

Original

FILED

2011 DEC -9 PM 1:21

GARRETT THOMAS
DISTRICT CLERK
DALLAS CO. TEXAS
Jillie R. Raley DEPUTY

WORLDVENTURES MARKETING, LLC
Plaintiff,

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IN THE DISTRICT COURT

v.

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§
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160TH JUDICIAL DISTRICT

TRAVOPOLY TRAVEL, LLC AND ROBERT OBLON
Defendants,

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§
§

v.

§
§
§

OF DALLAS COUNTY, TEXAS

MICHAEL AZCUE, WAYNE NUGENT, DAN STAMMIN, DAVE ULLOA and YVETTE ULLOA
Third Party Defendants.

§

DEFENDANTS' SPECIAL EXCEPTIONS, MOTION TO TRANSFER VENUE, ORIGINAL ANSWER, COUNTERCLAIMS AND THIRD PARTY CLAIMS

NOW COME Defendants, Travopoly Travel, LLC and Robert Oblon, named Defendants in the above-entitled and numbered cause, and file this Special Exceptions, Motion to Transfer Venue, Original Answer, Counterclaim, and Claims against Third Parties and would show this Court:

I. PARTY IDENTIFICATION INFORMATION

1. Travopoly Travel, LLC (hereafter "Travopoly") has not been issued a driver's license. Travopoly has not been issued a Social Security number.
2. The last three numbers of Robert Oblon's (hereafter "Oblon") driver's license number are x771 and his last three numbers of his Social Security number is x052.

II. MOTION TO TRANSFER VENUE

3. Plaintiff is WorldVentures, LLC (hereafter "WV"); Defendant's are Travopoly and Oblon.
4. Plaintiff sued Defendant's in Dallas County for damages.
5. This case should be transferred out of Dallas County, which is not a proper county for venue, to Collin County, a proper county for venue.
6. Plaintiff pleads that venue is proper in Dallas County because: (1) all or a substantial part of the events or omissions giving rise to the claims alleged herein occurred in Dallas County;

and (2) by agreement of the parties.

7. Defendant's specifically deny that all or a substantial part of the events or omissions giving rise to the claims occurred in Dallas County or were required to be performed in Dallas County by contract or agreement.

8. The provision cited by Plaintiff to support venue in Dallas County has no relevance to the matter at hand. Section 15.035 of the Civil Practice and Remedies Code provides that a defendant can be sued in the county where the obligations under a contract were to be performed, if that location is expressly identified in writing.

9. Defendants specifically deny that Travopoly has any agreement of any kind with WorldVentures. Defendants specifically deny that Oblon has any agreement with WorldVentures where performance is or was due in Dallas County.

10. Defendants specifically deny there is any writing under which an obligation is to be performed in Dallas County by either Travopoly or Oblon. Section 15.035 as cited by Plaintiff is not a basis upon which to establish venue over either defendant.

11. Defendants specifically plead that venue is proper in Collin County because: (1) all or a substantial part of the events or omissions giving rise to the claim occurred in Collin County; (2) Oblon is a natural person and he resided in Collin County at the time the cause of action accrued; (3) Travopoly is not a natural person and Collin County is the location of Travopoly's principal place of business; and (4) the Plaintiff resided in Collin County at the time of the accrual of the cause of action. Tex. Civ. Prac. & Rem. Code §15.002(a)(1), (2), and (4).

III. GENERAL DENIAL

12. Defendants deny each and every allegation of Plaintiff's Original Petition, and demand strict proof thereof as required by the Texas Rules of Civil Procedure.

IV. VERIFIED DEFENSE

13. Defendants specifically deny that any statements, references or comments made by Defendants related to, referencing or acknowledging that Mike Azcue and Wayne Nugent were having tax problems, were subject to criminal prosecution for tax evasion or may have criminal penalties resulting from tax problems cannot be disparagement, because the statements are true.

14. On April 21, 2011, Mike Azcue, in the United States District Court for the Eastern District of Texas in Cause Number 411CR52, pled guilty to one count on federal charges in open court. A true and correct copy of the publically available file stamped plea agreement by Azcue is attached as attachment "A."

15. Azcue's signed a factual summary admitting his conduct and guilt to the charge of the intentional failure to file tax returns which resulted in losses to the government. A true and correct copy of the publically available file stamped factual summary is attached as attachment "B."

16. On April 21, 2011, Wayne Nugent, in the United States District Court for the

Eastern District of Texas in Cause Number 411CR53, pled guilty to two counts on federal charges in open court. A true and correct copy of the publically available file stamped plea agreement by Azcue is attached as attachment "C."

17. Nugent signed a factual summary admitting to his conduct and guilt to the charges of the intentional failure to file tax returns, which resulted in losses to the government. A true and correct copy of the publically available file stamped plea agreement by Azcue is attached as attachment "D."

18. Nugent and Azcue were both convicted and sentenced in open court and required to pay fines for the guilty plea to the charges and since any reference or statement made by Defendants has the defense of truth and therefore cannot be a business disparagement to WorldVentures.

19. Conditions precedent were not completed by WorldVentures as required by the contracts in which it sues upon.

V. DEFENDANTS' COUNTERCLAIMS AND CLAIMS AGAINST THIRD PARTIES

A. Third Party Defendants

20. Mike Azcue (hereafter "Azcue"), individually, is a Texas resident who resides in Collin County at 2238 Fox Crossing Ln, Frisco, TX 75034-2603.

21. Wayne Nugent (hereafter "Nugent"), individually, is a Texas resident who resides in Collin County at 1524 Van Winkle Dr., Plano, TX 75007-1212.

22. Dan Stammen (hereafter "Stammen"), individually, is a Texas resident who resides in Collin County at 7605 Olive Branch Ct., Plano, TX 75024-3741.

23. Dave Ulloa (hereafter "D Ulloa"), individually, is a Texas resident who resides in Collin County at 3308 Preston Road, Ste. 350, Plano, TX 75093.

24. Yvette Ulloa (hereafter "Y Ulloa"), individually, is a Texas resident who resides in Collin County at 3308 Preston Road, Ste. 350, Plano, TX 75093.

Count 1 - Minority Shareholder Oppression, Action for Refusal to Make Distribution and Action for Denial of Review of Books and Records (Oblon Against WV, Stammen, Azcue, and Nugent)

25. Counter-Plaintiff/Defendant Oblon, d/b/a Traco has a 5% ownership in Defendant WorldVentures and was and is now entitled to a distribution of WorldVenture's accumulated profits in the amount of at least \$1,000,000.00 with interest from January 1, 2009.

26. Oblon is and has been at all times pertinent to this petition, a member, owner, or assignee of WorldVentures, a limited liability company.

27. Oblon believes that WorldVenture regulations specify that he is entitled to receive distributions of profits once a year. WorldVentures has failed and refused to make a distribution to

its members from accumulated profits. WorldVentures has failed to make distributions since 2005.

28. WorldVentures, Nugent, Stammen and Azcue have terminated Oblon's employment, removed him from his management position, refused to declare dividends, refused and denied access to information about the company, failed to hold meetings, excluded him from a meaningful role in the corporate decision making and siphoned off corporate earnings to the majority shareholders, thus denying Oblon financial and participatory rights.

29. The majority shareholders' conduct substantially defeats the expectations that objectively viewed are both reasonable under the circumstances and central to Oblon's decision to join the venture.

30. A membership interest in a limited liability company may be wholly or partly assigned. An assignee of a membership interest does not have the right to: (1) participate in the management and affairs of the company; (2) become a member of the company; or (3) exercise any rights of a member of the company. However, an assignee of a membership interest does have the right under *BOC Section 101.502* to examine records. Mr. Oblon owns 5% of the company makes him the owner of a membership interest or an assignee of a membership interest and an assignee of a membership interest has the right to examine the books and records for a proper purpose.

31. Oblon made demand as provided by the Texas Business Code and WorldVentures, by and through its attorney denied Oblon the right to review the records.

32. As a result of each of the above stated causes of action Oblon has been damaged and has incurred out of pocket damages.

33. Oblon requests the court to compel WorldVentures, Stammen, Azcue and Nugent to comply with the law and make available the books and records for review and for damages and out of pocket expenses.

Count 2 - Business Disparagement
(Travopoly and Oblon Against WV, Azcue, Nugent, Stammen, D. Ulloa and Y. Ulloa)

34. Beginning in 2011, Azcue, Nugent, Stammen and Dave and Yvette Ulloa published disparaging words about Travopoly Travel, LLC.

35. The statements made by these individuals were false. In particular, statements were made that Travopoly was a MLM or direct marketing company, that Travopoly was illegally recruiting WorldVentures Independent Representatives and that Travopoly has stolen or was in possession and using for its own benefit, WorldVenture's confidential information.

36. Each of the individuals published the false statements with malice.

37. Each of the individuals published the words without privilege and publication caused special damages.

Count 3 -Fraud

(Oblon Against Stammen, Azcue, and Nugent)

39. In 2005, Counter-Plaintiff/Defendant Oblon entered into an agreement with Nugent, Stammen and Azcue of which Oblon was and is a 5% owner and Nugent, Azcue and Stammen were the controlling shareholders.

40. Nugent, Azcue and Stammen caused WorldVentures to be used for the purposes of perpetrating, and did perpetrate an actual fraud on Oblon to avoid liabilities owed to Oblon under the terms of the agreement and for each of their own direct personal benefit.

41. Nugent, Stammen and Azcue, as officers of the company, diverted or caused to be diverted revenue and profits from Oblon to themselves by intentionally and fraudulently causing alterations, manipulations and changes in the WorldVentures compensation plan, falsely representing that certain independent representatives were entitled to the revenues when they knew they were not, and causing the payment of large amounts of revenues to themselves and to others who were not rightfully entitled to the money, for their direct personal benefit.

42. As a result of the actions of Nugent, Azcue and Stammen's fraud, Oblon has suffered actual damages in the form of lost profits, income and out of pocket expenses.

Count 4 -Breach of Contract

(Oblon Against WV, Azcue and Nugent)

43. In 2005, Oblon entered into a valid, enforceable contract with WorldVentures, Azcue and Nugent. WorldVentures, Azcue and Nugent are the proper parties to the contract along with Oblon.

44. Oblon sues for breach of the contract.

45. Oblon performed or was excused from performing each of his obligations.

46. WorldVentures, Azcue and Nugent have breached the contract.

47. Oblon has suffered damages and a result of the breach.

VI. DECLARATORY JUDGMENT

48. Counter-Plaintiffs/Defendants request that declaratory judgment be entered under Chapter 37 of the Texas Civil Practice and Remedies Code as follows:

(a) WV claims that Counter-Plaintiffs/Defendants have certain duties and obligations provided there exists a contract and Counter-Plaintiffs/Defendants deny the that they owe any duty to WV.

(b) WV claims it has the right to sue Counter-Plaintiffs/Defendants for their breach of particular terms and/or provisions of a contract or agreement it holds with Counter-Plaintiffs/Defendants. Counter-Plaintiffs/Defendants deny the entered into a contract with WV.

(c) Counter-Plaintiffs/Defendants allege alternatively, that if such an agreement exists, WV and Counter-Plaintiffs/Defendants are required to use arbitration regarding any dispute of the contract.

VII. RELIEF REQUESTED

49 There exists a genuine controversy between the parties herein that would be terminated by the granting of declaratory judgment. Counter-Plaintiffs/Defendants therefore request that declaratory judgment be entered regarding the existence of any rights or duties or alternatively the obligation of arbitration.

VIII. ATTORNEY'S FEES

50. Pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, request is made for all costs and reasonable and necessary attorney's fees incurred by Counter-Plaintiffs/Defendants herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

IX. DAMAGES

51. As a direct and proximate result of the occurrences made the basis of this lawsuit, Travopoly Travel, LLC was caused to suffer actual damages and out of pocket damages.

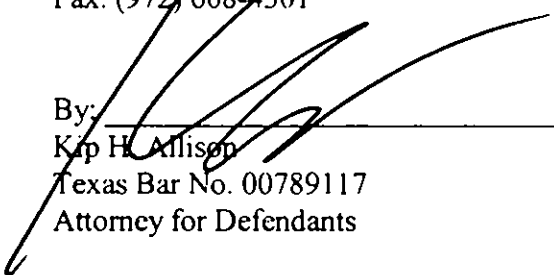
52. As a direct and proximate result of the occurrence made the basis of this lawsuit, Travopoly Travel, LLC was caused to suffer actual damages in excess of the jurisdictional limit of this court.

X. PRAYER

Defendants pray the Court, will transfer this cause to Collin, will sustain the exceptions to the Plaintiff's Petition and order Plaintiff to replead, compel the inspection of Plaintiff's books and records, award damages in judgment with pre and post judgment interest, reasonable attorney's fees as available by statute, and after notice and hearing or trial, enter judgment in favor of Defendants, awards Defendants the costs of court, attorney's fees, and such other and further relief as Defendants may be entitled to in law or in equity.

Respectfully submitted,

Allison | Associates
5600 Tennyson Parkway, Ste. 330
Plano, TX 75024
Tel. (972) 608-4300
Fax. (972) 608-4301

By: 
Kip H. Allison
Texas Bar No. 00789117
Attorney for Defendants

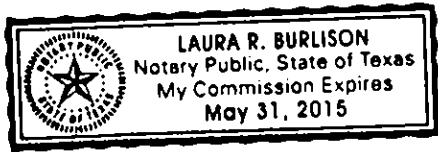
VERIFICATION

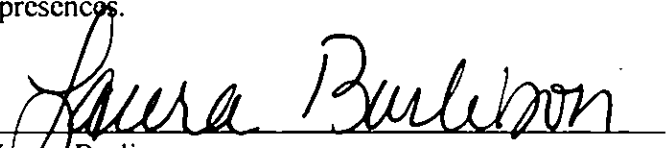
The undersigned verifies on knowledge and beliefs that paragraphs 19 are true and correct to the best of knowledge and that the documents attached are true and correct copies of documents on file with the Eastern District of Texas Federal District Clerk.



Kip H. Allison

Kip Allison, known to me appeared before me, Laura Burlison, on December 9, 2011 and executed his signature to this document in my presences.





Laura Burlison
Notary

CERTIFICATE OF SERVICE

I certify that on December 9, 2011 a true and correct copy of this pleading was handed to Plaintiff's Counsel in open court and transmitted by facsimile to opposing counsels office.



Kip H. Allison

LOCATION Plano

USA Andy Williams

Assigned

JUDGE Don D. Bush

VS

" "

Appeared

DEPUTY CLERK Toya McEwen

COURT REPORTER: Bryn & Assoc -

Mary Ann Romero

MICHAEL AZCUE

Defendant

INTERPRETER: _____

William Cohan RET

Attorney

USPO _____

BEGIN 3:48pm

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 21 2011
BY DAVID J. MALAND, CLERK
DEPUTY

- PLEA TO INFORMATION, Initial Appearance held on Indictment
- INITIAL APPEARANCE AND PLEA TO INFORMATION
- WAIVER OF INDICTMENT SIGNED

- CASE CALLED
- DEFENDANT SWORN
- Hearing held by Interpreter: _____
- Dft appears: with counsel William Cohan Ret
- Dft advised of charges advised of maximum penalties advised of right to remain silent;
- advised of right to counsel received copy of information
- Defendant to plead guilty to Count (s) One (1) of the Information.
- Defendant signs Consent to Administration of Guilty Plea by United States Magistrate Judge.
- Defendant signs Waiver of Indictment.
- Consent Form entered into the record.
- Waiver of Indictment form entered into the record.
- AUSA Court stated charges in Information.
- AUSA Court stated essential elements AUSA Court stated range of penalty.
- Court reviews rights RE: plea of guilty, jury trial and to appeal.
- Court reviews plea agreement with defendant
- Plea Agreement entered into record UNDER SEAL.
- Court reviews factual statement statement of facts factual resume with defendant.
- Factual Statement: Statement of Facts Factual Resume entered into the record.
- Forfeiture provision explained to Dft. Dft acknowledged understanding forfeiture provision.
- Defendant pleads guilty to Count One of the Information
- Court will recommend district court accept plea of guilty.
- Court finds plea is voluntary, knowledgeable and that it has a basis in fact.
- Defendant remanded to custody of U.S. Marshal.
- Defendant placed on Conditions of Release. Defendant to remain on Conditions of Release.
- Sentencing to be set to a later date
- Court recessed 4:08pm

EXHIBIT
A

4:08pm Adjourn

ORIGINAL

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

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

APR 21 2011

BY DAVID J. MALAND, CLERK
DEPUTY

UNITED STATES OF AMERICA

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v.

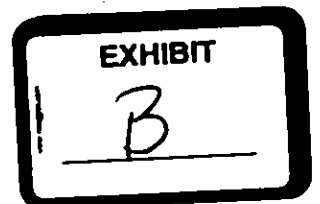
NO. 4:11CR 52
(Judge Sheff)

MICHAEL AZCUE

FACTUAL STATEMENT

It is hereby stipulated and agreed by the defendant Michael Azcue ("Azcue") that the following facts are true and correct and that he understands and agrees, with express consent of his counsel, William A. Cohan, that this Factual Statement may be used by the Court to determine whether his plea is voluntary and knowing and by the probation officer and the Court to determine an appropriate sentence for the offense which he is pleading guilty.

1. During the calendar year 2004, Azcue, a resident of Plano, Texas, in the Eastern District of Texas, had and received gross income in excess of \$15,900 (highest minimum filing requirement for defendant), and by reason of such gross income, was required by law to make an income tax return on or before April 15, 2005, to the person assigned to receive returns at the Internal Revenue Service ("IRS") or to any other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; and that well-knowing and believing all of the foregoing, he willfully and intentionally failed to make an income tax return to the



person assigned to receive returns at the local office of the IRS or to any other proper officer of the United States. Azcue owed approximately \$329.50 in taxes to the United States Treasury.

2. During the calendar year 2005, Azcue, a resident of Plano, Texas, in the Eastern District of Texas, had and received gross income in excess of \$16,400 (highest minimum filing requirement for defendant), and by reason of such gross income, was required by law to make an income tax return on or before April 17, 2006, to the person assigned to receive returns at the Internal Revenue Service ("IRS") or to any other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; and that well-knowing and believing all of the foregoing, he willfully and intentionally failed to make an income tax return to the person assigned to receive returns at the local office of the IRS or to any other proper officer of the United States. Azcue owed \$12,274.50 in taxes for that year.

3. During the calendar year 2007, Azcue, a resident of Plano, Texas, in the Eastern District of Texas, had and received gross income in excess of \$17,500 (highest minimum filing requirement for defendant), and by reason of such gross income, was required by law to make an income tax return on or before April 15, 2008, to the person assigned to receive returns at the Internal Revenue Service ("IRS") or to any other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; and that well-knowing and believing all


of the foregoing, he willfully and intentionally failed to make an income tax return to the person assigned to receive returns at the local office of the IRS or to any other proper officer of the United States. The tax loss as a result of this conduct was \$5,736.50.

4. Azcue's intentional failure to file tax returns resulted in the following tax losses for the following years: 2004 - \$329.50; 2005 - 12,274.50; 2006 - \$0.00; 2007 - \$5,736.50. The total tax loss was \$18,340.50.

DEFENDANT'S SIGNATURE AND ACKNOWLEDGMENT

I have read this Factual Statement and the Information or have had them read to me and have discussed them with my attorney. I fully understand the contents of this Factual Statement and agree without reservation that it accurately describes the events and my acts.

Dated: March 1, 2011


MICHAEL AZCUE
Defendant

DEFENSE COUNSEL'S SIGNATURE AND ACKNOWLEDGMENT

I have read this Factual Statement and the Information and have reviewed them with my client, Michael Azcue. Based upon my discussions with the defendant, I am satisfied that the defendant understands the Factual Statement as well as the Information, and is knowingly and voluntarily agreeing to these stipulated facts.

Dated: February 28, 2011


WILLIAM A. COHAN
Attorney for Defendant

LOCATION Plano USA Andy Williams Assigned
JUDGE Don D. Bush VS " " Appeared
DEPUTY CLERK Toya McEwen
COURT REPORTER: Bryn & Assoc.

INTERPRETER: MaryAnn Romero
USPO _____
BEGIN: 3:48 pm

WAYNE NUGENT
Robert Bernhof, RET William Cohan

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 21 2011
Attorney
BY DAVID J. MALAND, CLERK
DEPUTY

- PLEA TO INFORMATION, Initial Appearance held on Indictment
- INITIAL APPEARANCE AND PLEA TO INFORMATION
- WAIVER OF INDICTMENT SIGNED

CASE CALLED DEFENDANT SWORN Hearing held by Interpreter: _____

Dft appears: with counsel William Cohan (Ret)
Dft advised of charges advised of maximum penalties advised of right to remain silent;
 advised of right to counsel received copy of information

Defendant to plead guilty to Count (s) One (1) + Two (2) of the Information.

Defendant signs Consent to Administration of Guilty Plea by United States Magistrate Judge.

Defendant signs Waiver of Indictment.

Consent Form entered into the record.

Waiver of Indictment form entered into the record.

AUSA Court stated charges in Information.

AUSA Court stated essential elements AUSA Court stated range of penalty.

Court reviews rights RE: plea of guilty, jury trial and to appeal.

Court reviews plea agreement with defendant

Plea Agreement entered into record UNDER SEAL.

Court reviews factual statement statement of facts factual resume with defendant.

Factual Statement Statement of Facts Factual Resume entered into the record.

Forfeiture provision explained to Dft. Dft acknowledged understanding forfeiture provision.

Defendant pleads guilty to Counts One + Two of the Information

Court will recommend district court accept plea of guilty.

Court finds plea is voluntary, knowledgeable and that it has a basis in fact.

Defendant remanded to custody of U.S. Marshal.

Defendant placed on Conditions of Release. Defendant to remain on Conditions of Release.

Sentencing to be set to a later date

Court recessed. 4:08 pm

EXHIBIT
C

4:08 pm Adjourn

ORIGINAL

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

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 21 2011
BY DAVID J. MALAND, CLERK
DEPUTY _____

UNITED STATES OF AMERICA §
v. § NO. 4:11CR53
WAYNE NUGENT § (Judge Schell)
§

FACTUAL STATEMENT

It is hereby stipulated and agreed by the defendant **Wayne Nugent** ("Nugent") that the following facts are true and correct and that he understands and agrees, with express consent of his counsel, Robert Bernhoft, that this Factual Statement may be used by the Court to determine whether his plea is voluntary and knowing and by the probation officer and the Court to determine an appropriate sentence for the offense which he is pleading guilty.

1. During the calendar year 2005, **Nugent**, a resident of Plano, Texas, in the Eastern District of Texas, had and received gross income in excess of \$8,200 (highest minimum filing requirement for defendant), and by reason of such gross income, was required by law to make an income tax return on or before April 17, 2006, to the person assigned to receive returns at the Internal Revenue Service ("IRS") or to any other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; and that well-knowing and believing all of the foregoing, he willfully and intentionally failed to make an income tax return to the



person assigned to receive returns at the local office of the IRS or to any other proper officer of the United States.


2. During the calendar year 2007, **Nugent**, a resident of Plano, Texas, in the Eastern District of Texas, had and received gross income in excess of \$8,750 (highest minimum filing requirement for defendant), and by reason of such gross income, was required by law to make an income tax return on or before April 15, 2008, to the person assigned to receive returns at the Internal Revenue Service ("IRS") or to any other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; and that well-knowing and believing all of the foregoing, he willfully and intentionally failed to make an income tax return to the person assigned to receive returns at the local office of the IRS or to any other proper officer of the United States.

3. **Nugent's** intentional failure to file tax returns resulted in the following tax losses for the following years: 2004 - \$13,667; 2005 - \$27,334; 2006 - \$0.00; 2007 - \$19,711. The total tax loss was \$60,712.

DEFENDANT'S SIGNATURE AND ACKNOWLEDGMENT

I have read this Factual Statement and the Information or have had them read to me and have discussed them with my attorney. I fully understand the contents of this Factual Statement and agree without reservation that it accurately describes the events and my acts.

Dated: 22 FEB 2011




WAYNE NUGENT
Defendant

DEFENSE COUNSEL'S SIGNATURE AND ACKNOWLEDGMENT

I have read this Factual Statement and the Information and have reviewed them with my client, Wayne Nugent. Based upon my discussions with the defendant, I am satisfied that the defendant understands the Factual Statement as well as the Information, and is knowingly and voluntarily agreeing to these stipulated facts.

Dated: March 1st, 2011



ROBERT BERNHOFT
Attorney for Defendant