

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2013 JAN 22 PM 2:30

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY [Signature]
DEPUTY

SEALED

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUSSELL ALLEN ERXLEBEN,

Defendant.

§ CRIMINAL NO. _____

A13 CR 029 LY

§ INDICTMENT

§ [Vio: 18 U.S.C. § 1343 – Wire Fraud;
§ 18 U.S.C. § 1957 – Engaging in Monetary
§ Transaction in Criminally Derived Property;
§ 15 U.S.C. §§ 78j(b) & 78ff and 17 C.F.R. §
§ 240.10b-5 – Securities Fraud]
§

THE GRAND JURY CHARGES:

INTRODUCTION

1. The following entities (hereinafter referred to individually or collectively as the “Erxleben Entities”) were formed at the direction of, used by, and/or maintained by, the Defendant, RUSSELL ALLEN ERXLEBEN:

a. **WALTEC Consultants** was an assumed name for a business formed by K.E., a person known to the Grand Jury, filed in Hays County, Texas, in or about January 2005. There is reason to believe that “WALTEC” is an acronym for: “We All Like To Earn Cash.”

b. **LRE Holdings** was an assumed name for a business formed by Defendant ERXLEBEN, filed in Hays County, Texas in or about July 2007. There is reason to believe that “LRE” is an acronym of the first letters of the first names of Defendant ERXLEBEN’s three children.

c. **The MDM Group** was an assumed name entity filed in Fort Bend County, Texas in or about January 2009. There is reason to believe that “MDM” is an acronym for: “Million Dollar Man” or “My Damn Money.”

d. From at least as early as January 2005, the primary place of business for the aforementioned entities was Lakeway, Texas, in the Western District of Texas.

2. Beginning in or about 2005, the Defendant enlisted the assistance and abilities of others in the establishment and operation of the Erxleben Entities.

3. Since at least 2005, the Defendant, through the Erxleben Entities, promoted and sold interests in several “investment” opportunities and obtained over \$2 million. These “investments” included the purchase of post-World War I German Government Gold Bearer Bonds, and the examination and appraisal of a painting by Paul Gauguin with a view toward obtaining a financial interest in the painting.

4. The Defendant used and/or maintained accounts at one or more financial institutions, including, but not limited to, Wells Fargo Bank, Frost Bank, Wachovia, Chase Bank (formerly Washington Mutual Bank), Bank of America, and Compass Bank. The Defendant maintained and used approximately 50 accounts at the aforementioned financial institutions.

THE SCHEME

5. Beginning at least as early as 2005 and continuing until in or about October 2009, Defendant ERXLEBEN devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

6. It was part of the scheme and artifice that the Defendant would solicit money from persons for the purpose of investing the money in one or more investment vehicles and

programs promoted by the Defendant, including a post-World War I German Government Gold Bearer Bond investment program and an investment pool for a purportedly valuable painting by a famous artist. The Defendant made false and fraudulent promises, representations, and pretenses in connection with each of these investment programs and to obtain money for his own personal use and benefit. The Defendant engaged in a single overarching scheme to defraud by obtaining, using, and commingling monies acquired by false and fraudulent pretenses among all of the investment vehicles, as befitted the Defendant's personal purposes and circumstances.

7. It was part of the scheme and artifice that the Defendant would fraudulently acquire cash and assets for the following purposes:

- a. to apply to the personal use and benefit of the Defendant and his family;
- b. to maintain an ongoing or expanding Ponzi scheme in which the "returns" paid to earlier investors actually constituted funds provided by later investors; and
- c. to make payments and/or fund distributions to some investors so as to lull investors into the mistaken belief that their investment remained sound.

8. It was part of the scheme and artifice that the Defendant, through one or more of the Erxleben Entities, would acquire cash and assets from individual investors from across the United States by means of false and fraudulent promises, representations, and pretenses.

9. It was part of the scheme and artifice that the Defendant transmitted and caused to be transmitted by others, including investors and those working on behalf of the Defendant, by wire communications in interstate commerce, writings, signals, signs, pictures and sounds to and from the Western District of Texas to locations outside of the State of Texas. These wire communications included, but were not limited to, the following:

- a. telephone calls;
- b. email communications via the internet;

- c. electronic communications involving the clearing of checks and other financial transactions through the Federal Reserve banking system;
- d. transfer by wire and electronic means of funds between financial institutions and investment companies located outside the State of Texas and financial institutions and investment companies in the Western District of Texas.

10. It was part of the scheme and artifice that the Defendant represented that the Erxleben Entities purchased assets with the funds obtained from individual investors when, in truth and fact, the investors' funds were applied toward other fraudulent investment activities, the payment of "dividends," "returns," and redemptions to prior investors, and the Defendant's own personal use and benefit.

11. It was part of the scheme and artifice that the Defendant represented to investors that the investors could trust the Defendant because of the Defendant's honesty, integrity, and business background and experience. In this regard, the Defendant knowingly and intentionally failed to disclose to most investors his prior federal felony conviction for securities fraud for which he served an 84-month term of imprisonment. In those instances when the Defendant did disclose his prior conviction, the Defendant would typically represent that he had "learned his lesson" or words to that effect, to convince the investors that he was no longer engaged in or associated with fraudulent activities.

12. It was part of the scheme and artifice that accurate and material cash flow and accounting information was not provided to investors.

13. It was part of the scheme and artifice that investors were lulled into the false belief that their investments had been applied in the manner that the Defendant represented, when, in truth and fact, investor funds were distributed as "returns" to prior investors, used to fund other endeavors, or applied by the Defendant for his own and his family's personal use and

benefit.

14. It was part of the scheme and artifice that through the use of different investments, the creation of various entities, and the use of various bank accounts, the Defendant created the illusion of separate and distinct investments, when, in truth and in fact, the Defendant commingled the funds of different investments.

15. It was part of the scheme and artifice that the Defendant omitted and failed to disclose material facts to potential investors and current clients, including but not limited to the following:

- a. that investor funds had been, and would be, funneled and diverted to other undisclosed ventures, including, but not limited to, making Ponzi-type payments to investors in other ventures;
- b. that investor funds had been, and would be, used for purposes unrelated to the specific venture in which the investor had been solicited and invested;
- c. that the Defendant used a substantial portion of investor funds for the personal use and benefit of himself and his family;
- d. that the Defendant had a prior felony criminal conviction for securities fraud;
- e. that as a result of the Defendant's prior felony criminal conviction, the Defendant owed approximately \$28 million in restitution;
- f. that as a result of the Defendant's prior felony criminal conviction, the Defendant was not legally permitted to deal in securities; and
- g. that the Defendant used numerous accounts with financial institutions that were opened and maintained by others, including one or more family members, in an effort to avoid detection of his fraudulent scheme.

THE GERMAN GOLD BEARER BOND VENTURE

16. From in or about September 2005 until in or about October 2009, the Defendant persuaded investors to purchase defaulted German Gold Bearer Bonds (hereinafter referred to as the German Gold Bonds) for approximately \$1,000 per bond.

17. A brief historical background of the origin of the German Gold Bonds is as follows:

- a. In the 1920s and 1930s, Germany issued gold bearer bonds to help finance its reconstruction and economic recovery efforts in the aftermath of World War I.
- b. Thereafter, the rise and demise of the Nazi regime, World War II, and a post-war German debt agreement, among other things, caused Germany to fail to honor these bonds.
- c. Germany's obligations regarding these bonds, as well as efforts to validate legitimate bonds, remain largely unresolved to the present day. The bonds may or may not have value as financial instruments, but the actual bonds could have potential value to collectors of historical documents.

18. The Defendant represented to investors that the German Gold Bonds would be placed in a trust (called an "Insured Note of German Obligations Trust," or INGOT) that would create an "asset backed security," worth many times the value paid for the underlying German Gold Bonds and rated "AAA" by Standard & Poor, a major financial ratings company. The Defendant also represented to investors that these securities, backed by the German Gold Bonds, would be coveted by institutional investors, who would buy them at premium prices and provide proceeds to generate a 100% or greater annual return for up to 30 years.

19. The Defendant never marketed or represented German Gold Bonds as historical documents that may be potentially valuable as collectible historical documents.

20. It was part of the scheme and artifice that the Defendant entered into an agreement with each investor, called a "Joint Venture Agreement" (JVA). The JVA provided, in

part, that the investor purchase a certain number of German Gold Bonds for \$1000 each. WALTEC would then place those bonds with Integrated Equities, Inc. (IEI) to hold and to place into an INGOT. The JVA also stated that the German Gold Bonds purchased by the investor represented a legal claim against the German Government of approximately \$1,000,000 per bond.

21. It was part of the scheme and artifice that the Defendant made false and fraudulent promises and representations to investors concerning the German Gold Bond venture, including, but not limited to, the following:

- a. that the Defendant had personally purchased German Gold Bonds and actually owned a certain number of German Gold Bonds;
- b. that the Securities and Exchange Commission (SEC) concluded the bond investment was still viable; and
- c. that all investor funds would be sent to Integrated Equities, Inc. (IEI) for the purchase of German Gold Bonds.

22. It was part of the scheme and artifice that the Defendant omitted and failed to disclose material information to investors in the German Gold Bond venture, including but not limited to the following:

- a. that investor funds had been, and would be, funneled and diverted to other undisclosed ventures, including, but not limited to, making Ponzi-type payments to investors in other ventures;
- b. that investor funds had been, and would be, used for purposes unrelated to the specific venture in which the investor had been solicited and invested;
- c. the Defendant used investor funds for the personal use and benefit of himself and his family;
- d. that if the German Gold Bond venture was ever a viable investment vehicle at all, it was no longer a viable investment as of October 2006;
- e. that the Defendant had a prior felony criminal conviction for securities fraud;

- f. that as a result of the Defendant's prior felony criminal conviction, the Defendant owed approximately \$28 million in restitution;
- g. that as a result of the Defendant's prior felony criminal conviction, the Defendant was not permitted to deal in securities;
- h. that in or about September 2006, IEI entered into a Rescission Agreement with the SEC to refund investments in German Gold Bonds;
- i. that the Defendant would receive money back from IEI under its Rescission Agreement with the SEC; and
- j. that the Defendant used numerous accounts with financial institutions that were opened and maintained by others, including one or more family members, in an effort to avoid detection of his fraudulent scheme.

23. It was part of the scheme and artifice that, after September 2006, the Defendant falsely represented that IEI would hold and/or place any German Gold Bonds into an INGOT.

- a. On or about June 30, 2006, the SEC filed a civil suit complaint against Integrated Equities, Inc. (IEI) and its principal, Jeff Weston. The complaint alleged violations by Jeff Weston, through IEI, of a misappropriation of funds related to the sale of joint venture interests involving German Gold Bonds.
- b. In or about June 2006, Jeff Weston testified during a deposition to the SEC that as of May 2006, no more "loans" were being received for the purchase of German Gold Bonds.
- c. In or about August 2006, IEI was placed into a permanent receivership, to identify the location or existence of assets or records and take exclusive possession of them.
- d. In or about September 2006, IEI agreed with the SEC to enter into a Rescission Offer, wherein Jeff Weston and IEI offered to rescind the Joint Venture Agreements entered into with their investors, under one of the following scenarios:
 - (1) an investor could be repaid the net amount of his investment in cash with interest;
 - (2) an investor could receive a blindly selected German bond, at the rate of one bond with a face value of \$1,000 for each \$1,000 such investor paid Weston, or IEI, with interest; or

(3) an investor could choose a combination of cash or bonds.

The Rescission Offer specifically stated that: “[i]t must be clearly understood that the Joint Venture Agreements that each investor executed are being fully rescinded and are hereinafter null and void with no further force or effect.”

24. In or about October 2006, IEI’s court-appointed receiver sent a supplement to K.E., of WALTEC Consultants, with an attached claim sheet. On the claim sheet, K.E., on behalf of WALTEC Consultants and with the Defendant’s knowledge, elected to have WALTEC’s investment of \$225,000 repaid in cash, with interest.

25. On or about December 18, 2006, pursuant to the Rescission Offer, WALTEC Consultants was issued a check for \$246,767.57, which represented the principal amount of WALTEC’s investment (\$225,000) with IEI for German Gold Bonds, plus interest.

26. It was part of the scheme and artifice that from in or about December 2006 until in or about October 2009, the Defendant continued to solicit and enter into agreements with investors for the purchase of German Gold Bonds and to represent that IEI was involved in the bond investment, despite the fact that IEI stopped receiving “loans” for the purchase of bonds as of May 2006, and despite the Rescission Offer under which Waltec was refunded a total of \$246,747.57.

27. It was part of the scheme and artifice that from in or about August 2008, the Defendant, after having obtained money from investors in the German Gold Bond venture and continuing to execute Joint Venture Agreements, began using contracts labeled “Purchase Agreement” in place of the contract previously known as a “Joint Venture Agreement.” The Purchase Agreement was used for the Defendant’s German Gold Bond program, but contained no reference to Jeff Weston or IEI. In addition, the Defendant asked several German Gold Bond

investors to return their original “Joint Venture Agreement” and replace them with a “Purchase Agreement.” The Defendant told one or more investors that there were “things” in the Joint Venture Agreement that would get him “in trouble.”

28. It was part of the scheme and artifice that none of the investors received any German Gold Bonds, or any document identifying their ownership interest in any German Gold Bond, by serial number or otherwise, nor did they receive any return on their investment.

THE PAUL GAUGUIN PAINTING VENTURE

29. Beginning in or about March 2009, the Defendant solicited investors and received money for the purchase and authentication of a painting called “The Sorcerer of Hiva-Oa” by Paul Gauguin, a well-known French artist from the late 19th century. An entity called The Gauguin Partners, LLC, was formed by Josh Pendley and Daniel “Dusty Moss” Morse, who located and contracted to purchase the painting. The Defendant was not a member of The Gauguin Partners, LLC, nor associated in any way with that entity.

30. It was part of the scheme and artifice that the Defendant represented that an art authenticator was engaged to authenticate the painting. The Defendant represented that if the painting was deemed authentic, it was believed it could be sold for approximately \$58 million. The authentication process was to cost approximately \$75,000, with \$25,000 of that amount to be paid immediately.

31. It was part of the scheme and artifice that the Defendant fraudulently solicited investors for money to authenticate the painting, without disclosing that he was not a member of The Gauguin Partners, LLC, nor was he authorized to sell any interests relating to the entity.

COUNTS ONE THROUGH FIVE**Wire Fraud
[18 U.S.C §1343]**

32. Paragraphs 1 through 31 of this Indictment are realleged and incorporated as though fully set forth herein.

33. From at least as early as January 2005 and continuing until in or about October 2009, in the Western District of Texas and elsewhere, the Defendant,

RUSSELL ALLEN ERXLEBEN

having devised and intended to devise a scheme and artifice to defraud, as set forth above, to obtain money and property by means of false, misleading, and fraudulent pretenses, representations, and promises, and omissions of material facts, did knowingly cause to be transmitted by wire, radio, or television communication in interstate and foreign commerce, a wire transfer of funds, constituting and containing a writing, sign, signal, picture, and sound, for the purpose of executing and attempting to execute said scheme and artifice, on or about the date set forth below:

Count	Date (on or about)	Description of Wire Transmission
1	January 28, 2008	A wire transfer in the amount of \$40,000 from an account at Independent Banker's Bank, Springfield, Illinois, and transmitted for deposit to a Chase Bank (formerly Washington Mutual Bank) account in the Western District of Texas.
2	April 14, 2008	A debit transaction pertaining to a cashier's check in the amount of \$40,000 drawn on an account of Wells Fargo Bank, Minneapolis, Minnesota, in the amount of \$40,000, and deposited to a Chase Bank (formerly Washington Mutual Bank) account in the Western District of Texas.
3	December 10, 2008	A wire transfer in the amount of \$30,000 from an account at TD Ameritrade, Omaha, Nebraska, and transmitted for deposit to a Bank of America account in the Western District of Texas.

Count	Date (on or about)	Description of Wire Transmission
4	March 24, 2009	A wire transfer in the amount of \$50,000 from an account at Wells Fargo Bank, San Francisco, California, and transmitted for deposit to a Bank of America account in the Western District of Texas.
5	July 14, 2009	A wire transfer in the amount of \$15,000 from an account at Capital One Bank, which cleared through Bank of America in the State of New York, and transmitted for deposit to a Bank of America account in the Western District of Texas.

All in violation of Title 18, United States Code, Section 1343.

COUNTS SIX AND SEVEN
Engaging in Monetary Transaction in Criminally Derived Property
[18 U.S.C. § 1957]

34. Paragraphs 1 through 31 of this Indictment are realleged and incorporated as though fully set forth herein.

35. On or about the dates set forth below, in the Western District of Texas and elsewhere, the Defendant,

RUSSELL ALLEN ERXLEBEN

did knowingly engage and attempt to engage in a monetary transaction, set forth below, in criminally derived property of a value greater than ten thousand dollars (\$10,000), which property was derived from specified unlawful activity, namely, Wire Fraud, contrary to Title 18, United States Code, Section 1343:

Count	Date (on or about)	Description of Monetary Transaction
6	January 29, 2008	A wire transfer of funds in the amount of \$30,000 from a Chase Bank (formerly Washington Mutual Bank) account to a Wells Fargo Bank account.
7	March 25, 2009	A wire transfer of funds in the amount of \$15,000 from a Bank of America account to a Broadway National Bank account.

All in violation of Title 18, United States Code, Section 1957.

COUNT EIGHT

Securities Fraud

[15 U.S.C. §§ 78j(b) & 78ff and 17 C.F.R. § 240.10b-5]

36. Paragraphs 1 through 31 of this Indictment are realleged and incorporated as though fully set forth herein.

37. On or about March 9, 2007, in the Western District of Texas, the Defendant,

RUSSELL ALLEN ERXLEBEN

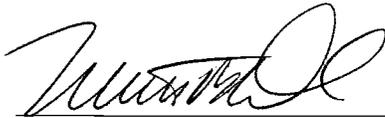
unlawfully, willfully, and with intent to defraud, by use of means and instrumentalities of interstate commerce and the mails, did, directly and indirectly, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale to investor C.R.B., a person known to the Grand Jury, of a security, specifically an investment contract in the form of a Joint Venture Agreement, in that the Defendant (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts, the statement of which was necessary in order for statements that were made not to be misleading in light of the circumstance under which the statements were made; and (c) engaged in acts, practices and courses of business that would and did operate as a fraud and deceit upon C.R.B. and others.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5.

ORIGINAL SIGNATURE
REDACTED PURSUANT TO
E-GOVERNMENT ACT OF 2002

RICHARD L. DURBIN, JR.
Attorney for the United States,
Acting Under Authority Conferred
by 28 U.S.C. § 515

By:



MATTHEW B. DEVLIN
Assistant United States Attorney

Sealed X

Unsealed _____

Personal Data Sheet

USAO# 2008R24428

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

RELATED CASE X YES NO
RELATED CASE NO. A-99-CR-245 JRN

A13 CR 029 LY

County: Travis AUSTIN Division Judge: _____

Date: 01-22-2013 Mag Ct.# _____ SSN: REDACTED FBI#: _____

Case No.: _____ Assistant U. S. Attorney: Matthew Devlin

Defendant: RUSSELL ALLEN ERXLEBEN Date of Birth: REDACTED

Defendant aka: _____

Address: REDACTED

Citizenship: United States X Mexico _____ Other _____

Interpreter Needed: Yes _____ No X Language _____

Defense Attorney: _____ Employed _____

Address of Attorney: _____ Appointed _____

Defendant is: In Jail _____ Where: _____

On Bond _____ Amt. of Bond _____ Where: _____

Date of Arrest: _____ Bench Warrant Needed Yes

Prosecution By: Information _____ Indictment X

Offense (Code & Description): Cts. 1-5: 18 U.S.C. § 1343 – Wire Fraud;
Cts. 6 & 7: 18 U.S.C. § 1957 – Engaging in Monetary Transaction in
Criminally Derived Property;
Ct. 8: 15 U.S.C. §§ 78j(b) & 78ff – Securities Fraud

Offense Is: Felony X Misdemeanor _____

Maximum Sentence: Cts. 1-5: Up to 20 yrs imprisonment; up to 3 yrs TSR; fine of \$250,000 or 2x
gross gain/loss; \$100 SA.
Cts. 6 & 7: Up to 10 yrs imprisonment; up to 3 yrs TSR; fine of \$250,000 or 2x
amount of criminally derived property involved; \$100 SA.
Ct. 8: Up to 20 yrs imprisonment; up to 3 yrs TSR; fine of \$5,000,000; \$100 SA.

Penalty is Mandatory: Yes X as to SA No _____

Remarks: Case Agent: SA Michael Fernald, IRS-CI, 499-5261