good part comes beginning every 60 days after that.

There is no media cost from this point forward on their second bottles and on from there, where the only expenses are cost of goods and shipping. This leaves a large profit of \$23 per bottle approximately.

Of course, customers fall off, charge cards sometimes don't work, and products are returned, but our numbers are so much better than industry averages so far that this is not a great concern. If you think about it, the compounding of adding customers every day, and shipping repeat customers on top of that, and the rapidly building base of customers that the TV and Radio campaign will feed, makes this a very profitable venture.

I have arranged a large local accounting firm to make the payments directly to you each month. They should commence by the end of May at the latest and then monthly like clockwork from there.

I hope you get all of that, but if you don't, give me a call and I will walk you through it. Have a great day!

Regards!

--

Herb Kay

Chairman

www.warriorhp.com

520-977-0514

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Tuesday, April 09, 2013 2:15 PM
Subject: Fwd: update

----- Forwarded message -----

From: **Herbert Kay** <herbyk57@gmail.com>
Date: Tue, Apr 9, 2013 at 10:25 AM
Subject: update
To: Herbert Kay <herbyk57@gmail.com>

Good Morning!

I thought now would be a good time to update all of you as to what is going on and what to expect. It is all good news.

First, we have finalized our deal with our new strategic partner, New Vitality. If you go to the www.warriormist.com website you will now see it is directed to the New Vitality website. By Friday, according to their staff, you will see the Warrior Mist product on the site ready for the big launch.

Next, all details for the big media ramp up are either now complete or the order put in and soon will be. By this I mean that we are in perfect FDA compliance on labeling, which we had to fix, and have transferred most of our data and control to New Vitality. They have submitted POs for more inventory to prepare for launch as well as related marketing materials.

Third, the official launch for the increased media budget is April 16. Yes, Monday would normally be the day, but we wanted to avoid launching on Tax Day. Look for our ads all over cable on stations that include but are not limited to Fox, MSNBC, CNBC, CNN, GAC, FX, Spike, Golf, The Outdoor Channel, ESPN, and lots more. I have no idea exactly when spots will run, so please don't deluge me with requests as to that kind of information, but it will be on a lot, so just be patient and you will soon see the spots, and little old me, all the time!

We are launching a renewed radio campaign as well.

Finally, as soon as the Mist launch is complete, we move on to Energy and Sleep right away.

Now, to set up expectations, the first couple of months will be small revenue as our model, as I have explained many times before in my updates, depends upon "continuity" or in other words, automatic reorders, to make money. This compounds quickly over a short period of time, so look for small checks to begin but fast escalating. Do NOT take this as a promise, but based upon our internal numbers, all of you should be whole in approximately 24 months from now.

In closing, as we are launching in the middle of April, this month's royalty check will be really small, May's will be better, and from there it will get much better every month. I plan to make monthly distributions as soon as royalties are received. We will receive our royalty approximately 10 days after the end of the previous month to give you some idea of timing.

All in all, we are in a very good place and miraculously, so far there have been no serious glitches in getting all of this work done and the transfer to NV complete. We are all excited, but as a cautionary note, as the Zen Master said, we shall see. Keep your fingers crossed, and start looking for my face on cable beginning April 16, and we should be fine. However, I have learned the hard way that a quip can be taken as a promise, so I am keeping my quips to a minimum. One thing you can be sure of; I will continue to press to make all of this happen as planned. You have all been wonderful and patient with me since this whole ordeal began. I truly appreciate that, and you are all in the front of my mind every day. That much is a promise.

Have a great day!

Herb Kay

Chairman

www.warriorhp.com

520-977-0514

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Saturday, April 13, 2013 2:46 PM
Subject: Fwd: Update

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Sat, Apr 13, 2013 at 10:33 AM
Subject: Update
To: Herbert Kay <herbyk57@gmail.com>

Good Morning All!

The launch of the new marketing campaign with our strategic partners is on track and on time for Tuesday of this week all across cable TV and radio. I thought you all might like to check out the new landing page designed by them. I think it's great and would love you to weigh in. Go to www.warriormist.com.

Keep your fingers crossed but this is looking very good so far. Have a great weekend!

Herb Kay
Chairman

www.warriorhp.com

520-977-0514

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Tuesday, April 16, 2013 8:42 AM
Subject: Fwd: update

----- Forwarded message -----

From: **Herbert Kay** <herbyk57@gmail.com>
Date: Mon, Apr 15, 2013 at 3:11 PM
Subject: update
To: Herbert Kay <herbyk57@gmail.com>

Good Afternoon!

Tomorrow is in fact set for launch as planned. FYI, you can see spots on Fox News, Fox Business, MSNBC, ESPN News, and MeTV. I don't know the specific schedule but the ad will run all throughout the day and prime time as well. I will keep you updated as I know the results.

Realistically, we expect a solid launch but for it to build over the first few days of the campaign as the ad repeats. Repetition breeds response.

So keep your fingers crossed! This is it!

Warmest Regards!

—
Herb Kay
Chairman
www.warriorhp.com
[520-977-0514](tel:520-977-0514)
Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Tuesday, April 23, 2013 2:33 PM
Subject: Fwd: update

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Tue, Apr 23, 2013 at 1:23 PM
Subject: update
To: Herbert Kay <herbyk57@gmail.com>

Good Morning All!

This is just a brief update to keep all of you in the loop as we progress.

As I said, we have signed the Joint Venture agreement with our new strategic partners and testing has commenced as of last week on schedule. They are testing the stations we have run on all along and added several into the mix. For example, we had been on Fox News and Business but we have added MSNBC, CNN, and ESPN among others. Also, we are back up on Sirius XM and many of you have been in contact with me telling me you heard or saw the ads.

The response last week was good, though we don't have final numbers as of yet due to the Boston Tragedy and the coverage bumping a percentage of our spots. This means that until we get what are called "Post Logs" we won't know for sure what the results were exactly, but we can say that they were on target for what we expected at first glance.

Moving forward, this campaign is just for Mist. We are moving ahead with production of new commercials with me doing the presentation for Energy and Sleep, and as of yesterday QVC told them that we would be on the air with them within 90 days of today.

Sorry that I don't have more specifics to share today, but now that I am not in charge I am sort of at the mercy of when they report to me weekly. Day to day I don't know a lot of the little details, which believe me, is a good thing.

That's it for now, and I will update again at the end of the week/weekend after I get the weekly summary. I will try and give ASAP an idea of cash flow as well once I have the hard numbers. I just don't want to create a expectation that isn't absolutely accurate, so please bear with me.

Have a great day!

Herb Kay
Chairman
www.warriorhp.com

E-mails

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Tuesday, April 30, 2013 3:17 PM
Subject: Fwd: update

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Mon, Apr 29, 2013 at 10:35 PM
Subject: update
To: Herbert Kay <herbyk57@gmail.com>

Good Evening:

Our new strategic partners have signed Chuck Liddell as the commercial spokesman for Warrior Mist and Energy. Google him, but if you are not familiar he is a former UFC World Champion, now retired, and the biggest name in the what is now the fastest growing sport in the world. Chuck endorses some major products, but he LOVES Warrior Mist for his many, many injuries and wants to endorse very much. He got the product while training in Montreal with George St Pierre, another huge name in the sport, who runs the number 1 UFC training gym located there and he buys Mist two cases at a time.

Chuck and I will shoot a long form infomercial in May. I will be the host and founder of Warrior and Chuck will talk about his injuries and how Mist has changed his life. He says it really has! Long form is a 30 minute show FYI. We never made one before due to the huge cost of doing so, but our new partners are footing the bill on everything now so we are off to the races.

The TV and radio campaign continues unabated and testing new stations every week. Many of you have seen it I know, and soon it will be all over the place. This is the 2 minute commercial featuring me alone and the radio spot as well which I voice. Once the new long form plays and assuming it is successful, we will cut a new 1:20 featuring Chuck.

Folks, this is a potential game changer and his fees do not affect our net payout as we are paid a royalty on gross so his cost is immaterial as far as we are concerned. Chuck could be a game changer, or not, but this is the kind of exciting thing that could greatly accelerate our getting all of your money back to you. No promises, but like I said, Google Chuck and see what you think.

Have a great evening!

Sincerely,

That's it for now. Have a great evening.

Herb Kay
Chairman
www.warriorhip.com

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Wednesday, May 01, 2013 10:22 AM
Subject: Fwd: Dinero

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Wed, May 1, 2013 at 12:05 PM
Subject: Dinero
To: Herbert Kay <herbyk57@gmail.com>

Good Morning!

I am being asked, not surprisingly, when and how much you can expect from distributions from Pay Back LLC. Good question!

So, I want to be very precise and careful in laying this out so as to create realistic expectations. I know that I have sometimes made the mistake of not tempering my enthusiasm, so I will try to here. That said, as I have been reporting, we are underway with our new strategic partners. In this arrangement, my role is one of being the "talent".

All of that said, we launched as I reported a new phase of testing April 16. And, as I have reported, the launch went well thought it was during the Boston Tragedy and the majority of our spots were bumped for breaking news coverage on the cable stations we advertise. So really last week was the first real week of test and we continue this week and are booked for the next 4 already. Assuming results continue as they have, the major ramp up of media spend will take place beginning in June. By major I mean \$1 million per month as a baseline and increasing from there.

So, bottom line, we should receive in the next week our first royalty check and when I do, it will be very small but I will cut out your checks upon receipt. It is not my plan to withhold any money, no matter how little at first.

Now, if you remember, the model is based upon "continuity" so once the big run up begins in June, we should see revenues climb very quickly. As each month goes by, your checks will increase exponentially as previous customers get their reorders every 60 days. This is not going to be similar to anything you have likely been involved with. It will not be a slow drip, drip, drip. It will start that way and then by fall become a torrent.

I estimate that all of you should be whole or near whole by the end of next year with checks coming every month. I will in each check to you include an accounting of the gross received, the net to Pay Back received from Warrior, and then of course your share. In this way, you will know precisely that you are getting your promised interest.

Finally, I am taping with Chuck Liddell, UFC Champion and Warrior Mist and Energy's new spokesman, a long form infomercial beginning next week. This could be a game changer much like George Forman and the grill or Joe Theisman and Super Beta Prostate, but we shall wait and see.

The reason for testing now, though we have been testing all along, is to find more stations where the ad works to absorb the marketing budget plus for our partners to see the numbers for themselves as opposed to just taking our word for it. We will test the new long form when it is finished, likely in June, but this will NOT affect the ramp up of the existing spot on cable and XM Sirius which many of you have already seen or heard.

So, summing it all up, when I get the royalty for April it is going to be tiny, but that said I will send out your share with an attached accounting regardless. I will, through our CPA firm as I discussed in previous emails, send the same thing, money and an accounting, every month thereafter until you are whole. The time that I estimate to finish paying all of you is about 19 months, but in any case we are at last underway. And we have a new spokesman and producing a new spot and this could greatly accelerate our pay out time, or not, but we will produce the new spot and test it and I will update you on that, then.

Finally, just in case you're curious how I am supporting myself during all of this, I got a job selling software; so as usual, lazy is not my issue! It's been a struggle, but we are here at long last. I appreciate all of your patience and support as always, and feel free to give me a call or email anytime if you have questions, but since we are the point of beginning to pay out, well, I am guessing there will be a lot less concern and a lot more smiles.

Talk to you soon!

Herb

--
Herb Kay
Chairman

www.warriorhp.com

520-977-0314

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Thursday, May 02, 2013 4:07 PM
Subject: Fwd: update
Attachments: taxon investor statement sample.pdf

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Thu, May 2, 2013 at 3:02 PM
Subject: update
To: Herbert Kay <herbyk57@gmail.com>

Hello Again:

We are busy preparing for distributions and decided upon the same template for your monthly statements that we were using for Taxon distributions before the failure of the company. I have attached an actual statement with the name blacked out to remind you of what they look like:

It will summarize you holdings each month and then keep an ongoing accounting of all you have received so you will know accurately where you are in terms of being fully repaid. It was a simple system and so we decided why fix what wasn't broken?

We are actually working on getting ready today in anticipation for the first royalty check we receive. All is continuing to go well as I have reported, so unless something comes up out of left field so to speak, we should be good to go.

For those of you who have your holdings in an IRA type plan, these monthly statements will go to the custodian of the investment along with the check payable to your account. If you would like us to copy you the statement so that you know when it was sent in in order for you to follow up, just let me know and I will make arrangements.

That's it for now. Have a great day!

Regards,

Herb Kay
Chairman
www.warriorhp.com
520-977-0514
Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

McKinney, Christopher A.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Monday, May 06, 2013 3:02 PM
Subject: Fwd: update

----- Forwarded message -----

From: **Herbert Kay** <herbyk57@gmail.com>
Date: Mon, May 6, 2013 at 12:27 PM
Subject: update
To: Herbert Kay <herbyk57@gmail.com>

Good Morning!

As I am leaving later this week for work on the new infomercial with our new endorser, Chuck Liddell, I thought that I would send this brief update.

Things continue to go well. MER is improving steadily and we are on course to ramp up as planned. I have no modifications to the schedule that I have been reporting all along.

I did spot an error on the part of our strategic partners last week; they were offering 30 instead of 60 continuity which in effect halves the value proposition to the customer. I immediately brought this to their attention, they concurred, and the change is being made this am which ought to accelerate our progress.

Finally, so that you have realistic expectations, as I said and want to reiterate, this month's check to Warror is going to be miniscule. This is because of the offer to the customers (which you can see and read for yourselves at www.warriormist.com) of paying only \$5.95 shipping to use the product for two weeks for free. Then they are charged the balance.

Since we launched on April 16, by May 1 literally nobody had been billed the balance. They have now. So, as I had said in my last update, I won't hold back a penny but it might not be a lot more than that! Next month will be dramatically higher as a result.

If you have any questions, don't hesitate to ask. Otherwise, have a wonderful week!

Sincerely,

--
Herb Kay
Chairman

www.warriorhp.com

520-977-0514

Makers of Warrior Mist, Warrior Sleep, and Warrior Energy

Filbert, Brian D.

From: judith sayre [pacificbeach18@gmail.com]
Sent: Friday, May 17, 2013 2:33 PM
Subject: Fwd: update

----- Forwarded message -----

From: Herbert Kay <herbyk57@gmail.com>
Date: Fri, May 17, 2013 at 2:05 PM
Subject: update
To: Herbert Kay <herbyk57@gmail.com>

Good Morning!

Okay, so we received our first royalty check, and as I had predicted, it was tiny. There were 916 qualifying transactions in April that cleared the credit card processor in time for the cut off date for the check (it takes routinely 2-5 business days after a charge is taken for it to show up in the bank). As I had pointed out and you can see for yourself on line at warriormist.com, the offer is to pay only \$5.95 and then the balance is billed in 14 days if the customer doesn't stop it which they can at any time (it is actually billed at 18 days to allow for shipping). This means that the gross revenue was \$5405 and change, our gross royalty at 5% was \$272.51 and the net to me was \$59.95 which would then be split with you 50/50 and well, you can see that tiny is the word.

Now, I made a promise to distribute no matter what, but I didn't really sit down to figure out until now that would mean the majority of you would get checks, if it were possible, of less than a penny and the largest would get about \$2.00. But, a promise is a promise, so I am going to carry over the royalties to next month when the \$29.95 balances start to kick in and the larger ad budget makes an impact to send you a real check UNLESS you want the tiny amount now. Further, I am waiving my share this month and the whole amount of my gross share will roll over as well. I feel dumb taking \$27 and change.

If you would like a check regardless of size, please email me and if your share is less than a cent, I will round up and send it. I am just trying to avoid spending over 40 cents on postage to send a few cents, but like I said, a promise is a promise and if you want it as a sign of good faith or for any other reason for that matter, just say the word and it shall be sent right away.

If not, be happy that we are on a roll and next month the check will be small but much more significant and spendable on something other than, well, nothing! Just let me know.

And for IRAs it is just silly to send out a penny or two, so those will roll over automatically to next month.

Let me know if you are not alright with this decision on my part. We are finally getting money, albeit tiny at first, but things are going exactly according to plan so far and this is just a beginning. You have trusted me this far, so I don't want to spoil that and not keep my word. That said, it is kind of silly to spend 40 cents to send a penny. But, like I said, it is your call. I will take silence as let it roll over. Only write if you want the check regardless.

I am off to work on the new 30 minute infomercial with Chuck Liddel right now. So far it is going well. I will keep you abreast of when you will be able to see it on the air.

State v Kay
CR 2014-0165

EXHIBIT B

Ortiz, Kim

From: Michael Hannley <Michael.Hannley@bankoftucson.com>
Sent: Thursday, March 26, 2015 12:20 PM
To: Liz Barbato
Subject: FW: favor

MICHAEL HANNLEY
President



4400 E. Broadway
Tucson, AZ 85711
520.320.1992
michael.hannley@bankoftucson.com

From: Michael Hannley
Sent: Thursday, March 12, 2015 4:29 PM
To: 'Herbert Kay'
Subject: RE: favor

Herb, well if you go to jail and not very far away I will visit you , never been close to a jail so would be very interesting, I did send up a scumbag up though who screwed the bank out of \$800m for mortgage fraud, never will forget him.....a Marine pilot great job at Raytheon making a buck and half, but no the dumb ass had to get greedy.....

So, my friend who do I send this letter too ? Name address etc, be a hell of a lot easier to send an email though, but whatever has best impact for you I can do.

Selling cars, wow I am a bit surprised that you through in the towel so quickly as if I had to I would focus my sights on being Sales manager in short time, as I know you are the best salesman, you can do it honestly, hell I loan money for a living at higher than market interest rates, why because I provide the best advice and service and charge accordingly, so you must be selling clunkers in South Tucson and not at Jim Click where I would be if I sold cars.

Do you still own the house in Rocky Point ? had so much fun there.....

Have to run to a staff meeting,
Cheers,
Mike

MICHAEL HANNLEY
President



4400 E. Broadway
Tucson, AZ 85711
520.320.1992
michael.hannley@bankoftucson.com

From: Herbert Kay [<mailto:herbyk57@gmail.com>]
Sent: Thursday, March 12, 2015 9:15 AM

To: Michael Hannley
Subject: Re: favor

Hi Mike:

Well, where to begin? First of all, had I actually done what the state alleged, I would have had a lot more money and could have hired defense counsel. I would have likely beaten these charges as the case is weak and I tell you sincerely, I did nothing remotely illegal. That said, I did a lot immoral and involved people in the deal that I shouldn't have and am responsible for the failure entirely, so there you go. Faced with a public defender who has no background in white collar crime and a prosecutor who literally never interviewed me not was I ever contacted by the investigators, well, I was in a weak position and decided to put this behind me as quickly as possible.

Jail, well, not afraid of it. I live monastically as it is, I would go to a minimum security prison and would spend my days once settled in being taken care of, reading, and writing. It almost sounds good and it would be a lot easier.

That said, I can be a lot more effective in paying back investors working on the outside to liquidate Mexican assets that I still control which will pay the majority back plus whatever I can earn. I have abandoned all of my long held business ambitions for life and am dedicating myself to the creative. My new novel will be done in the first draft in a week or so, then a rewrite and then release. As you know, I have written a non-fiction bestseller before and this is my first attempt at fiction, but even if it works only on a nominal level, I will make a living and perhaps more. We shall see and no more hyperbole from me. The title is "Conversations with Satan" and it is really good, at least I think so. I would be happy to let you read it after the second draft is done and it is smoother than it is now.

Meanwhile, ironically, I find myself out of work as of last week being fired from a car dealership because, and I know you will laugh at this but it's true and ironic at the same time, I wouldn't lie to customers! Man, the car business is slimy, top to bottom. I will never do that again and its reputation is deserved.

So, after I find out on the 30th if I am in prison or probation, I will take another traditional job selling something other than cars (as you know, I can pretty much sell anything as long as I actually believe in it), and write and work to sell assets depending. I have asked the court to appoint a trustee to oversee and collaborate on the sale to maximize return to investors. We shall see.

In the end, it is good to know that I still have a friend in you. When the world turns to shit, pardon my being crude, you find out right away who is a friend and who was an acquaintance. You are on my very short list of friends, and god forbid should you ever need me to do anything, regardless of whether you write this letter or not, I will come through. Period. Any idiot can be your friend when things are good, but when they aren't, well, you are great. It touches me deeply.

So I ask that you write a letter recommending probation because I will be more effective for investors out than in and also if you could reference that you have seen me do it before, well, that would be great. But I won't put words in your mouth and you decide.

Thanks so much!

Herby

On Mon, Mar 9, 2015 at 4:45 PM, Michael Hannley <Michael.Hannley@bankoftucson.com> wrote:

Herb,

What a surprise and a wow surprise you never do anything half ass for sure. You can imagine the shock I had where you are potentially going to prison, you are the 1st on this for sure, glad you told me about it before it hit American Greed on TV, that would have been a shocker.

So, you are conflicted on taking a sabbatical in prison to enable you to think, write a book, just getting away from it all, not a bad thought for sure especially in a minimum security prison.

Do you have any sort of life now? If not I think the prison time would do you well, but then you back track and say you do not want to go to prison and ask that I send a letter to your attorney for the judge to give you probation.

So, which one is it? I must ask where is your head is in this..... as I sure cannot see you making restitution on what you will be hit with for sure way too much money even if you have the Mexican property, as it still would require a significant amount capital which you for sure cannot obtain. In my world, you would need to share with me your plan on how to utilize a 'probation' as you said "to work to get all of your investors "some" part of their investment from the Mexican property marketed and sold".

I remember the time when we discussed initial Mexican property development that went bad , and you were embarrassed that you could not fulfill the investor return, where I countered " not an investor alive that would not criticize the investment manager on getting all or part of the principal back, forget the investment return".

You did at that time return the investors' money and told me "you are right Mike, not one person complained but where thrilled that I would be so honest".

This is what I would tell the judge, if in fact, you want consideration of probation.

Now for the life of me, I cannot figure why such a smart guy like you, very successful in business would push the envelope with your investors and screw them out of their money for whatever you did with the investor funds. Again, if the investment was a bad one, that would be what you tell them, but I am assuming given this is a federal case, you must have used their investment funds for you outside personal needs. Is this where you say "I did nothing in the operations of the companies that was illegal, I did things to raise the money that I shouldn't have.....but you're not guilty ?

You pled guilty Herb, man I don't get it and think your explanations are flawed.

This in no way impedes our friendship or relationship, as you repaid every nickel that I loaned you, both personally and to the bank so I am sorry that you destroyed your reputation at this point, which has to be the worst hell that I can imagine.

In conclusion, what would you like me to do,.....send an email to your attorney that all of our dealings both personal and business were always on the up and up, which I am happy to do so ,,,,,if that is what you really want?

Very sad my friend that after all of your personal and business success that you would be faced with prison.

So, your friend is still here to communicate with.....

Mike

MICHAEL HANNLEY

President



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520.320.1992

michael.hannley@bankoftucson.com

From: Herbert Kay [mailto:herbyk57@gmail.com]
Sent: Thursday, March 05, 2015 10:34 AM
To: Michael Hannley
Subject: favor

Hi Mike:

Long time no speak, which is trite I know and obvious, but where do I begin?

I am in California, have pled guilty to two criminal counts, and on March 30 am facing sentencing. The judge, Chon-Lopez, has broad discretion and can choose anything from probation to prison.

Now, you might think that I would prefer probation, but in reality, not really. At this point I am so stressed and so buried in the fallout of my own stupidity and acts that going to prison would in many ways be a vacation as crazy as that sounds. I don't know, but the pressure off and serving my time seems somehow peaceful to me. After all, I am not going to end up in Maximum Security, I'm too old to be cute to other inmates (yes, I still have a sense of humor), and I could spend my days reading and writing which for me is paradise. And when I come out, my slate will be clean insofar as the law is concerned and I can go forward to live out the rest of my life with my family quietly. It has a certain appeal.

But I left a wake of destruction in my path. I did a lot of things I wish I hadn't, and though I tell you privately that I did nothing in the operations of the companies that was illegal, I did things to raise the money that I shouldn't have. I am guilty.

Now, I think you have known me long enough and well enough to know that I am not a bad person. At least, I don't think so. I am a deeply flawed one. So I ask that you write a letter about your perceptions of me over the years that we have known each other and why you think I deserve probation, but only if you think I do. If not, just ignore this request. I in no way ask you to say anything that you feel is not true.

I want probation because I want to pay restitution. I control approximately \$7 million in real estate in Mexico that once sold, and I have it listed and aggressively priced with one under contract right now, that will make the investors/victims substantially whole. As you know, I have successfully sold land and returned millions to investors before in the Amigos 1 project, so I can say truthfully that I know how to do this. And this is the key. The court could appoint a trustee to do this if I go to prison, but Mexico is more than tricky and I fear that the process takes constant hand holding and deep experience. It is nothing like the US.

I have told the court that I am more than willing, in fact would prefer, judicial oversight. I just want to make sure it gets done right. And if there is any deficit, then I will set up a repayment plan for that from income I may receive as well. If I go to prison, my future earnings potential would be effectively destroyed and the investors guaranteed to get nothing.

So that is my goal, to maintain responsibility to make the investors as whole as possible and build myself into the man I want to be as opposed to the man that I have been.

In closing, I know that I have not been a close friend over the years in the sense that you and I saw or talked often. And this is a lot to ask, I know. For whatever it is worth, the public side of me that you saw was never the real me. The real me is intensely private, which is why you almost never saw me in social settings over the years. I am a hermit by nature, and in a sense this is why prison does not frighten me.

Anyway, you are one of those people that I most admire and hope that you will do this for me. If not, again, I completely understand and will leave you alone. I promise no hard feelings. If you do decide to help, I need the letter returned to me, and I will then give it to my counsel to be given to the judge, by March 13. Just attach it to an email.

I am also available by phone if you would like to talk first. My cell is unchanged, 520-977-0514.

Thanks my old friend. I am so sorry.

Sincerely,

--

Herb Kay

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Herb Kay
520-977-0514

I live to create possibility for others.