

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : INDICTMENT

-v.- : 09 Cr.

JOSEPH PREBUL, :

Defendant. :

- - - - - X

COUNTS ONE THROUGH ELEVEN  
(Wire Fraud)

The Grand Jury Charges:

Relevant Individuals and Accounts

1. At all times relevant to this Indictment, JOSEPH PREBUL, the defendant, was a resident of Chattanooga, Tennessee, and the president of Prebul Auto Group. At certain times relevant to this Indictment, Prebul Auto Group had approximately six car dealerships in Georgia and Tennessee, including Prebul Jeep Inc. ("Prebul Jeep").

2. A certain individual (hereinafter "Victim-1") was a relative of JOSEPH PREBUL, the defendant. At all times relevant to this Indictment, Victim-1 was a resident of New York, New York, and the owner of several businesses in the music industry.

3. From at least in or about 2004 through in or about December 2008, JOSEPH PREBUL, the defendant, solicited Victim-1 and others to invest funds in a cash management program account (a "CMP Account") at PREBUL's dealership. From at least in or

about June 2007 through in or about December 2008, Prebul Jeep maintained two accounts with Chrysler Financial Services Americas LLC ("Chrysler"): (i) a financing account called the "Wholesale Floorplan" (the "Financing Account") and (ii) a cash management program account (the "Chrysler CMP Account"). Chrysler loaned money to fund PREBUL's car business through the Financing Account and charged a certain interest rate on these loans. When PREBUL's dealership earned money, PREBUL could transfer the profits into the cash management program, which offset the outstanding balance on any loans that PREBUL's dealership owed to Chrysler in the Financing Account. As PREBUL well knew, the funds in the Chrysler CMP Account did not earn interest for the car dealership, for PREBUL, or for any other person. Rather, any money deposited in the Chrysler CMP Account offset the amount of interest that Chrysler charged on the outstanding balance of a car dealership's loans.

#### The Scheme to Defraud

4. From at least in or about 2004 through at least in or about July 2008, JOSEPH PREBUL, the defendant, engaged in a scheme to defraud Victim-1 and Victim-1's family by soliciting millions of dollars under false pretenses, failing to invest the money as promised, falsely claiming that the money would be invested in an account where it would earn an above-average interest rate of return and be immediately accessible, failing to

inform Victim-1 and Victim-1's family that the money was going to be used to finance PREBUL's businesses, and misappropriating and converting the money for PREBUL's own benefit without the knowledge and authorization of Victim-1 and Victim-1's family.

5. To execute the scheme, JOSEPH PREBUL, the defendant, solicited Victim-1 and Victim-1's family to invest their money in a CMP Account, based upon, among other things, his false statements that funds invested in the account would be liquid, accessible, and earn an above-average rate of return. For example, on or about July 27, 2004, PREBUL wrote to Victim-1's son that money should be invested in a CMP Account because "[t]here is no better set up at any bank in America. It's only for car dealers who borrow large amounts of money. If we are holding a large sum of deposit, let's put the money to work and give us a great rate of return with no risk associated with the deposit. If you need it for operations, just call [an employee] and he can wire the money on the same day of the request." On or about September 14, 2004, PREBUL wrote to Victim-1's son that the rates payable on deposit in a CMP Account were high and would be higher the following month, that Victim-1's son should wire money to a CMP Account for deposit, and that "[a]s interest rates go up, this account is going to be very attractive." On or about January 23, 2006, PREBUL wrote to Victim-1's son that he should consider putting excess cash "in

the offset account at my office that is drawing over 6% of interest per month. Unless you have another instrument that brings more interest to the bottom line, this account is the best that I have seen."

6. Based on these representations, from in or about 2004 through at least in or about July 2008, JOSEPH PREBUL, the defendant, obtained millions of dollars from Victim-1 and Victim-1's family through interstate wire transfers from a financial institution located in the Southern District of New York to a financial institution located in Tennessee.

7. In truth and in fact, as JOSEPH PREBUL, the defendant, well knew, these representations were false. PREBUL did not have access to an account that earned the above-average interest rate of return that was promised to Victim-1. The Chrysler CMP Account did not earn any interest, but instead offset the amount of interest owed by PREBUL in the Financing Account. In fact, contrary to PREBUL's representations to Victim-1 and others, Chrysler only allowed funds in the CMP Account to reduce the outstanding balance of the loans and interest owed on the loans, and it was solely within Chrysler's discretion to apply such funds in such order and in such priority as Chrysler determined.

8. Any money invested with JOSEPH PREBUL, the defendant, was not immediately accessible to Victim-1 and Victim-

1's family because the money was used to finance PREBUL's business operations and to fund a lavish lifestyle. Moreover, from at least in or about 2005 through at least in or about 2008, PREBUL's businesses were failing and Victim-1's money was used, in part, to finance PREBUL's business operations.

9. JOSEPH PREBUL, the defendant, deposited and caused to be deposited the funds of Victim-1 and Victim-1's family into the Chrysler CMP Account and a central operating account for PREBUL's business. PREBUL never told Victim-1 that Victim-1's invested funds were going to be deposited into a central operating account that would be used to finance PREBUL's businesses. In fact, PREBUL used the central operating account for expenses relating to Prebul Auto Group, PREBUL's real estate properties, and PREBUL's airplanes. In addition, PREBUL withdrew approximately \$1,000,000 annually from this central operating account as part of his salary and other compensation.

10. JOSEPH PREBUL, the defendant, further used the funds that Victim-1 and Victim-1's family sent to PREBUL to pay for personal expenses, including private chartered planes, family vacations, golf lessons and tournaments, and five-star hotel accommodations.

11. To conceal this scheme and the fact that the investments by Victim-1 and Victim-1's family were not earning any interest, JOSEPH PREBUL, the defendant, created and caused to

be created false, misleading, and fraudulent documents including, but not limited to, client account statements that were sent to Victim-1 and Victim-1's representatives that reflected fictitious positive rates of return on investment, consistent with the returns that had been promised to Victim-1 and Victim-1's family in the Chrysler CMP Account.

#### The Scheme Unravels

12. In or about June 2008, JOSEPH PREBUL, the defendant, sent and caused to be sent a fictitious account statement to Victim-1 and Victim-1's representatives stating that Victim-1 had at least \$12 million in principal and interest invested in the Chrysler CMP Account. In truth and in fact, PREBUL only had a few million dollars available to pay to Victim-1, and most of the \$12 million in principal and interest of Victim-1's funds had already been spent to finance PREBUL's businesses and personal lifestyle.

13. In or about July 2008, Victim-1 requested the return of approximately \$6.5 million and JOSEPH PREBUL, the defendant, returned approximately \$4.5 million of that amount. Shortly thereafter, Victim-1 demanded the return of the additional \$2 million that Victim-1 had requested. When PREBUL failed to return the funds, Victim-1 demanded an accounting and eventually a return of all the invested funds.

14. On or about July 31, 2008, during a consensually recorded conversation between Victim-1 and JOSEPH PREBUL, the defendant, PREBUL admitted that he owed Victim-1 money. In addition, PREBUL falsely claimed that the Chrysler CMP Account had no money left. In fact, there was approximately \$700,000 in the CMP Account as of July 31, 2008.

15. On or about August 4, 2008, during a consensually recorded conversation between Victim-1 and JOSEPH PREBUL, the defendant, PREBUL admitted to Victim-1 that PREBUL used and caused others to use Victim-1's money for expenses related to PREBUL's car dealerships.

16. In or about August 2008, JOSEPH PREBUL, the defendant, met with Victim-1 in New York, New York. During that meeting, PREBUL admitted that he owed millions of dollars to Victim-1. PREBUL gave a document to Victim-1 at that meeting stating that PREBUL owed Victim-1 a little more than approximately \$7,641,000, which represented the amount of Victim-1's principal investment plus interest that PREBUL represented Victim-1 would get by investing in the Chrysler CMP Account.

#### Statutory Allegations

17. From at least in or about 2004 up through and including in or about July 2008, in the Southern District of New York and elsewhere, JOSEPH PREBUL, the defendant, having devised and intending to devise a scheme and artifice to defraud, and for

obtaining money and property by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully and knowingly did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, on or about the dates set forth below, as a result of PREBUL's false representations regarding the investment of Victim-1's funds, PREBUL caused Victim-1 to wire transfer the following amounts from Victim-1's account in New York, New York, to PREBUL's accounts in Tennessee:

COUNT	Approximate Date	Substance of Wire Transfer
ONE	January 11, 2006	Wire Transfer of approximately \$1,500,000 from New York, New York, to Tennessee.
TWO	June 29, 2006	Wire Transfer of approximately \$500,000 from New York, New York, to Tennessee.
THREE	November 28, 2006	Wire Transfer of approximately \$300,000 from New York, New York, to Tennessee.
FOUR	February 12, 2007	Wire Transfer of approximately \$368,000 from New York, New York, to Tennessee.
FIVE	February 16, 2007	Wire Transfer of approximately \$799,975 from New York, New York, to Tennessee.
SIX	April 27, 2007	Wire Transfer of approximately \$199,975 from New York, New York, to Tennessee.

SEVEN	May 30, 2007	Wire Transfer of approximately \$3,000,000 from New York, New York, to Tennessee.
EIGHT	August 7, 2007	Wire Transfer of approximately \$850,000 from New York, New York, to Tennessee.
NINE	September 12, 2007	Wire Transfer of approximately \$300,000 from New York, New York, to Tennessee.
TEN	December 17, 2007	Wire Transfer of approximately \$5,000,000 from New York, New York, to Tennessee.
ELEVEN	May 2, 2008	Wire Transfer of approximately \$1,699,975 from New York, New York, to Tennessee.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT TWELVE

The Grand Jury further charges:

18. On or about October 3, 2007, in the Southern District of New York and elsewhere, JOSEPH PREBUL, the defendant, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting so to do, did place in a post office and authorized depository for mail matter, a matter and thing to be sent and delivered by the Postal Service, and did deposit and cause to be deposited a matter and thing to be sent and delivered by private and commercial interstate carrier, and did take and receive

therefrom, a matter and thing, and did knowingly cause to be delivered by mail and such carrier according to the direction thereon, and at the place at which it was directed to be delivered by the person to whom it was addressed, such matter and thing, to wit, PREBUL made false and fraudulent representations to cause Victim-1 in New York, New York, to send a check in the amount of \$500,000 by means of Federal Express in interstate commerce.

(Title 18, United States Code, Sections 1341 and 2.)

#### FORFEITURE ALLEGATION

19. As the result of committing one or more of the foregoing wire fraud and mail fraud offenses, in violation of Title 18, United States Code, Sections 1343 and 1341, as alleged in Counts One through Twelve of this Indictment, JOSEPH PREBUL, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C), and Title 28, United States Code, Section 2461, all property, real and personal, which constitutes or is derived from proceeds traceable to the wire fraud and mail fraud offenses, including, but not limited to, the following:

a. At least approximately \$6,800,000 in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the charged wire fraud and mail fraud offenses; and

b. The real property and appurtenances known and described as 401 Brady Point, Signal Mountain, Tennessee.

Substitute Asset Provision

20. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

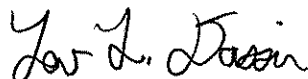
d. has been substantially diminished in value;  
or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981(a)(1)(C);  
Title 21, United States Code, Section 853(p);  
Title 28, United States Code, 2461.)

  
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FOREPERSON

  
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LEV L. DASSIN  
Acting United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

JOSEPH PREBUL,

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INDICTMENT

09 Cr. \_\_\_\_

(Title 18, United States Code,  
Sections 1343, 1341, and 2.)

LEV L. DASSIN  
Acting United States Attorney.

A TRUE BILL



Foreperson.

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