UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
v.	)	**Case No. 02 CR 112-01**
	)	
MICHAEL SEGAL, et al.	)	**Judge Ruben Castillo**
	)	
Defendants.	)	

DEFENDANT MICHAEL SEGAL'S REPLY BRIEF IN SUPPORT OF HIS MOTION TO MODIFY

At the outset, Segal wishes to make clear what is and what is not at issue in his Motion to Modify. Segal is not asking this Court to modify its revised $15 million forfeiture order. Rather, he is asking this Court to comply with its obligations under Federal Rule of Criminal Procedure 32.2 ("FRCP 32.2").

In order to put this Motion in context, it is necessary to focus on prosecutorial misconduct, mostly committed by AUSA Hogan ("Hogan"), starting with Segal's trial and separate forfeiture trial (hereinafter, "forfeiture hearing") and then progressing through the Government's noncompliance with the Seventh Circuit's 2007 remand mandate to determine the extent to which Segal took net assets from Near North and then concluding with the negotiation of the Settlement Stipulation.

At trial, Hogan convinced the jury that Segal had misappropriated millions of dollars of Near North assets for his own personal benefit. Hogan told the jury that Segal used Near North money to purchase interests in various partnerships in his own name. Moreover, at the subsequent forfeiture hearing, Hogan told the jury that the Highland Park home was owned by Segal. At the forfeiture hearing, the Government claimed no ownership interest in Segal's

Highland Park home but later called it a substitute asset. In fact, at the forfeiture hearing, Hogan did not claim that Near North owned any of the restrained assets that were at stake during the negotiations which led to the Settlement Stipulation. That is probably because the Government introduced Government Exhibit 41 into evidence at trial and it demonstrated how Segal was the owner of all but four of the restrained partnerships. Now, in the Government's Response, Hogan argues, contrary to what he argued at trial and at the forfeiture hearing, and contrary to third-party documents produced in response to the Government's and Segal's subpoenas, that only $12 million of the restrained assets belonged to Segal.[1]

Notwithstanding the Seventh Circuit's 2007 remand order, Hogan ignored and tried to circumvent both the Seventh Circuit mandate and this Court's Order requiring the Government to stop arguing for a $30 million personal forfeiture, and to instead explain precisely how much Near North money, net of Segal's reinvestments into Near North, went to benefit Segal personally. The Government responded with misleading and non-record documents, thus requiring this Court to perform its own analysis unaided by the Government. This Court ultimately determined that Segal should personally forfeit $15 million and no more. Being aware that the Parties did not agree about the ownership of restrained assets, this Court then ordered that there be two separate, but related hearings, one to determine ownership of the restrained assets and a second to determine the value of those assets. Hogan was not content to follow this Court-ordered procedure. Instead, using the power of his office, he deprived Segal of his due process rights by coercing him to settle on the eve of the scheduled evidentiary hearings.

[1] As set forth below, at trial and in the forfeiture filings, the Government's position was that Segal owned all but four of the restrained assets. (Government Trial Exhibit 41.) After this Court reduced Segal's $30 million personal forfeiture judgment to $15 million, the Government changed its position. By June 2009, when the Government submitted its Supplemental Evidentiary Submission, the Government took the position that Segal only owned $16 million in assets. (*See, e.g.,* June 2009 Schedule, SES Ex. 6, attached hereto as Exhibit 1.) By the time the Parties settled and now, the Government claimed that Segal only owned $12 million in assets. (*See,* Government's January 2013 Schedule, attached hereto as Exhibit 2; *see also,* G. Br. p. 20.)

Based on both trial and forfeiture hearing evidence, Hogan knew that only four of the restrained assets (*see,* Government Ex. 41) were owned by Near North, and that the remaining restrained assets were not only owned by Segal (as the Government told the jury at trial), but were worth far in excess of the $15 million Segal was ordered to forfeit. Hogan knew that if this Court heard this evidence, it would have reached a result far different from that contained in the Settlement Stipulation Segal was forced to accept.

Hogan's plan to strip Segal of his assets included refusing to comply with Segal's pre-hearing discovery requests. Hogan knew that an impoverished and long-imprisoned Segal could not afford to put on a forensic presentation at the hearings. Hogan also knew that without a proper turnover of the records Segal requested, Segal would justifiably fear that he would not be able to convince this Court his position regarding ownership and value was valid. Next, Hogan informed Segal's attorneys that at the evidentiary hearing he would prove that most of the restrained assets belonged to Near North and not to Segal.

Now, it could be questioned why did Segal, knowing that he was the owner of these restrained assets, enter into this "settlement." The answer is that Segal knew that because the Government successfully barred him from access to any of his money, his computer records and personal financial records, he might not be able to prove his case before this Court. Under duress, a desperate Segal was forced to take something as opposed to receiving nothing so that he could support himself and his family.

Hogan's misconduct with respect to Segal is not the only time Hogan abused his awesome powers as an AUSA. Courts in the Northern District of Illinois have found that Hogan also abused the powers of his office to deprive other individuals of their due process rights. For example, in ruling on the materiality of a *Brady* violation in *United States v. Boyd,* 833 F. Supp.

1277 (N.D.Ill.), Judge Aspen specifically stated that "head Prosecutor William F. Hogan, Jr.'s conduct respecting the suppressed evidence compels a finding of materiality." *Boyd,* 833 F. Supp. at 1364. Hogan's misconduct was again repeated in the recently decided civil rights case of *Fields v. City of Chicago,* No. 10 C 1168 (N.D. Ill.) where Judge Kennelly granted Fields a new trial in large part because Hogan led Fields' counsel, Judge Kennelly and the jury to believe that the Government's star witness against Fields was not to be released early from prison because of its testimony in favor of the Government. In fact, at the time Hogan made those representations, he intended to, and three months later did, successfully obtain the release of the Government's star witness. In the first trial, Fields was awarded $80,000.00 against the City of Chicago, and in the second trial with Hogan as the last witness, the jury awarded Fields $22 million.

Hogan has no concept that when he exercises the power of his office, his first duty is to act as an officer of the court. As an officer of this Court, Hogan had the professional duty to be honest and candid. Just like his conduct in *Boyd* and *Fields,* Hogan has not been honest and candid here with either this Court or Segal. This Court is as much a victim of Hogan's misconduct as is Segal. At the time Segal entered into the Settlement Stipulation and it was approved by this Court, this Court was unaware of all the facts. Hogan misrepresented the ownership and valuation facts regarding the restrained assets and coerced a desperate Segal to sign the Settlement Stipulation. Those alleged facts have now been reiterated in the Government's Response.

Specifically, a majority of the Government's Response is premised on this argument:

> On the afternoon of January 31, 2013, Mr. Moriarty and AUSA Hogan again met with Mr. Joyce and Ms. Doherty at the USAO, discussed at length the evidence the government planned to present at the impending hearing, and detailed why and how it had reached the $8 million offer. AUSA Hogan again explained that the government's

> evaluation of the evidence was that Segal owned only about $12 million of the approximately $47.5 million in assets, that the government's worst-case scenario was that he could establish ownership of at most $20 million, and that Near North could and would establish that it owned the rest, meaning that Segal would walk away with at most approximately $5 million after satisfying his forfeiture obligation. Hogan explained that in the interest of a final settlement and to put an end to the constant litigation, the government was willing to add $3 million to that $5 million figure – a 60% premium over what the government considered its worst-case litigation scenario – and reiterated that this was government's final offer. (G. Br. p. 20)

The Settlement Stipulation has resulted in Segal overpaying his $15 million forfeiture judgment by millions of dollars in violation of his due process rights.

Understanding Hogan's strategy requires an analysis which is akin to peeling the layers of an onion. An examination of each layer of litigation reveals another reason why the arguments in the Government's Response falsely summarize what has happened in this case. The alleged facts the Government references in its Response: (a) consist of unsupported, non-trial record evidence; (b) misrepresent the trial record evidence; or (c) are directly contrary to the United States forfeiture department's initial forensic ownership and valuation determinations. For example, the Government's statement that the settlement involved $47.5 million in restrained assets is wrong for at least two very apparent reasons: (1) almost $10 million of the $47.5 million figure is comprised of Near North's bank accounts, which clearly have nothing to do with Segal's seized assets; and (2) the Government has never, at any point, presented any forensic evidence demonstrating the value of any assets, and thus, the numbers it uses to reach the $47.5 million -- excluding the verifiable financial accounts -- are arbitrary, incomplete and inaccurate.

The Government at trial and the forfeiture hearing claimed that Segal owned all but four of the restrained assets. As the years passed and while Segal was in prison, the Government re-categorized certain high value assets as belonging to Near North. The Government's new claims that Near North owned a majority of the restrained assets is completely contrary to both the

position it took at trial and the forfeiture department's forensic analysis. (*See, e.g.,* Government's Forfeiture Sentencing Order Schedule, attached hereto as Exhibit 3.)

Under FRCP 32.2(b)(1)(A), this Court has an independent duty to determine the ownership and value of the assets Segal released in satisfaction of his forfeiture judgment in order to determine whether the Government received a windfall in violation of Segal's due process rights. The Government's Response to Segal's Motion to Modify does not address the merits of these issues, including specifically that it has received more than the $15 million to which it is entitled. The Government also completely ignores Segal's argument that this Court has an independent duty under FRCP 32.2(b)(1)(A) to determine the ownership and value of the restrained assets. This Court had the absolute right to rely on the Government to supply that information (since Segal had no ability to do so) so this Court could meet its duties. The Government never addressed this FRCP 32.2 argument. Instead, the Government argues that the $15 million forfeiture judgment is a final judgment which has been affirmed and is thus, law of the case. Segal does not contest that the $15 million forfeiture judgment is final. Its finality is just not relevant to his Motion. The Government then argues that Segal's efforts to undo or rewrite or seek relief from the settlement are barred by *res judicata* and judicial estoppel. These arguments miss the mark. Segal's forfeiture issue has not been extinguished because this Court has an independent duty to determine the ownership and value of the restrained assets -- something that has never been done and something that it cannot be barred from doing.

As set forth below, Segal was coerced into an unconscionable settlement, which has resulted in an enormous windfall to the Government, all because of Hogan's misconduct. Because the Settlement Stipulation is inconsistent with the Government's trial and forfeiture hearing positions as to asset ownership, it deprived Segal of his constitutionally protected due

process rights and this Court must intervene. *See, e.g., Carmine v. United States,* 974 F.2d 924, 928 (7th Cir. 1992)(Contracts between the Government and criminal defendants -- at least in the context of plea agreements -- raise "special due process concerns for fairness[.]")

Segal's Motion does not ask this Court to reconsider his conviction, nor is Segal asking this Court to overturn its $15 million forfeiture judgment. Rather, Segal's Motion focuses on Hogan's pattern of prosecutorial misconduct and abuses of power which have severely impeded Segal's due process rights and caused Segal to pay more than $15 million to satisfy his forfeiture liability.

This Court should order the Government to provide an up-to-date accounting detailing the amounts it has received with respect to each restrained asset that Segal released to the Government. Exhibits A and B to Segal's Motion to Modify clearly show that the Government has received at least $20 million more than the $15 million Segal was ordered to forfeit. An up-to-date accounting will demonstrate whether the Government has received more than $35 million, all because Hogan coerced Segal to settle based on his misrepresentations and ongoing misconduct. In sum, this Court should exercise its independent duties under FRCP 32.2(b)(1)(A) to determine the ownership of the restrained assets and then require the Government to refund to Segal the money and other assets it received in excess of $15 million. Segal sets forth below not only the reasons why this Court is legally required to exercise its independent duty under FRCP 32.2, but also the factual history demonstrating exactly why the Government's Response is unsupported by the Record and why it is so important for this Court to intervene at this time.

ARGUMENT

I. The Government Never Denies That This Court Has An Independent Duty to Determine the Ownership of the Restrained Assets Which Are Subject To Forfeiture.

This Court's independent duty, established by FRCP 32.2(b)(1)(A), is explained in detail

in Segal's Motion. The Government never responds to this aspect of Segal's Motion. It never cites the Rule, nor does it discuss its application to this case. Beyond the rule itself, the *Libretti* line of cases make it clear that this Court's duty is independent of the Parties' actions. The Parties cannot by their agreement relieve this Court of its FRCP 32.2 obligations. Segal's Motion sets out these cases in detail – and again the Government never responds. The Government's abject failure to discuss Segal's analysis of FRCP 32.2(b)(1)(A) and the *Libretti* line of cases or present contravening authority reveals the total lack of merit of its Response.

The Court's obligation under FRCP 32.2 is straightforward:

> "If the Government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense." FRCP 32.2(b)(1)(A).

Here, the Government seeks forfeiture of the restrained assets on the theory that they were owned by Near North, the RICO enterprise. There has never been any finding – not at trial, not during the forfeiture hearing or the proceedings leading up to the Settlement Stipulation – that the disputed assets were owned by Near North rather than Segal. The fact that the Parties jointly requested and were granted hearings to determine the ownership and value of the restrained assets is itself proof that the Court never determined whether the requisite nexus existed.

Segal's Motion further explains that this Court has an *independent duty*, explained in the *Libretti* line of cases, to make such a finding regardless of what positions the Parties take. *See, e.g.* Segal's Motion at pp. 18-26 (citing *Libretti v. U.S.*, 516 U.S. 29 (1995), *U.S. v. Beltramea*, 785 F.3d 287 (8th Cir. 2015), *U.S. v. Hill*, 2012 WL 3151379 (W.D.N.C. Aug. 2, 2012), *U.S. v. Newman*, 659 F.3d 1235 (9th Cir. 2011), *U.S. v. Wendfeldt*, 2012 WL 2681842 (D. Nevada 2012).

This matter should be resolved according to FRCP 32.2. Nevertheless, Segal will address each of the legal arguments raised against him in the Response.

II. The Government's Ad Hoc Collection of Legal Arguments Have No Merit.

The Government briefly raises a collection of ad hoc arguments. None of which have any merit and can be disposed of quickly.

A. This Court Has Jurisdiction to Determine Whether the Government Has Proved Who Owns the Disputed Assets Because It is Required to Do So By FRCP 32.2.

It would be odd if this Court lacked jurisdiction to exercise its independent duty. After all, FRCP 32.2 requires this Court to determine whether the Government has proven the requisite nexus between Segal's offense and the disputed assets allegedly subject to forfeiture. That duty does not disappear by simple operation of time. The fact that the Seventh Circuit examined other rulings of this Court – before returning the case to the jurisdiction of this Court – cannot rid this Court of jurisdiction.

Moreover, this Court has repeatedly stated that it retains jurisdiction over this matter. Paragraph 8 of the Preliminary Forfeiture Order explicitly states that the Court retains jurisdiction "to take additional action and enter further orders as necessary". *See* Or. July 1, 2004 (Docket 347). Paragraph 7 further states that the Preliminary Forfeiture Order is subject to amendment and correction. *Id*.

Nevertheless, the Government argues that once a forfeiture order becomes "final" it cannot be modified or reversed by any court. (*See,* G. Br. 3-4.) This statement is too broad. Even if the fact of the $15 million personal forfeiture is final, the implementation of the forfeiture order is nevertheless subject to FRCP 32.2. The cases cited by Segal eviscerate the Government's argument. In *Beltramea*, for example, the Eighth Circuit had full authority to reverse a forfeiture order that was agreed to by all the parties and "final". *U.S. v. Beltramea*, 785

F.3d at 291. Likewise, in *Newman*, the Ninth Circuit upheld a district court's decision to reject a "final" forfeiture stipulation to which all parties agreed. *U.S. v. Newman*, 659 F.3d at 1239; *see also, U.S. v. Wendfeldt*, 2012 WL 2681842 (same). Those courts did not lack jurisdiction to modify an otherwise final order and neither does this one. Here, the Government presents no countervailing authority.

B. The Forfeiture Order Has Not Been "Satisfied" or "Extinguished".

In something of a carry-over of its jurisdiction argument, the Government argues this Court cannot supplement or modify its forfeiture holdings because they are "final" and the Settlement Stipulation has "extinguished" the forfeiture judgment. (*See,* G. Br. p. 4.) This argument suffers from the same problem as all the others: it is directly contradicted by FRCP 32.2 and decided decisions of federal courts.

Decisions of the federal circuits cited by Segal have affirmed trial courts that modified forfeiture orders (or reversed trial courts for failing to modify forfeiture orders) that were agreed to by the parties and "final". *See, Beltramea* and *Newman.* In each of these cases, the court was faced with forfeiture orders that were just as "final" as the one here. Those trial courts had full power and authority to modify their own orders to comport with the court's independent duty to determine the nexus between specific property to be forfeited and the offense. Once more, the Government's complete failure to distinguish this precedent or present any countervailing authority speaks volumes. This argument is of no merit and should be ignored.

C. The Law of the Case is FRCP 32.2 and the *Libretti* Line of Cases.

The law that governs the issue before the court is FRCP 32.2 and the *Libretti* line of cases. In an effort to avoid that law, the Government raises a handful of unrelated rulings made by this Court and bundles them together into the so-called "law of the case". (*See,* G. Br. pp. 10-

12.) More specifically, the Government proposes that three rulings from this Court stand for another, more metaphysical rule that all forfeiture issues in this case are governed by Segal's Settlement Stipulation – FRCP 32.2 and *Libretti* be damned.

That cannot be true and it is easy to see why. The specific rulings cited by the Government decided (1) the effect of the Government's failure to include Rush Oak Bank Stock in Segal's Settlement Stipulation,[2] (2) whether Segal properly exercised a right to buy insurance policies, and (3) whether Segal properly exercised a right to repurchase his interest in the Bulls. (*See,* G. Br. pp. 5-10.) It is certainly true that these rulings are the law of the case, but only so far as the rulings themselves extend. If, for example, Segal were to re-raise a challenge based on his right to buy back insurance policies seized by the government, that issue has been decided and is subject to the law of the case. But to say that this Court can tease out certain aspects of separate rulings, knit them together into some new meta-ruling, and use this as justification to avoid the dictates of the Federal Rules of Criminal Procedure is simply too much. Certainly, if a trial court were permitted to essentially rewrite FRCP 32.2 and multiple decisions of federal circuits and trial courts by synthesizing a new "law of the case," the Government would have some authority to cite for that remarkable proposition. But, of course, the Government cites no authority for its creative argument. Instead. we get a rote recitation of black letter law, but nothing that justifies the Government's baroque interpretations. (*See,* G. Br. p. 10.)

In fact, an examination of the Government's lonely citation on law of the case proves that its argument is flatly wrong. In its Response, the Government cites *Christianson v. Colt Industries Operating Corp*., 486 U.S. 800 (U.S. 1988). (*See,* G. Br. p. 10.) Unfortunately for the Government, *Christianson* states in no uncertain terms that courts are not limited by the law of the case doctrine.

[2] This Court has not yet ruled on this pending, fully briefed issue.

> "[T]he law-of-the-case doctrine 'merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power.' A court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance[.]" *Christianson*, 486 U.S. at 817.

The Government's failure to acknowledge this language is just as inexplicable as its failure to respond to *Beltramea*, *Newman*, *Wendfeldt,* etc. But the passage cited above plainly states this Court is not limited by its prior orders and, in fact, must revisit them when the failure to do so would result in clear error. Not coincidentally, a trial court's failure to observe its FRCP 32.2(b)(1)(A) duty is reviewed for plain error. *See*, *U.S. v. Beltramea*, 785 F.3d at 291.

The Government's insistence on resolving this Court's FRCP 32.2(b)(1)(A) responsibility by reference to the terms of the Settlement Stipulation alone is the inconvenient fact that the Settlement Stipulation is completely silent on the question of who owned the disputed assets. FRCP 32.2. requires this Court to independently determine whether the Government has proven the nexus between the specific property it wants to keep and Segal's offense. In this case, the Government's theory is that the disputed assets are forfeitable because they were owned by Near North, the RICO enterprise. But the trouble is this alleged fact is never stipulated to in Segal's stipulation. In fact, it is not stated in any agreement between the Parties. (Nor did the Court ever make that finding itself, because the hearing to resolve the ownership issues was never held.) Because the Settlement Stipulation is silent on this issue, even if the Government's argument that Segal's Settlement Stipulation controlled were true (it isn't), the stipulation has nothing to say on the matter.

In the end, the Government's creative invocation of the law of the case doctrine is simply too clever for its own good, relies on the extrapolation and synthesis of multiple unrelated rulings, is not supported by any legal authority, is contradicted by the Government's own authority, and turns out to not resolve the issue even if it were correct.

D. Res Judicata Cannot Apply Because Ownership of the Disputed Assets Was Never Adjudicated Despite the Requirement of FRCP 32.2(b)(1)(A).

The principle of res judicata cannot apply to the issue of ownership of the disputed assets because the hearing intended to adjudicate ownership was never held. Nevertheless, the Government still briefly argues that some unnamed rulings – none of which resolve who owned what – are dispositive of the ownership issue. (*See,* G. Br. p. 11.) The Government's argument appears to boil down to the argument that because Segal might have brought the present challenge earlier, his failure to do so is fatal. But that argument fails to account for the fact – well established in FRCP 32.2, *Beltramea, Newman,* and the other cases already cited – that this Court itself has an independent duty to determine who owned the disputed assets. In other words, this Court must make this finding regardless of when Segal raises the issue.

It is clear that appellate circuit courts have the authority to correct plain error by trial courts even when that plain error was not brought to the trial court's attention. "There is authority that the courts of appeals can correct plain errors not drawn to the attention of the district court." *Capitol Indem. Corp. v. Keller,* 717 F.2d 324 (7th Cir. 1983). This, of course, is what occurred in *Beltramea*, where counsel for the defendant in the trial court made no objection to a forfeiture order, but the Court of Appeals nonetheless reversed due to the trial court's plain failure to exercise its FRCP 32.2(b)(1)(A) duty. *Beltramea*, 785 F.3d at 291. Accordingly, the Government's main argument in this matter – that Segal should have brought up this Court's independent FRCP 32.2(b)(1)(A) duty earlier – simply has no merit. A plain error will be corrected at any time. The res judicata and claims preclusion doctrines simply have no effect on the present motion because trial courts presiding over forfeitures must require the Government to prove up its case regardless of what position the defendant takes or when he takes it. Not only can this Court address this issue at any time, but because of all of the post-settlement pleadings

generated as a result of Hogan's misconduct and noncompliance with the terms of the Settlement Stipulation, this Court has, on numerous occasions, ruled that it would postpone addressing certain matters until all appellate matters were resolved. Consequently, this Motion is not untimely.

E. No Trial Court Can Estop the Exercise of Its Own Independent Duty.

The Government's final proposition is that no plaintiff may agree to a forfeiture stipulation, and then benefit from a FRCP 32.2 determination. But that is not what the cases (those same cases ignored by the Government) say. Again and again, the cases show that a trial court may – and indeed must – act independently to determine that the Government proves the nexus between an offense and specific property to be seized.

Ultimately, the Government's judicial estoppel argument fails because the Government misunderstands who exactly is being estopped. In this case, it is the Court itself that would be estopped from exercising its own duty pursuant to FRCP 32.2. As the cases show, this novel application of the judicial estoppel doctrine is inapplicable to the factual scenario now before the Court.

III. The Government Ignores The Position Hogan Took at Trial and the Forfeiture Hearing, Which Position Is Supported By the Government's Internal Forensic Accounting, That Segal Owns All But Four of the Assets Involved In The Settlement (*i.e.,* the Assets Which Formed the Basis of the Forfeiture Judgment Entered Against Segal) and The Fact That It Has Received Millions More Than It Was Entitled to Receive In Satisfaction of Segal's Forfeiture Obligation.

Knowing that its purported legal arguments lack merit, the Government tries to divert this Court's attention from the facts which reveal that: (a) Segal owned the assets at issue, and (b) the Government misrepresented the values of those assets and, as a result, the Government recovered far more than the $15 million Segal was ordered to forfeit. Instead, the Government argues that Segal mischaracterizes: (a) the nature of the Settlement Stipulation, including the events leading

up to the scheduled February 2013 hearing, the settlement discussions, and the agreement that was reached and confirmed in writing; and (b) the nature of the asset valuations, and the ownership of certain assets. Setting aside the fact that these arguments contradict the Government's trial record, including Government witness testimony and evidence, as set forth below, the Government's arguments are false and misleading.

One may ask, why is Hogan now taking a position completely contrary to the position he took at trial and the forfeiture hearing? One may also ask, why does Hogan refuse to submit to Segal, Joy Segal or this Court an itemized statement accounting for the assets and monies the Government has received in satisfaction of Segal's $15 million forfeiture obligation? Similarly, one may ask, why does the Government seek to keep the outrageous windfall it has received?[3] Finally, one may ask, why has Hogan, the line prosecutor in this matter, been involved in every step of this litigation (*e.g.,* the pre-filing case investigation, trial, sentencing, forfeiture, appeals, resentencing, probation, supervised release, etc.), when the Department of Justice has specific departments concerning each aspect of a case?

The answers to these questions are twofold. The most apparent answer is that, since the inception of this case (*i.e.,* when Segal accused Hogan of engaging in ethical violations), Hogan has been on a mission to punish Segal. Hogan has done an outstanding job thus far. The less apparent answer, which intertwines Hogan's personal animus toward Segal, and which in hindsight, is now clear as day, is that, in Hogan's crusade to punish Segal, Hogan got caught up in a web of his own lies – lies he made to Segal, to this Court and to the Seventh Circuit -- regarding certain key facts concerning the ownership and valuation of the assets the Government

[3] For example, Segal released the Lincoln Place Associates partnership, which the Government valued at $2.5 million in the settlement negotiations, to the Government as partial satisfaction of his forfeiture obligation. The Government then turned around and sold it for close to $10 million. Thus, the Government made a $7.5 million profit at Segal's expense because it misrepresented the value of this asset during the settlement negotiations.

seized. Segal's Motion to Modify brings those false representations to light. Thus, all Hogan can do now is distract this Court from the truth. But here, the truth must prevail. Hogan's misrepresentations and other misconduct have ultimately and directly resulted in the Government receiving an enormous windfall to Segal's detriment in violation of: (a) Segal's due process rights, (b) the Seventh Circuit's mandate ordering Segal to forfeit $15 million, but no more, to the Government, and (c) the Excessive Fines Clause of the Eighth Amendment. To fully appreciate the extent of Hogan's misrepresentations which have resulted in these circumstances, Segal sets forth the following factual history summarizing Hogan's misconduct. This factual background clearly illustrates Hogan's ongoing efforts to punish Segal.

A. Factual Background Leading Up to The Bifurcated Ownership/Valuation Hearings.

Hogan's personal vendetta against Segal dates back over a decade. Before Segal was convicted, Segal's lawyer, Daniel Reidy of Jones Day, alleged in pretrial motions that Hogan engaged in certain constitutional, Department of Justice and ethical violations that could have exposed his conduct to public scrutiny.[4] Early on, Segal filed multiple motions concerning these violations fully supported with attachments by Daniel Reidy. In response, and particularly, in order to avoid issues of professional misconduct for this conduct, Hogan began engaging in a pattern of misconduct and retribution designed to both punish Segal for putting Hogan's misconduct at issue and to protect himself. Hogan's misconduct knew no boundaries. The more Segal contested Hogan's misconduct, the more Hogan became obsessed with punishing Segal.

[4] Prior to 1990, federal prosecutors were exempt, by executive order, from state and federal bar canons of ethics, including attorney-client relationships and communications. However, there was a long running controversy concerning whether state ethics rules, such as those prohibiting an attorney from communicating directly with a person whom the lawyer knows is represented by counsel, applied to federal prosecutors. In 1999, Congress laid this conflict to rest when it passed the McDade Murtha Act, 28 U.S.C. §530B Ethical Standards for Attorneys for the Government ("McDade Act"), which states that an attorney for the Government shall be subject to State laws and rules governing attorneys to the same extent and in the same manner as every other attorney in that state. 28 U.S.C. §530B. After the McDade Act was enacted, federal prosecutors were no longer afforded protection for their breaches of the canons of ethics of either the state or federal bar associations where they practice law.

Over the years, Hogan, the line prosecutor in this matter, has conspicuously inserted himself into every step of the legal process -- *i.e.,* pre-trial investigation, trial, restitution, forfeiture, controlling the trustee's decisions and each of the several appeals -- even though the Department of Justice has specific divisions for each of those processes. In fact, Hogan even went outside the jurisdiction of this Court and continued his vindictive misconduct by interfering in all levels of the case brought against Segal in the United States Tax Court.[5] Hogan's motivation to be so involved is concerning. Hogan is more than just an advocate for the Government. Had Hogan not engaged in such conduct, which has repeatedly violated Segal's due process rights over the years, this litigation would have been resolved long ago. Indeed, Segal has served his time, paid his restitution, forfeited his 100% interest in a $250 million company employing 1,000 people, and unknowingly -- until now -- paid the Government far in excess of the $15 million that he was ordered to pay. Why has Hogan taken this course of conduct? The answer is obvious – to further punish Segal. His job is not to win at all costs. *See, e.g., United States v. Lopez-Avila,* 678 F.3d 955 (9th Cir. 2012)("The Department of Justice has an obligation to its lawyers and to the public to prevent prosecutorial misconduct. Prosecutors, as servants of the law, are subject to constraints and responsibilities that do not apply to other lawyers; they must serve truth and justice first. *United States v. Kojayan,* 8 F.3d 1315, 1323 (9th Cir. 1993). Their job is not just to win, but to win fairly, staying within the rules." *Berger,* 295 U.S. at 88.))

1. Hogan's Prosecutorial Misconduct Began Before This Case Was Even Initiated.

Far before the trial began, Segal discovered that certain Near North executive employees (hereinafter, the "Takeover Group") were, *inter alia,* interfering with Near North's contractual

[5] Hogan's bullying tactics of inserting himself in every step of the process and even outside of this litigation is no different than his misconduct in the *Fields* case, discussed herein, for which he has been reprimanded.

relations. (Docket No. 97, p. 11.) Upon making this discovery, on January 20, 2002, Near North filed a civil lawsuit against the Takeover Group. On January 26, 2002, just six days after filing Near North's civil lawsuit, Segal was arrested. Segal asked for an arraignment hearing and the Government dismissed the arrest without prejudice. Then, on February 14, 2002, the Government issued its first indictment.

Around the same time the Takeover Group left Near North, Near North discharged David Cheley, a computer technician. (Docket No. 97, p. 8.) In approximately late March 2002, after Segal had been arrested,[6] Segal discovered that the Takeover Group (who would later become Government private agents as early as September 2001), some of whom testified against Segal at trial) was engaged in cybercrimes to assist the Government by, for example, unlawfully retrieving and sharing confidential information, such as privileged attorney/client communications pertaining to facts and issues before and after Segal's arrest and the unlawful conduct of Segal's ex-employees. (*Id.*, pp. 12-13.) Segal filed several pretrial motions concerning these due process violations.[7] It was later confirmed that Cheley was hacking into Near North's technology and transmitting confidential Near North documents to members of the Takeover Group.[8] (*Id.*, pp. 8-11.) Those members of the Takeover Group soon became cooperating Government private agents. (*Id.*, pp. 12-15.) Accordingly, Near North's independent board of directors, consisting of a prior United States Attorney and an FBI station manager, decided that Near North would amend its complaint against the Takeover Group to

[6] Segal was taken to a hotel room, cooperated and answered questions without his attorney present, but when he refused to wear a wire, he was arrested.
[7] Although this Court did not rule in favor of Segal on these motions, there were clear findings of fact in the Record that would create concerns relating to Hogan's representations and a possible review of his misconduct at both the federal and state levels.
[8] The hacked e-mail communications were given to the Government before Segal was arrested. (*See, e.g.,* Exhibit 4.)

include allegations of these cybercrime violations in order to protect Near North's assets and business relationships.

On September 17, 2002, Near North's outside corporate counsel, Joshua T. Buchman, met with Hogan and other Government parties to tell them, as a courtesy, that Near North was going to amend its civil suit against the Takeover Group to allege a conspiracy between the Government's cooperating witnesses and Cheley to unlawfully obtain Near North's confidential and attorney/client privileged information and to use such information to engage in unfair competition against Near North. (*See,* Affidavit of Joshua Buchman, attached hereto as Exhibit 5.) At this meeting, Hogan voiced objections to the conspiracy allegations. Hogan told Buchman, in pejorative terms, that the Government did its own investigation and that its witnesses had nothing to do with the alleged cybercrimes. (*Id.*) Buchman was told that if Segal's independent Board continued pursuing the civil case against the Takeover Group, the Government would consider charging Near North in a superseding indictment or naming Near North as a RICO enterprise.

Shortly thereafter, on October 2, 2002, Near North filed its Amended Complaint in the civil case against the Takeover Group, which Amended Complaint also contained modified allegations as requested by the prosecutors. Segal's action in doing so provided Hogan with ample motive to punish him. Although under typical circumstances, even the most aggressive prosecutor would never put himself in such a position or follow through on such a threat, here, Hogan had concerns about being accused of breaching the canons of ethics under the Illinois Rules of Professional Conduct and avoiding potential liability.[9] Soon thereafter, on October 31, 2002, the grand jury returned a second superseding indictment charging Segal with a RICO

[9] Hogan's conduct exposed him to various Department of Justice regulations and possible issues concerning his intended strategy in prosecuting Segal.

violation.[10] (Docket No. 92.) After discovery proceeded in Near North's civil lawsuit against the Takeover Group, Segal's lawyer, Reidy of Jones Day, filed a fully vetted motion supported with forensic attachments, including attorney/client privileged documents, seeking an evidentiary hearing concerning whether the executive members comprising the Takeover Group had been government agents when they received the stolen attorney client privileged documents. (Docket No. 204.) The next day, on June 6, 2003, the grand jury returned a third superseding indictment against Near North. The third superseding indictment was the first to include criminal charges against Near North, even though no new evidence supported those charges. This was the follow up of Hogan's second threat of punishment by indicting Near North. This indictment precipitated the economic demise of Near North, the fifth largest US insurance broker, employing 1,000 employees across 11 offices in 7 states.

In response to the Government charging Segal and Near North with RICO, Segal filed various motions, including a motion to dismiss for vindictiveness, which motions laid out facts demonstrating that Hogan and other Government parties: (a) received information concerning the proven cybercrimes with the Takeover Group, and (b) interfered with the investigation of those cybercrimes. Specifically, these motions laid out certain constitutional violations, Department of Justice guideline violations and ethical violations, such as interfering with protected attorney/client emails. (*See,* Docket No. 146.) Segal also argued, *inter alia,* that Hogan violated the United States Attorney's Manual in the Government's search warrant affidavit and in failing to have an independent third party segregate thousands of privileged e-mails seized from Near North at any time during the Government's investigation in this case. (Docket No. 238.)

[10] The RICO indictment was predicated on two acts of Section 1346 dishonest services and this was the beginning of using RICO instigated by Hogan. Again, Segal is not seeking to "undo" any of the allegations made against him. He merely asserts these facts to demonstrate the Government's animus against him -- *i.e.,* "objective evidence that a prosecutor acted in order to punish the defendant for standing on his legal rights." *United States v. Dickerson,* 975 F.2d 1245, 1251 (7th Cir. 1992).

Multiple pleadings were filed which raised concerns of Hogan's misconduct and breaches of the canons of ethics. Nevertheless, this Court did not grant an evidentiary hearing.[11]

2. At Trial, Hogan Took the Position That Segal Owned All The Assets At Issue Here.

At trial, the Government was determined to have the jury convict Segal and assess the heaviest of penalties against him. However, the Government did not present one victim at trial or evidence that any disbursement transaction violated Illinois insurance accounting regulations. Instead, the Government argued that Segal used millions of dollars stolen from Near North to grow Near North's business and to support his lavish lifestyle. Hogan referred to Segal's actions as "looting," when no such conduct was ever proved or even referenced at trial.

Among other documents relied on by the Government at trial was Government Exhibit 41 (an audit memorandum prepared by Deloitte & Touche ("Deloitte")), which demonstrated that Segal owned all but four of the partnerships at issue. This Deloitte memorandum made clear that as part of Near North's 1994 audit, Deloitte took steps to analyze both Segal's and Near North's noninsurance related assets, and determined that those assets should be "sold" to Segal and then made appropriate accounting adjusting journal entries in Near North's books and records to reflect Segal's personal ownership of those assets. This analysis resulted in schedules and working papers being prepared. As explained more fully in Segal's Motion to Modify and here, the Government's trial witnesses testified consistent with Government Exhibit 41.

On the same day Segal was convicted, Hogan requested an immediate forfeiture trial, which restricted Segal's ability to consult and prepare with his attorneys. At the end of the two

[11] Although Segal never had an opportunity to prove his allegations, they are in the court record, and would show that Hogan was protecting his witnesses (*i.e.,* the Takeover Group) for Segal's criminal trial. However, because this conduct occurred after the McDade Act was enacted, had Segal been given an opportunity to prove these allegations, Hogan could have and should have been disciplined for violating the canon of ethics set forth in the Illinois Rules of Professional Conduct. Although Hogan has no personal financial stake in the outcome of Segal's case (because all monies recovered go to the Government, and not Hogan), Hogan did have his personal integrity and licensure at stake with the Illinois Supreme Court.

day forfeiture hearing, this Court entered the jury's $30 million forfeiture judgment against Segal. Ten days later, on July 1, 2004, this Court entered a Preliminary Order of Forfeiture which authorized the Government and the United States Marshal on a broad basis to seize and take custody of all of Segal's (and his family's) assets in order to satisfy his $30 million forfeiture liability. (Docket No. 347.) The Government subsequently seized assets that it not only claimed were acquired with stolen funds, but it also seized "substitute" assets (*i.e.,* assets that it did not claim were acquired with "PFTA" funds, or assets which were acquired prior to the alleged racketeering period, including assets belonging to his wife and son, regardless of when they were acquired). At or about the same time the Government seized Segal's assets, it subpoenaed the general partner of each of the partnerships in which Segal had an interest.

On December 1, 2005, a Forfeiture Sentencing Order was entered. Attached to the Forfeiture Sentencing Order was a Schedule of Assets, prepared by the Government, which identified all of Segal's assets which the Government had seized in order to ensure satisfaction of his $30 million forfeiture judgment. (*See,* Exhibit 3.) The Schedule of Assets, which was prepared by Tanya Sluder, the Government's forensic accounting paralegal, identified Segal as the owner of, *inter alia*: (a) 1.07792% of BSV Limited Partnership (*i.e.,* the United Center) as of 12/31/03; (b) a "substantial interest" consisting of 25% in Lincoln Place Associates; (c) a 1.72117% limited partnership interest in the Chicago Bulls as of June 9, 2003; (d) "480 out of 6,838 shares of Lakeshore Entertainment Corp." and (e) 11% of Sheridan House Associates.[12] (*Id.*) In fact, only a select few restrained assets were identified as being owned by someone other than Segal. Specifically, the Schedule of Assets identified Joy Segal as the owner of: (a) Café Hilary (5%); (b) Hilary's of Schaumburg (1%); (c) Mercantile Capital Partners, LP; (d) East

[12] Hogan has never referenced this initial accounting prepared by the Government, which demonstrates that Hogan has ignored 13 years of Government information, exhibiting and proving his material misrepresentations and nondisclosures.

Bank Club Venture LP; (e) Sheridan House Associates (11%); and (f) certain financial accounts and insurance policies. (*Id.*) The Schedule of Assets also identified Near North as the owner of Sheridan Road Lifestyles.[13] (*Id.*)

3. Hogan's Vindictive Behavior Continued After Segal Was Convicted.

After Segal was convicted, but before he was sentenced, he was immediately imprisoned without bail. Although Segal had no past criminal record and had been convicted of a crime with no victims or loss, and although all of his assets had been restrained, Hogan, again acting vindictively, twice argued that Segal should be denied bail because he was a flight risk. Thus, Segal was forced to serve 18 months at the Metropolitan Correctional Center ("MCC") before being transferred to Oxford Federal Prison Camp, while his sentencing hearing was delayed. During those months, rather than allowing Segal to post an offered $4 million bail, Segal was incarcerated at the MCC. While there, and throughout his entire imprisonment, Segal was

[13] As set forth below, the Government later changed its position concerning the ownership of certain assets. For example, by 2007, the Government had created a new schedule which claimed that Near North owned the Bulls Partnerships and the Chicago White Sox. According to the Government's 2007 schedule, Near North owned $6,099,650 in assets, which included the interests in the Bulls and White Sox. (*See,* Government's 2007 Schedule, attached hereto as Exhibit 6**.)** Although the 2007 Schedule incorrectly reflects that Near North owns the Bulls and White Sox, the 2007 Schedule did correctly reflect that the remaining assets the Government was restraining were owned by Segal. (*Id.*) Specifically, the 2007 Schedule states that the Government was holding $20,812,324 in Segal's personal assets (including 100% of the Highland Park home and insurance policies), $7,527,137 in Segal partnerships, and another $2,168,067 in Segal funds. (*Id.*) In other words, even if the Government was correct that Near North owned the Bulls and White Sox partnerships (which, as explained above, it was not), the Government was still restraining at least $30,597,528 of Segal's assets. The Government's 2007 Schedule remained the same until June 2009 -- *i.e.,* two months after this Court made it clear that Segal would not be required to forfeit $30 million and gave the Government "one final opportunity" to submit a supplemental brief in late April, 2009 dealing with who owned the restrained assets. In June 2009, the Government then took a new position when it filed its Supplemental Evidentiary Submission. This time, in addition to claiming, contrary to the position it took at trial, that Near North owned both the Bulls and the White Sox, the Government now claimed that Near North owned a significant amount of other assets. As explained below, in SES Ex. 6, the Government claimed that Near North's assets were worth $31,581,881, whereas Segal's assets were only worth $16,022,451. (*See,* Exhibit 1.) Thus, now faced with the chance that Segal may be ordered to forfeit less than $30 million, the Government took a new position that it was holding almost $15 million less of Segal assets than it previously (for five years) claimed it was holding. (*Id.*) After this Court entered an order requiring Segal to forfeit only $15 million, which was affirmed on appeal, and by the time the Parties negotiated the Settlement Stipulation that is the basis of the current Motion, the Government had changed its position, again contrary to the position it took at trial, and argued that Segal's assets were only worth $12,783,556. (Exhibit 2.)

denied: (a) access to his personal records and computers,[14] (b) an opportunity to get his financial affairs in order, like any other white collar criminal,[15] and (c) access to his funds to pay for continued legal and accounting representation.

Although Hogan had succeeded in convicting Segal as the line prosecutor in this case, his involvement continued through the forfeiture, restitution and appellate aspects in order to interfere with Segal's due process rights and to protect himself from his misconduct.[16]

Segal appealed, and argued, *inter alia,* that Hogan engaged in a vindictive prosecution by punishing Segal by pursuing a prosecution (*i.e.,* a RICO count) in retaliation for Segal doing something the law permitted him to do (*e.g.* exercising his constitutional rights under the First Amendment to access the courts for legal wrongs he and his company have suffered by filing an amended complaint). Such conduct demonstrates that Hogan had a personal animus against Segal. Although the Seventh Circuit denied Segal's arguments concerning Hogan's animus, it nevertheless held that prosecuting a case with a personal animus could be a due process violation of a basic sort. Despite recognizing this proposition, the Seventh Circuit ultimately rejected Segal's argument.[17]

4. Hogan's Misconduct Continued When The Seventh Circuit Remanded This Case in 2007.

In 2007, the Seventh Circuit vacated this Court's $30 million forfeiture judgment and remanded "for a determination of what portion [of net proceeds] of the $30 million was not

[14] To this day, the Government has refused Segal access to his personal records and computers.
[15] For example, Blagojevich was sentenced to a more severe term than Segal, yet he was he was permitted to post bail.
[16] Hogan's continued involvement, post-conviction, was designed to control and protect the Appellate and subsequent filings that could expose Hogan's rampant misconduct through both the trial and the pre-trial constitutional motions. As explained herein, Hogan controlled, and continues to control, this entire legal process. After Segal was convicted, Hogan took total control over the post-conviction matters, including forfeiture, restitution, the trustee's involvement and several appeals.
[17] Segal is not looking to have this argument reconsidered here. Rather, he sets forth these facts to demonstrate the years in which Hogan has engaged in such unethical conduct.

reinvested in the enterprise, but rather went to benefit Segal personally and is therefore subject to forfeiture as proceeds of the illegal enterprise." *United States v. Segal,* 495 F.3d 826, 840 (7th Cir. 2007). The Seventh Circuit was clearly concerned about whether the $30 million forfeiture judgment might constitute double counting, "given that the amount that went back into the company will be forfeited through the forfeiture of the enterprise." (*Id.*) The Seventh Circuit held that recovering these proceeds from Segal a second time would be double counting. (*Id.*, 495 F.3d at 839.)

Hogan sought to avoid the Seventh Circuit's mandate. First, he petitioned the Seventh Circuit for a rehearing, showing his fixation on punishing Segal, for he knew at this time that the Government's own trial exhibits reflected a substantial amount of money that Segal poured back into Near North, which facts squarely addressed the Seventh Circuit's double counting concerns. What reasonable prosecutor would do this, especially after taking Segal's company and obtaining a 10 year sentence against Segal? This conduct demonstrates Hogan's personal animus against Segal. Then, when the Seventh Circuit denied this request, Hogan continued to deliberately ignore the Seventh Circuit's mandate and delayed addressing the remanded issue on so many occasions that it took nearly two years for this Court to issue an opinion concerning the remanded issue. Hogan's unwarranted conduct and countless delays caused Segal to incur unnecessary legal fees by filing 8 pleadings and attending numerous court hearings and further required a needless expenditure of this Court's time, attention and resources.

Hogan's misconduct continued the moment this case was remanded to this Court. For example, on January 16, 2008, this Court directed Segal to file a brief regarding the way he believed this Court should proceed in light of the Seventh Circuit's remand instructions. This Court also gave the Government an opportunity to respond. On February 20, 2008, Segal filed

his Position Paper on the remanded Forfeiture Issues ("Position Paper") based on the trial record and PSR which, following the Seventh Circuit's directive, argued that he should be required to forfeit no more than $1.5 million, plus his 100% ownership interest in Near North, a company valued at $250 million. Segal's Position Paper also explained that the Government had never provided an accounting of Segal's personal property that it was holding. Thus, Segal also requested this Court to order the Government to produce an accounting reflecting: (a) what Segal assets it possessed; (b) what interest, income and profit distributions it received by virtue of holding those assets; and (c) what expenses and fees it paid in connection with the maintenance and sale of those assets. The Government's response was due March 8, 2008. On February 20, 2008, Segal also filed a Motion to Release Property to Segal, which asked this Court to release all property, and distributions received therefrom, acquired pre-1995.

Hogan ignored this Court's briefing schedule. Instead of filing its response on March 8, 2008 as required, on March 18, 2008, the Government acknowledged it did not respond on time and moved for leave to file a consolidated response to Segal's briefs. Although the Government sought to file a combined response, it never did. Instead, it filed its Response to Segal's Motion to Release on April 7, 2008. Then, on April 28, 2008, it asked this Court for yet more time to respond to Segal's Position Paper. The Government was given until May 6, 2008 to file its response. Not only did the Government again delay filing its response, but it ignored the Seventh Circuit's mandate concerning what net proceeds went to benefit Segal personally. Instead, in its response, the Government argued that Segal stole $30 million from the PFTA[18], and that Segal was required to borrow $30 million to replenish that deficit, which loans he never repaid. Thus, according to the Government, there would be no double counting because Segal

[18] This is another example of Hogan's massive misrepresentations of the Record. Neither this Court, nor the jury, ever concluded that Segal "stole" one dollar.

never repaid the borrowed $30 million. The Government conveniently ignored the fact that Segal deposited the $30 million he borrowed into Near North. Then, after Segal filed his reply brief, which described how the Government failed to follow the Seventh Circuit's mandate, the Government asked for, and was given leave to, file a sur-response. In its sur-response, the Government continued to ignore the Seventh Circuit's mandate, and reiterated the arguments it made in its response brief that Segal should be required to pay $30 million.

On July 31, 2008, this Court ordered the Government to submit its evidence by September 2, 2008. The Government's Evidentiary Submission continued to ignore the Seventh Circuit's mandate, and falsely argued that Segal used PFTA money to both acquire and grow Near North and its affiliates, and that Segal was forced to borrow to repay the $30 million that was taken to grow his business. According to the Government, when Segal was ordered to forfeit Near North with that outstanding debt, there could have been no double counting. However, at the forfeiture trial, the Government's own witness, Ms. Prescott, stated that there was no connection between the loans and any insurance regulatory deficit. (Tr. 5909-10, 5911, 5914.)

On September 24, 2008, this Court entered a briefing schedule, allowing Segal to respond to the Government's Evidentiary Submission, and the Government to file a reply.[19] On November 14, 2008, Segal sought leave to file his response to the Government's Evidentiary Submission, as well as a Motion to Strike Certain Arguments raised in the Government's Evidentiary Submission. The Motion to Strike set forth the Government's repeated due process violations. (*See,* Docket No. 1416, attached hereto as Exhibit 7.) For example, Segal argued that certain arguments should be stricken because they: (a) failed to reference any part of the record,

[19] Segal's counsel sought an extension of time to respond due to their inability to communicate with Segal in prison.

(b) inaccurately referenced or summarized the record, (c) relied on alleged evidence outside of the record, or (d) disregarded or ignored the Seventh Circuit's remand order. (*Id.*)

On November 14, 2008, Segal also again sought an accounting.[20] On November 17, 2008, this Court ordered the Government to file its reply to the Evidentiary Submission and its response to Segal's Motion to Strike by December 19, 2008. On December 3, 2008, this Court granted Segal's Motion for Accounting and ordered the Government to provide an accounting by December 15, 2008. On December 16, 2008, the Government filed a response to Segal's Motion for Accounting, which attached a schedule of partnership assets. The schedule identified all of Michael and Joy Segal's assets seized by the Government. The only asset that was specifically classified by owner was Sheridan House Associates, which separately identified both Michael and Joy's interests therein.[21]

As of January 5, 2009, the Government still had not filed its reply to its Evidentiary Submission, or a response to Segal's Motion to Strike, which were due December 19, 2008, nor had the Government sought an extension of time to do so. Accordingly, Segal filed a motion to bar the Government from filing those briefs. Segal's Motion to Bar explained the Government's countless delays and complete disregard for this Court's Orders.[22] On January 13, 2009, the Government filed an emergency motion for leave to file its Reply to Evidentiary Submission, which this Court granted on January 14, 2009. The Government never responded to Segal's Motion to Strike.

[20] The Government never provided the accounting Segal requested in his Position Paper.
[21] The Government's schedules have repeatedly acknowledged Joy's ownership in various interests, including Sheridan House Associates and East Bank Club (*see, infra*), which the Government has ignored in not only Joy Segal's requests for relief, but even after the Parties reached a settlement here. (*See, e.g.,* Ex. 3.)
[22] Segal acknowledged in this motion that he was required to seek one extension of time because of the difficulty in communication with his counsel while in prison, and also, because the Government's Evidentiary Submission was supported by 500 pages of trial testimony.

After two months had passed, on March 17, 2009, Segal moved for a ruling on the remanded forfeiture order. On March 26, 2009, this Court denied Segal's motion and said it was taking the matter under advisement. After all of Hogan's delays, which caused Segal unnecessary legal fees and expenses and needlessly took this Court's time, this Court clearly acknowledged the Seventh Circuit mandate. In that regard, on April 17, 2009, this Court issued an order acknowledging that the only way it could honor the Seventh Circuit's mandate was to search the trial record for "what portion of the $30 million . . . went to benefit Segal personally." (Docket No. 1453.) This Court continued:

> In that regard, the government misses the boat. Instead of providing guidance on the question posed by the Seventh Circuit, the government continues to argue at length that Segal should be on the hook personally for the entire $30 million, because that is how much was missing from the PFTA. The problem is not with the amount stolen from the PFTA; the Seventh Circuit's concern was with *where* this money went. If it went back into the enterprise in some form, it would have been recaptured by the government when the enterprise was forfeited. Thus, the question for this Court, in accordance with the remand, is what the evidence shows regarding how much of this money actually went into Segal's own pocket. The argument advanced by the government, that Segal should be personally liable for the entire amount missing from the PFTA, was made on appeal and was rejected by the Seventh Circuit, most recently in a petition for rehearing which the Seventh Circuit summarily denied. Simply reinstating the $30 million judgment, as the government proposes, would be futile and improper. (*Id.*)

Notwithstanding this finding, and although this Court agreed that the Government's submissions "offered very little insight on the issue remanded by the Seventh Circuit," this Court declined to grant Segal's unanswered motion to strike. (*Id.*) Instead, this Court afforded the Government "one more opportunity to parse through the trial evidence and offer this Court its analysis of what the evidence shows regarding what amount 'went to benefit Segal personally and is subject to forfeiture as proceeds of the illegal enterprise.'" (*Id.*) This Court expressed an opinion that Segal "grossly underestimated the amount of executive compensation and other personal proceeds he received as a result of the racketeering activity," but held that it would have no

choice, but to accept Segal's $1.5 million number (which figure was supported by record evidence, such as trial transcript references, Government exhibits and the PSR), absent the Government availing itself of the opportunity to direct this Court as to record evidence showing what Segal personally received and did not reinvest. (*Id.*) The Government was therefore directed to file a new brief by May 11, 2009.[23] Although this Court never ruled on Segal's Motion to Strike, which motion set forth Hogan's pattern of either ignoring or misrepresenting the record evidence, Segal appreciates that this Court continued to follow the Seventh Circuit's mandate by disregarding the Government's arguments up until this point.

More than a year and a half had lapsed since the Seventh Circuit remanded this matter. As set forth above, Hogan not only disregarded this Court's orders by filing several untimely briefs, but he again completely disregarded the Seventh Circuit's mandate. Instead, Hogan focused his efforts on trying to reinstate the $30 million forfeiture judgment. After this Court's April 17, 2009 ruling, however, the Government was now faced with one last opportunity to tell this Court, with Record evidence, how much Segal personally received. This ruling only raised Hogan's desire to punish Segal more. As explained below, it was at this point that Hogan started really misrepresenting the Record in order to achieve a maximum punishment against Segal with a total disregard for Segal's due process rights.

Consistent with its prior behavior, the Government sought additional time to file its Supplemental Evidentiary Submission, which the Government ultimately filed on June 15, 2009. Knowing that he had to file something to comport with this Court giving him "one final opportunity", and desperate to continue punishing Segal, in his Supplemental Evidentiary Submission, Hogan continued to disregard the Seventh Circuit's mandate and deliberately

[23] Even given this one final opportunity to comport with the Seventh Circuit's mandate, as explained below, the Government continued to disregard and disrespect this Court's and the Seventh Circuit's orders.

misrepresented the Record to this Court in order to support the Government's new theory that Segal should be required to forfeit, at a minimum, $18 million.

Hogan knew that misrepresenting the record was the only way he would be able to take advantage of the second chance afforded to him by this Court. Ignoring his own record concerning the $17 million that Segal poured into the enterprise (*see, infra*), in direct disregard of the Seventh Circuit's concern about double counting, Hogan deliberately misrepresented the true nature of the Government's exhibits and trial testimony, which when reviewed in their entirety reflect the $17 million Segal put into Near North, and instead supported the $18 million forfeiture figure by misstating the trial record.[24] But even if Hogan's $18 million forfeiture figure was correct, if Hogan had followed the Seventh Circuit's mandate and considered the $17 million in cash that Segal put into Near North, Hogan should have taken the position that Segal netted no more than $1 million.

The way that Hogan manipulated the trial record is evidenced by the "exhibits" attached to his Supplemental Evidentiary Submission ("SES"). While certain of the SES exhibits are actual trial exhibits, or at least portions of trial exhibits, certain of the other SES exhibits (including, but not limited to, SES Exhibits 4, 6 and 7) are unauthenticated, undated and unsigned charts or summaries which were never submitted, let alone admitted, at trial. According to the Government, these SES Exhibits are purportedly supported by or summarize Government trial exhibits or testimony. But in reality, these SES Exhibits are replete with misinformation and fabricated "record evidence." These SES Exhibits, including the "accounting" reflected therein, were never part of the trial. An examination of the SES Exhibits

[24] Hogan's conduct in misstating the evidence in this manner amounts to a *Brady* violation. *See, Brady v. Maryland,* 373 U.S. 83 (1963).

reveals either that there is no record support for their content, or that the record supports the opposite conclusion.

For example, SES Ex. 4 is a summary chart entitled "Segal Compensation and Other Income Items." At the bottom of this exhibit, the Government concludes that Segal has received a total of $18,025,368 in compensation and other income. Although this chart purports to support the Government's $18 million figure, this chart was not introduced at trial, and much of what is contained therein is either false or ignores or grossly misrepresents the trial record and PSR. For example, the $18 million the Government claims Segal received contains $1,700,000 in proceeds from the sale of Grand Avenue Venture. But Grand Avenue Venture's response to the Government's trial subpoena, and other records, including SES Ex. 9(c), reveal that Segal personally owned this asset. Further, if there was any doubt that Segal owned this asset, the trial evidence reveals that Segal's draw account was charged for this asset. (*See, e.g.,* Government Trial Exhibit 41.) Nevertheless, the Government falsely adds the proceeds from this sale as compensation or income that Segal received from Near North.

Similarly, the Government includes in its SES Ex. 4 chart $1,062,228 in distributions that the Government claims Segal received from partnerships that Near North owned. To support this theory, the Government relied on SES Exs. 2 and 8. But neither of those exhibits supports the Government. For example, SES Exs. 2 and 8 merely reflect the distributions that Segal received. Neither of those exhibits stand for the position that Near North owned the partnerships making the distributions, and in fact, the Government's own trial exhibits (*e.g.,* Exhibit 41), witness testimony and documents received pursuant to the Government's trial subpoenas contradict any argument that those distributions came from partnerships that Near North owned.

In sum, the way the Government reached its $18 million figure is not only totally unsupported by the record, but it is false.

Like SES Ex. 4, SES Exs. 4(b)-4(e) are not trial exhibits, but are instead summaries that purport to be based on trial record evidence. But like SES Ex. 4, these exhibits are unauthenticated, undated, unsupported, and most significantly, false. For example, the Government, as part of its Supplemental Evidentiary Submission, introduced SES Ex. 4(b) as if it summarized trial testimony, but it does not accurately reflect what happened at trial. To support its false summary schedule in SES Ex. 4(b), the Government created SES Ex. 4(c), which relies on the testimony of Angela Amaro regarding the cash that was given to Segal (even though Amaro was not the person at Near North who was responsible for giving Segal cash, and therefore, had no personal knowledge). However, the Government fails to support SES Ex. 4(c) with any actual trial transcript testimony. Likewise, in SES Ex. 5, there was only testimony that Segal received $125/week for taxis and transportation. Setting aside the fact that these are legitimate business expenses, the trial record clearly demonstrates that SES Ex. 5 cannot support the Government's summary in SES Ex. 4(b).

Similarly, although the Government would like this Court to believe that SES Exhibits 4(d) and 4(e) summarize parts of the trial record, they do not. These exhibits are not based on trial evidence, and further, they include distributions from assets which the Government knew, through its own trial exhibits and the documents received in response to the trial subpoenas, Segal owned. In other words, the summary the Government attempts to provide with these exhibits is directly contrary to the position the Government took at trial.

Not only did the Government's Supplemental Evidentiary Submission circumvent the Seventh Circuit's mandate by ignoring the $17 million in loans that Segal made to Near North

and relying on false and misleading non-record evidence to support its argument that Segal should forfeit $18 million, but the Government also, for the first time, took the position that Near North owned several of the restrained assets. Although the Government stated otherwise at trial and continued to affirm its trial position (*see, e.g.,* Exhibit 3), in its Supplemental Evidentiary Submission, the Government claimed that Near North owned approximately $31 million of the restrained assets, whereas Segal only owned $16 million of the restrained assets. (Ex. 1.)

To support this argument, the Government relied on SES Ex. 6 -- another unauthenticated, undated and unsigned document that was not introduced at trial and is not part of the record. (*Id.*) Setting aside the fact that the accounting and other information contained in SES Ex. 6 is contradicted by the Government's own trial evidence, it is replete with misrepresentations. As an initial matter, the first page of SES Ex. 6 claims there are a total of $47,541,332 in restrained assets. (*Id.*) But this is not true because, *inter alia,* this figure includes nearly $10 million of Near North's bank account. The funds in Near North's bank account had nothing to do with Segal's restrained assets.

On page 2 of SES Ex. 6 (Ex. 1 hereto), the Government's chart is entitled "NNIB Account Balances, Earn-Outs and Partnership Values." In line 5 on this schedule, the Government claims that Near North owns 56% of the Highland Park home, but this position is directly contrary to the Government's position at the forfeiture trial that Segal owned 100% of the Highland Park home. (*See, e.g.,* Tr. 2620, 5201.) In line 6, it wrongly claims that NNIB Partnerships are worth $9,824,400, and distributions from those partnerships total $2,827,697. (Ex. 1.) To support these figures, the Government simply references other pages of SES Ex. 6 (as opposed to any trial record evidence) as if ownership had already been determined. As an initial matter, there had never been (and to this date, there has not been) a determination (other

than the one made by Deloitte, as reflected in Government Exhibit 41 and the Deloitte work papers relating to Government Exhibit 41, which have never been produced) regarding who: (a) owned the partnerships that the Government claimed were "NNIB partnerships," or (b) was entitled to the distributions from those partnerships. Moreover, as explained above, the trial record clearly reflects -- and indeed, the Government's position was -- that Segal owned all but four partnerships, including all of the partnerships that it now lumped into this NNIB category. The Government created this chart to use in SES Ex. 4 (*see, supra*) to support its $18 million forfeiture figure by showing that Segal allegedly received NNIB distributions that he was not entitled to. The Government's conduct in doing so was completely vindictive, especially given the records it has concerning the ownership of those assets showing that Segal is the owner.

SES Ex. 6 is also flawed to the extent it purports to reflect the values of the restrained partnerships under its summary charts entitled "Propossed (sic) Offers for Sale." As explained herein, the Government never updated any of the assets' valuations over the course of the 9 years that they had been restrained, nor did the Government ever have a forensic accounting analysis performed concerning the asset valuations. Not only were the asset valuations not updated, but the Government's classification of these figures as "offers" is totally unsupported. There is no evidence that any person made an offer to purchase any of these assets.

Even the trial exhibits that the Government attached to its Supplemental Evidentiary Submission are misleading. For example, the Government purports to attach Government Trial Exhibit 439 as SES Ex. 8. This document represents Segal's investment account check register from June 1, 1995 through January 31, 2002. The first page of SES Ex. 8 is marked page 1 and the last page is marked 110, but there are not 108 pages in between. It is curious that the

Government fails to attach the entire Trial Exhibit 439, or specifically, any of the pages it has excluded which would show all of Segal's disbursements to Near North.

In sum, the SES Exhibits submitted to this Court were replete with misinformation and fabricated "record evidence."

Segal filed his response to the Government's Supplemental Evidentiary Submission on July 24, 2009. Although Segal established the money he received from Near North, he likewise established, through the Government's own trial exhibits and witness testimony, that he loaned or otherwise personally contributed more than $17 million in cash ($13 million of which were loans) to Near North. (Tr. 1290-91, 1702-03, 2201, 2204, 2752, 2887, 5903-04; PSR 26; Tr. Ex. 503.) The most obvious misrepresentation of its own record is Government Trial Exhibit 19, where the Government deliberately failed to disclose the fact that Segal's $13 million in loans to Near North are reflected on Near North's books as liabilities. Hogan only wanted to disclose one side of the balance sheet, even though the books and records produced pursuant to the trial subpoenas two years before the trial started support this fact.

On August 21, 2009, after again seeking an extension of time, the Government filed its Reply to its Supplemental Evidentiary Submission and argued in direct contravention of both this Court's April 17, 2009 Order and the Seventh Circuit's mandate, that none of the $30 million was put back into Near North. Alternatively, the Government argued that at least $18 million went to Segal. Although the Seventh Circuit remanded the forfeiture proceedings for a determination of how much of the $30 million in *net proceeds* went to benefit Segal personally (*see, United States v. Segal,* 495 F.3d 826, 840 (7th Cir. 2007)), Hogan's arguments that Segal received at least $18 million ignored the monies that Segal put into Near North and were based in large measure on exhibits which were falsely represented to be trial exhibits and on other

misrepresentations of record evidence. In other words, although this Court gave Hogan "one last opportunity" to file a pleading that complied with the Seventh Circuit's directive, Hogan deliberately ignored the Seventh Circuit's mandate. Hogan knew from the Government's records that Segal put more money into Near North. Yet, as explained above, Hogan accomplished what he could not do directly by deliberately concocting and submitting non-record, incomplete and inaccurate exhibits to contradict these facts.

On August 31, 2009, Segal moved to strike the Government's reply brief. This Court denied Segal's motion as moot. Instead, that same day, this Court entered an Opinion: (a) acknowledging that the Government was asking this Court to accept new evidence that was not presented at trial and to which Segal objected; (b) sharing Segal's frustration over the Government's delays in providing a direct answer to the question posed by the Seventh Circuit; (c) finding that, after giving the Government "one final opportunity" to provide its answer to the question posed by the Seventh Circuit, the Government inexplicably continued to urge this Court to accept additional evidence rather than providing a clear answer to the question on remand; and (d) finding that the Government was fully aware of its burden at trial concerning how much money went to Segal personally, and thus, no exceptional circumstances exist that would warrant the Government to submit new evidence. (Docket No. 1483.) Notwithstanding the foregoing, and not considering the $17 million that Segal loaned or otherwise transferred to Near North (thereby not addressing the Seventh Circuit's net proceeds issue on remand), this Court concluded that Segal personally received at least $15 million from the racketeering enterprise. (Docket Nos. 1482, 1483, 1493.)

Although Segal, relying on the Government's trial exhibits and witnesses, demonstrated what he received, and further, that he put $17 million back into the company, Hogan ignored

these record facts, attempted to make new record facts, and argued that Near North paid off the company loans. Without considering the cash Segal infused into Near North, this Court ultimately ruled that Segal personally received $15 million.

5. Hogan Interfered With Segal's Defense and the Parties' Appealed.

As explained more fully in Segal's Motion to Modify, on several occasions throughout this litigation, Segal requested a release of a reasonable amount of his restrained funds to pay his lawyers and accountants, and also, to pay for medical expenses of certain family members. If the amounts Segal sought were released, the Government would still have sufficient restrained funds to pay Segal's forfeiture obligation in full. Nevertheless, each request Segal made was objected to by Hogan as part of his deliberate strategy to punish Segal, interfere with Segal's legal defenses, and cover up his own misconduct. Segal's motions were denied by this Court. Even after this Court reduced Segal's personal forfeiture to $15 million, the Government refused to release any funds to Segal, although it was restraining enough assets to cover the former $30 million forfeiture judgment. Shortly after the $15 million judgment was entered, on September 16, 2009, Segal again sought a release of funds. On October 1, 2009, the Government filed an objection to Segal's request and this Court then denied Segal's request.

6. As Soon As Hogan Learned That The Government Was Not Going To Collect $30 Million, He Again Changed His Strategy Concerning the Ownership of the Restrained Assets.

When the Government first seized all of Segal's assets pursuant to the Preliminary Order of Forfeiture, it identified only one asset – Sheridan Road Lifestyles – as a Near North owned asset. (*See,* Ex. 3.) And with the exception of a select few other assets belonging to Joy Segal, the Government acknowledged that the remaining assets, including the Bulls partnerships, were owned by Segal. (*Id.*) The forfeiture schedules were originally prepared by Tanya Sluder, a

Government paralegal. After Hogan took over Segal's forfeiture issues, in 2007, the Government prepared new schedules. (Ex. 6.) The 2007 schedules were the same as the schedules originally prepared as part of the forfeiture proceedings, except this time, the 2007 Schedule reflected that Near North owned the Bulls partnerships and the Chicago White Sox, and that Segal owned all other assets, including 100% of the Highland Park home. (*Id*.) Pursuant to the Government's 2007 Schedule, the Government lists the "Amounts of Potential Forfeiture to Date" (*i.e.,* as of 2007) as:

NNIG	$6,099,650
Segal Personal	$20,812,324
Segal Partnerships	$7,527,137
Funds Collected to Date	$2,168,067

(*Id.*) To the extent it claimed that the value of Near North assets were valued at $6,099,650, those assets included the Chicago Bulls partnerships (which as explained above, the Government previously acknowledged were owned by Segal) and the Chicago White Sox (which, as explained above, were also owned by Segal). (*Id.*)

After this Court entered its April 21, 2009 Order giving the Government "one more opportunity," the Government again changed its position. The Government updated its 2007 schedule, which it ended up attaching to its Supplemental Evidentiary Submission as SES 6, to reflect that Segal only owned $16 million in assets, and that Near North went from owning $6 million in assets (including the Government's wrongful inclusion of the Bulls and White Sox) to $31 million. (*See,* Exhibit 1.)

Then, after the Seventh Circuit affirmed the $15 million forfeiture judgment, the Government took a whole new approach. This time, contrary to what it claimed at trial and at the forfeiture hearing, it claimed that far more than half of the partnerships were owned by Near North. By the time the Government created its January 2013 schedules, its position was that

Near North owned nearly $12 million in partnerships, whereas Segal only owned approximately $2 million in partnerships. (Exhibit 2.) The January 2013 schedules reflected that Segal only owned $12 million in assets, whereas Near North owned $33 million in assets. (*Id.*) When this case was remanded for the second time, the Government's position as to ownership directly contradicted not only the evidence in the trial Record, including Government Exhibit 41 (which, ironically, the Government also attached to its pleadings and relied upon), but also the documents received in response to Government subpoenas and the Government's initial schedules -- *i.e.,* the schedules before Hogan intervened in order to protect himself and further punish Segal.

The following chart reflects the evolution of the Government's approach, excluding assets owned by Joy Segal:

Government Schedule	Michael Segal Assets	Near North Assets
2005 Forfeiture Sentencing Order Schedule (Ex. 3)	All, but Sheridan Road Lifestyles	Sheridan Road Lifestyles
2007 Schedule (after Hogan became involved)(Ex. 6)	Most assets – totaling at least $28,339,461	$6,099,650, ($3,699,650 of which represented Segal's interests in the Chicago White Sox and Bulls partnership interests)
2009 Schedule (after this Court gave the Government "one final opportunity")(Ex. 1)	$16,022,451	$31,518,881 (comprising a total of a significant number of assets which had previously been properly categorized as Segal's assets)
2013 Schedule (used for settlement negotiations)(Ex. 2)	$12,783,556.45	$33,838,290

7. Hogan Controls The Trustee In Order To Prevent Segal From Obtaining Information He Is Entitled to Receive.

Throughout the course of this litigation, Segal requested information concerning his restrained assets. None of the owners (except the Bulls, the White Sox and Lakeshore

Entertainment Corp.) of those assets (*e.g.,* general partners of real estate limited partnerships in which Segal owned an interest and insurance companies which carried a policy insuring Segal's life) would speak with Segal or his counsel because of the Government's restraining orders. Often, Hogan responded that the Trustee was responsible for the failure to share information. However, the Trustee in this case does not function as a normal trustee. He cannot and has not released documents or information absent Government authorization. (*See, e.g.,* Exhibit 8.) Distribution checks like the checks the Government received when it sold Segal's assets after the settlement (*see, e.g.,* Group Exhibit 9 - Checks for distributions and sale of Lincoln Place Associates partnership totaling more than $10 million (*i.e.,* $7.5 million more than the Government valued Lincoln Place during the settlement negotiations) and Group Exhibit 10- Checks for distributions and sale of the Peterson Plaza partnerships totaling more than $2 million (*i.e.,* $1,926,537.03 more than the Government valued the Peterson Plaza partnerships during the settlement negotiations)) were sent to the United States Marshal for deposit into the U.S. Marshal's Seized Asset Account. The Trustee did not deposit those checks into a trust account that he controlled.

The Trustee's lack of authority is confirmed by his failure to respond to Segal's requests for information. Since Hogan misrepresented the Trustee's role and function on more than one occasion, Segal's counsel asked the Trustee, through his counsel, for an accounting of the assets held by the Trustee. (*See, e.g.,* Exhibits 8 and 11.) The Trustee, however, has never responded to any of those requests -- because all such requests must be made to Hogan.

B. Hogan's Misconduct Continued When This Case Was Remanded for a Second Time After Segal Was Resentenced.

On May 29, 2012, this Court entered an amended forfeiture judgment. (Docket No. 1669)

Thereafter, this Court set a bifurcated hearing to first decide who owned the restrained assets[25], and then, after determining the value of those assets, to determine how Segal would satisfy his $15 million forfeiture judgment. (Docket Nos. 1678, 1701.) These hearings could have and should have been simple, since at trial the Government's Trial Exhibit 41 stated that Segal owned all but four of the restrained partnership interests. The Government's trial witnesses testified in a consistent manner. (*See, e.g.,* Tr. 960, 1082, 1091, 1101, 1147, 1275, 1277, 1280, 1302, 5920.) The Government also identified all restrained assets, apart from Sheridan Road Lifestyles, as Segal owned assets in its forfeiture presentation Schedule of Assets. (*See,* Exhibit 3.) At the forfeiture hearing, the Government took the position that Segal owned the Highland Park home and all but four of the restrained partnerships. Consequently, Segal's $15 million forfeiture could have easily been satisfied by Segal using his proceeds from the sale of his Highland Park home (*i.e.,* $6,009,541.07) and his partnership distributions (*i.e.,* $7,953,070.79). (Exhibit 2.) In other words, according to the Government's January 2013 Schedules, the Government was restraining $13,963,070.79 in cash in those two categories alone which would have nearly covered Segal's forfeiture obligation. Segal could have paid the remaining $1 million with funds from one of his financial accounts and that would have been the end of the story. The Government had $15 million of Segal's cash in hand. That being the case, what reasonable prosecutor would continue pursuing the actions the Government unnecessarily pursued here? Only Hogan – because he wanted to punish Segal.

[25] According to the Government, if an asset was acquired with Near North corporate funds, it belonged to the Government as part of the enterprise forfeiture. This proposition flies in the face of the Government's trial evidence and witness testimony, like Government Exhibit 41, which shows that even if assets were originally acquired with Near North funds, those assets became Segal's after Deloitte's audit, which realigned the ownership of most partnerships to Segal by charging Segal's draw account for the cost of those assets. In fact, this Court's $15 million forfeiture judgment accounts for the amounts that were charged in Segal's draw account for these partnerships. (*See,* Docket No. 1483.)

As explained in Segal's Motion to Modify and above, Hogan intervened in the forfeiture aspect of this case and changed the Government's strategy once he realized Segal may not have to personally forfeit $30 million. Although there was no rational purpose to litigate the ownership of the restrained assets since the Government's position had always been that Segal owned virtually everything, Segal now knew he would have to put up a fight to have any chance of succeeding, since the Government's new position, which was completely contrary to the position Hogan took at trial, was that a significant portion of the restrained assets were owned by Near North. Accordingly, the Parties began preparing for the bifurcated hearing.

To prepare for the ownership hearing, Segal contacted the general partners of the restrained partnerships several times to obtain proof of his ownership. As stated previously, only three would talk to him in light of the Government's restraining orders. In fact, one of the general partners said this Court's restraining orders prevented him from speaking with Segal and that he did not want to be hassled by the Government. (*See,* Affidavit of Michael Segal, attached hereto as Exhibit 12.) Segal also reached out to the insurance carriers who had issued the restrained insurance policies. But the insurance carriers also refused to talk to Segal because of the Government's restraining orders. Similarly, when Segal contacted Merrill Lynch regarding his ERISA accounts, Merrill Lynch would not talk to him. (*Id.*) Segal, through counsel, then contacted Larry Boysen, the Deloitte auditor who prepared Government Trial Exhibit 41. Boysen provided Segal with an affidavit confirming that Exhibit 41 was not a planning exercise concerning what should happen, but instead actually reflected what happened (*i.e.,* Segal was charged for the assets that were transferred to him and thus, Segal owned all but four of the restrained partnerships). Boysen described the audit, including how Deloitte reached its conclusions in Government Trial Exhibit 41. He also confirmed that there were work papers

supporting those conclusions. (*See,* Affidavit of Lawrence Boysen, attached hereto as Exhibit 13.) Boysen's confirmation corroborates the similar testimony at trial reflecting that work papers existed. (*See, e.g.,* Tr. 960, 1082, 1091, 1101, 1147, 1275, 1277, 1280, 1302, 5920.) Thus, Segal subpoenaed Deloitte to obtain those work papers and through phone calls and e-mails requested the Government to allow his counsel to review the Deloitte work papers. The subpoena to Deloitte sought all work papers supporting the Government's Trial Exhibit 41. Neither the Government nor Deloitte produced those work papers. Notwithstanding Segal's multiple requests for those work papers and the Government's obligation to produce them, Hogan failed to turn them over. Such conduct, consistent with Hogan's conduct in *Boyd* and *Fields*, amounts to a *Brady* violation. Similarly, when Segal asked Deloitte to turn over the Boysen Government Exhibit 41 work papers, they did not do so.

Knowing that the work papers and Boysen would support the asset ownership position the Government took at trial (which was that Segal owned virtually all of the restrained assets), Hogan interfered with Segal's efforts to obtain Boysen's testimony. For example, although Boysen had given Segal an affidavit consistent with Government Exhibit 41 and Deloitte's testimony at trial, as the hearing approached, Boysen, after he was contacted by Hogan, started backtracking on both the statements he made in his Affidavit and the statements he made in Government Trial Exhibit 41.[26] Hogan also took depositions in a case relating to Joy Segal's efforts to regain possession of her restrained assets. Segal did not receive notice of these

[26] After Hogan's visit, Boysen also began contradicting both the Government's trial witnesses who testified that there were work papers reflecting that Segal's draw account had been charged for the partnership realignment and Exhibit 247 (an analysis of Segal's draw account), showing the changes on Segal's draw account. To the extent Near North had advanced money to pay for partnerships or other interests that were now in Segal's name, per Government Trial Exhibit 41, Segal's draw account was charged to reflect these Near North payments. Besides the Government's misrepresentations, Exhibit 247 and Deloitte's work papers supporting Exhibit 41 would support Boysen's accounting entries and Segal's corresponding payments.

depositions and was not able to attend through counsel to protect the record. Hogan then sought to use this evidence against Segal.

Prior to the scheduled ownership hearing, the Government invited Segal to review the documents it intended to use at the ownership hearing. Segal's counsel reviewed and copied those records. However, the Government's "ownership records" were incomplete, despite the Government being the only party with the ability to retrieve information regarding the ownership of assets and despite the fact that, as explained above, the Government previously subpoenaed all entities for that information and should have had that information in its possession. (*See, e.g.,* Group Exhibit 14, comprising of certain of the Government subpoenas and responses.) Conspicuously absent from the Government's documents were the actual subpoenas and the Deloitte work papers supporting Government Trial Exhibit 41. Although the Government turned over a few boxes in connection with the hearing, a high percentage of those documents were in duplicate form. Moreover, those documents included random accounting entries that had little or no relevance to asset ownership, let alone any significance toward asset valuation. Further, no copies of the insurance policies were turned over. At the very least, Hogan's conduct constitutes a probable *Brady* violation.

Moreover, the records which the Government turned over reflected that some of the restrained assets were nonforfeitable ERISA accounts, including a Principal account and a Merrill Lynch account that was funded prior to the forfeiture date. On December 7, 2012, Segal's counsel, Ed Joyce, wrote Hogan expressing Segal's belief that Segal's ERISA accounts fell outside of the forfeiture proceeding and thus, were not forfeitable. (Ex. 15.) Hogan responded that the ERISA accounts were subject to forfeiture.

As the hearing quickly approached, Segal's hands were tied. Believing he owned the restrained assets that Hogan now claimed were owned by Near North, but without the ability to speak to the general partners of those limited partnerships, the issuers of the restrained insurance policies and the custodians of the financial accounts regarding ownership, without his personal records and personal computer (which the Government took and kept) and without the money to hire experts to determine asset valuations, Segal turned to settlement discussions. The Parties met several times to discuss settlement. In most of those settlement meetings, Hogan was the Government's spokesperson. He was usually belligerent. As Segal's counsel (Judge Marc Martin, Edward Joyce and Jennifer Doherty) tried to explain Segal's settlement posture, Hogan often times screamed profanity across the negotiating table.

As the Government acknowledges in its Response, in preparing for the bifurcated hearing and in their settlement discussions, the Parties relied on the schedules prepared by the Government identifying the restrained assets and the Government ascribed ownership and valuations of those assets. The Government said it was restraining $47.5 million in assets, including partnership investments, distributions from Segal investments, financial accounts, etc.

It is disingenuous for the Government to argue that the first hearing was to determine the ownership of $47.5 million of restrained assets because (a) the Government told the jury during the trial and during the post-conviction forfeiture hearing that Segal owned all those assets, and (b) the $47.5 million aggregate value was pure fiction. Had the Government not abandoned its trial and forfeiture hearing positions , only one hearing would have been needed and that was because the asset valuations had not been determined by the Government, although it had nine years to do so. But even that hearing should have been unnecessary since the Government was

restraining more than $15 million in Segal cash which could have been used to satisfy the forfeiture judgment.

The Government knew its values were low as evidenced by its own internal charts. For example, the 2007 schedule, attached hereto as Exhibit 6, shows that the value of Sheridan House Associates should have been at least $3 million. Yet, the Government never changed the $750,000 value of Sheridan House Associates on its 2013 schedules which the Government required the Parties to use when determining how Segal would pay his $15 million judgment. According to the Government's 2007 schedule, Sheridan House should have been listed in the 2013 schedule as being worth at least $3 million -- as opposed to the $750,000 value the Government ascribed to it.[27] As explained below, Segal released his interest in Sheridan House to the Government to satisfy $750,000 of his $15 million forfeiture judgment. Based on the Government's own internal information, information not shared with Segal or this Court, Segal should have received at least a $3 million credit for this asset. He did not. Sheridan House is an example of the second reason why the Government's approximate values were wrong. This is because the Government did not update its value schedules for nine years, even though it possessed information regarding each asset and was the only party with the ability to talk to the general partners, managing members and insurance companies. The Government's argument that the values in the January 2013 schedules used by the Parties to settle were furnished by the general partners of the partnerships is not supported by the record and is simply not true.

[27] As the Government's internal schedule reflects, there was an offer to purchase Sheridan House Associates for $510,000, and then a subsequent offer to purchase Sheridan House Associates for $750,000. Hogan takes credit for increasing the value of this asset from $510,000 to $750,000. But this is all a façade. In reality, the Government's own schedule reveals that even the $750,000 value was too low, since that offer did "not include [the] substantial equity in [the] building -- value should be $2.0 to $3.0 MM." Who would make an offer to purchase an asset without seeking to purchase the substantial equity in the asset? The Government could have easily obtained an appraisal at any time, but there is no evidence that it ever attempted to appraise any assets. This Sheridan House Associates situation proves the reason why Hogan did not ever seek follow up valuations on any assets since 2007. On information and belief, Hogan's $750,000 value was just a cover up for a severely unvalued insider purchase that he tried to effect in approximately 2006.

Even though the January 2013 schedules had not been updated and only reflected the unauthenticated 2004 valuations the Government placed on those assets, those were the valuations that Segal had to accept if he wanted to settle. The Settlement Stipulation, drafted by the Government, was conditioned on Segal accepting the Government's bogus valuations for purposes of the interests he "released" to the Government in order to satisfy his $15 million obligation.[28]

1. The Government Misrepresents the Settlement Discussions.

It is true that the Parties' early settlement discussions were not productive. But that is because Hogan's temper interfered with Segal's reasonable efforts to recoup assets he rightfully owned, while simultaneously paying the Government what he owed in order to satisfy his forfeiture judgment. But, as the hearing approached, Segal had no choice but to reach a settlement with the Government. Segal had lost nearly every motion he submitted to this Court, including each request for a release of funds to pay attorneys and experts to testify at the ownership and valuation hearings. If Segal proceeded to hearing, he risked losing everything.

During the settlement negotiations, Segal was told at first he could select the assets he wanted to use to pay his $15 million forfeiture judgment, and likewise, that he could select the assets that he wanted to keep. The caveat, however, was that Segal had to accept the Government's valuations of those assets.[29]

[28] The way the Government drafted the Settlement Stipulation by having Segal accept the valuations, Hogan was able to protect his misrepresentations concerning those valuations by having Segal waive his rights to challenge those valuations.

[29] The Government criticizes Segal for not complaining about the asset valuations and lack of financial information at the time he settled. But, as explained above, Segal did seek information about his assets and was unable to get it because no one would talk to him and because Hogan's discovery production was incomplete and inaccurate. Therefore, accepting the Government's valuations was the only way the forfeiture would be resolved. However, Hogan claims in his response that these valuations were set by the General Partners. They were not. There is no record evidence to support Hogan's statement. For example, all of the evidence concerning the insurance policies, such as ownership, beneficiaries and corresponding loan values, was never produced. In fact, the only thing Segal can determine from the Government's charts regarding value is that they have not been updated for 13 years. And

Given the Government's take it or leave it offer, Segal had no choice and he, therefore, decided to release his ownership interest in certain assets to pay his $15 million forfeiture. For example, Segal agreed to release his ownership interest in Lincoln Place Associates, which the Government valued at $2.5 million. This would reduce his $15 million obligation to $12.5 million. Segal also released his ownership interest in Elm Street Plaza and Asbury Plaza, each of which the Government valued at $25,000. Segal then decided to use his undisputed ownership of Lakeshore Entertainment Corp, which the Government valued at $2.5 million, to pay part of his $15 million forfeiture. Among the assets Segal decided not to release to the Government was his interest in the Bulls partnerships.

Although Segal was focused on releasing his interest in certain assets in order to satisfy his $15 million forfeiture obligation, the Government's position was that, irrespective of who owned the assets, Segal was only permitted to retain $8.4 million in assets.[30] The Government initially permitted Segal to pick whichever assets he wanted to release, but later, it changed its tune. As the night progressed, even though Segal picked assets according to the Government's terms, the Government told Segal that in order for the settlement to go through, Segal would have to retain his interest in Lakeshore Entertainment and instead transfer to the Government one half of his interest in the Bulls partnerships. But, to make this a palatable offer, the Government agreed that the Government's half of Segal's interest in the Bulls partnerships would be subject to Segal retaining certain acquisition rights. The Government then changed its arbitrary value of

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as explained above, Sheridan House Associates' own documents reflect a manipulated value that was rebutted as too low on Hogan's own document that $750,000 should be $3 million. The only supported values are those concerning the cash accounts. And as explained below, even some of those accounts were not accurately reflected in the Government's schedule.

[30] As explained below, the Government's argument concerning its agreement to give Segal $8.4 million is a red herring. Even if that was the agreement, which it was not, the Government never actually gave Segal that amount of money or assets comprising that sum. To the extent the Government is arguing that the $8.4 million it "gave" Segal was consideration for the Settlement Stipulation, it clear was not and the Settlement Stipulation should be reformed. *See, Contempo Design, Inc. v. Chicago and Northeastern Illinois District Counsel of Carpenters*, 226 F.3d 535 (7th Cir. 2000).

Lakeshore from $2.5 million to $1.6 million, further demonstrating how arbitrary and unsupported its valuations were. This conduct presents an example of how Hogan coerced Segal into a take it or leave it situation. The Government reneged on its offer that Segal could select whichever assets he desired, but Segal had no choice but to go along.

Hogan, knowing of Segal's sensitivities towards his family (*e.g.,* Segal had filed several motions seeking a release of funds to help care for his family's medical needs), played on Segal's emotions and persuaded him to take a purported $2 million insurance policy which would ultimately benefit his family. Hogan represented during the settlement negotiations and through the Government's schedules that Near North owned every insurance policy that had been restrained. But Hogan never produced any insurance documents reflecting ownership, beneficiaries or other details of the policies. Because the insurance companies would not speak with Segal during the settlement negotiations or thereafter until he purchased the policies, Segal had to rely on Hogan's representation that the insurance policies were something Near North owned and could "give," "transfer" or "sell" to Segal. But, as Segal explained in his Motion to Modify, this insurance policy was neither owned by Segal nor Near North, and there was no way Near North could make Segal the owner of the policy. Instead, this policy was purchased in 1987, and was owned by an insurance trust, prior to any alleged RICO misconduct and is held in trust. Hogan knew this because he had in his possession sufficient information to identify policy information. Although the policies on their face disclosed the identity of the true owners and beneficiaries of the policies, those policies were not shown to Segal.[31] In the limited documentation that was furnished to Segal as part of the settlement, the Government

[31] In fact, even after the Government was to release the two insurance policies to Segal as part of the Settlement Stipulation, Segal still had immense difficulties in obtaining information from the insurance carriers because of the Government's restraining orders and instructions to not communicate with Segal or his counsel. (*See, e.g.,* Docket No. 1758.)

conspicuously withheld documents supporting the ownership and beneficiaries of the insurance policies. More concerning is the fact that when the Government finally ordered the turnover of the information concerning the policies that Segal retained as part of the settlement (*i.e.,* as part of the alleged $8.4 million the Government "allowed" him to keep), the face of the policy revealed that neither Near North, nor Segal, had any rights in the policy. Instead, the owner of the policy was Harvey Silets, as Trustee. (*See, e.g.,* Exhibit 16.) Thus, although the Government's position is still that it gave Segal $8.4 million as part of the settlement, it really shortchanged Segal by $2 million because it "gave" Segal a $2 million asset (*i.e.,* the insurance policy) that it did not own or control, and which could not have provided any benefit to Segal.[32]

Similarly, of the "$8.4 million" the Government allegedly "gave" to Segal, an additional $2 million was comprised of Segal's nonforfeitable ERISA accounts which the Government never could have collected. By retaining these accounts, as opposed to any of his other financial accounts, Segal incurred a $400,000 tax liability.[33] So, even if you look at the settlement as the Government does, *i.e.,* that it agreed to give Segal $8.4 million, it really shortchanged Segal by at least $4 million. These are just further examples of Hogan's deliberate misconduct.

Then, even though Joy Segal owned the East Bank Club limited partnership interest and had been paying taxes on distributions she received from the East Bank Club for many years before her interest was restrained (*see, e.g.,* Exhibit 17), and even though the Government had documents reflecting that Joy Segal owned this asset, Hogan restrained it and kept all distributions from the East Bank Club and claimed that East Bank Club belonged to Near North and thus, if Segal wanted it, he would have to pay $345,000 (the value the Government had

[32] Only Hogan knew the true nature of these policies. For example, Hogan withheld information about insurance policies that have dual ownership or beneficiaries other than Near North. It should come as no surprise that Hogan's conduct continues to interfere with Segal and others.

[33] Hogan's actions in forcing Segal to accept accounts which never should have been on the table further demonstrates Hogan's continued punishment of Segal.

placed on East Bank Club) for yet another asset that should have never been on the table. Segal did pay the Government $345,000 for East Bank Club, but the Government did not have the right to sell the asset.

The foregoing vindictive conduct Hogan engaged in throughout the settlement negotiations is just another example of his prosecutorial misconduct. Hogan misrepresented the ownership and value of the restrained assets, which Segal had no ability to discover on his own, in order to induce Segal to enter into the settlement. Segal is asking this Court to exercise its independent duty to determine the ownership of the restrained assets and to return to Segal the money which the Government has collected in excess of Segal's $15 million forfeiture obligation.

2. The Parties Reached a Settlement and Although the Government, Unbeknownst to Segal, Received an Enormous Windfall, Hogan Continued His Efforts to Punish Segal.

As a result of the Parties' settlement, the Government received at least $20 million more than the $15 million Segal was ordered to forfeit. Segal, however, was unaware of Hogan's misrepresentations concerning the ownership and value of the restrained assets (*e.g.,* the fact that Segal selected an insurance policy allegedly worth $2 million that Hogan represented the Government was able to "release" back to Segal, when in fact the Government had no right to restrain that policy in the first place).

a. The Government Intentionally Obstructed Segal's Timely Access to Funds Which It Agreed to Release to Segal Pursuant to the Settlement.

Pursuant to Paragraph 9 of the Settlement Stipulation, the Government was to release $2,150,000 in cash from Segal's restrained assets once the settlement was approved.[34] However,

[34] Although, as explained above, these ERISA accounts never should have been restrained in the first place since ERISA accounts are not subject to forfeiture, Segal was forced to negotiate for the release of those ERISA accounts

Hogan intentionally obstructed Segal's timely access to these funds. For example, one month after the settlement was approved, the Government still refused to release the funds, so Segal was forced to file a motion seeking the release of those funds.

Hogan argued that, of the $2,150,000 to be released to Segal, approximately $1,600,000 should continue to be restrained. Specifically, the Government argued that $851,120.71 should be withheld to satisfy Segal's restitution judgment (even though the restitution judgment was entered jointly and severally against Near North and Segal) and another $750,000 should be withheld to force Segal to sign paperwork transferring his ex-wife's interest in Sheridan House to the Government -- something that was never required as part of the Parties' Settlement. Although the Government made no claims to the remaining $550,000 due Segal, it refused to release that $550,000 to Segal until April 24, 2013 (two and one half months after the settlement was approved), and only after Segal was required to file several more motions with this Court, which Hogan opposed, seeking a release of those funds.

On May 21, 2013, this Court found that Segal was only responsible for $325,000 of the $851,120.71 restitution judgment (because Near North was equally liable).[35] Although it had absolutely no right to do so, the Government continued to hold the remaining $526,000 it claimed was necessary to satisfy Segal's restitution obligation until more than four months later. On September 27, 2013, after Segal's purchase option rights under the Settlement Stipulation had lapsed, the Government released the remaining $526,000. And the release was only after

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because he needed cash to exercise his other rights under the Settlement Stipulation (*e.g.,* buying additional insurance policies and buying back his economic interest in the Bulls partnerships). Apart from this cash, the only other cash Segal had to his name (since everything else had been seized by the Government) was his *de minimis* monthly Social Security check, at least a portion of which was used to pay to the Government to satisfy his restitution judgment and tax liens.

[35] It is worth noting that, although Segal paid his restitution obligation in full, the entities that received restitution signed affidavit denying they were entitled to the money. (*See, e.g.,* Exhibit 18.)

Segal was forced to file several additional motions (even though this Court had previously ordered that the money be released to Segal).

The Government also improperly withheld $750,000 for months. After the Settlement Stipulation was agreed to, but before it was signed and approved by this Court, Hogan began to interfere with Segal's rights under the agreement. For example, Hogan was trying to sell Segal's interest in the Sheridan House Associates. In working with an inside party to sell this asset, Hogan discovered that Segal's ex-wife, Joy Segal, still owned 11% of this partnership.[36] Hogan developed the false argument that an error was previously made in drafting part of Joy Segal's settlement agreement. Specifically, Joy Segal's settlement agreement only released her claims to Michael Segal's interests in assets that were restrained to satisfy the $15 million forfeiture judgment. Her settlement agreement did not release any interests that she independently had in any asset, including her 11% interest in Sheridan House Associates. The Government knew Joy Segal and Michael Segal each independently owned an 11% interest in Sheridan House Associates. Although Segal agreed to and did release his 11% interest, Hogan wanted to sell a 22% partnership interest in Sheridan House Associates. The plain language in Joy's settlement agreement prevented him from doing so.

To remedy the situation, Hogan would either have to modify Joy Segal's settlement agreement (which had been approved two years prior) or obtain her agreement to give up her 11% interest. Consequently, Hogan intimidated Joy Segal into signing a release of her 11% interest in Sheridan House Associates to Segal for no consideration by threatening that Michael

[36] The Government's schedules have always reflected that Segal only owned an 11% interest in Sheridan House Associates and that is all he agreed to transfer to the Government. The proposed buyer, also the General Partner of Sheridan House Associates, informed Hogan that his books and records reported that Joy Segal had an 11% interest in Sheridan House Associates, and further, that Joy Segal's distribution checks had been given to the U.S. Marshal as part of Segal's forfeiture. Like East Bank Club, the Government took all distributions that Joy Segal was entitled to receive.

Segal's forfeiture settlement would not go through if she refused to assign her 11% interest to Segal. Out of fear that Segal's agreement would not go through, Joy Segal signed an assignment releasing her 11% partnership interest in Sheridan House Associates to Michael Segal.

When Segal refused to accept Joy Segal's assignment of this interest, Hogan unlawfully and vindictively threatened to and did withhold $750,000 in cash due to Segal per the terms of the Settlement Stipulation. Although Segal fully complied with his obligations under the Settlement Stipulation and released *his* interest in Sheridan House Associates both by the terms of the Settlement Stipulation and by signing an assignment prepared by the partnership's General Partner, and despite the Court ordering the Government to release the $750,000, the Government did not release the $750,000 to Segal until January 2014, eleven months after the Settlement Stipulation was approved by this Court. In other words, the Government did not release the $750,000 to which Segal was entitled as of February 2013 until nearly a year later, and then only after Segal unnecessarily incurred thousands of dollars in attorneys' fees in preparing motion after motion to recover the money to which he was entitled. This is just another example of Hogan's deliberate misconduct designed to unjustifiably punish Segal. The Government knew since the time it seized Sheridan House Associates, and most definitely at the time the Parties reached the Settlement Stipulation, that Segal only owned an 11% interest and that Joy Segal owned an 11% interest. Yet Hogan engaged in months of unnecessary and improper litigation when he discovered that Joy still owned 11% of Sheridan House Associates. Continuing on as a line prosecutor with his control over the USA forfeiture department and process, and showing his arrogance to this Court, Hogan interfered with Joy and Michael Segal's due process rights. Both Joy Segal and Michael Segal were victims of Hogan's vindictive misconduct.

Ultimately, Segal filed seven pleadings in order to recover the funds which the Government agreed to release to him as part of the settlement. (*See,* Docket Nos. 1708, 1712, 1717, 1731, 1733, 1742 and 1753.) This course of conduct, which was a direct result of Hogan's desire to continue punishing Segal, delayed Segal's receipt of the funds to which he was entitled, directly interfered with Segal's option rights under the settlement, needlessly caused Segal to incur substantial fees and unnecessarily wasted this Court's time and resources.

b. The Government's Deliberate Delay In Releasing Funds and Necessary Information to Segal Interfered With Segal's Other Rights Under the Settlement Stipulation.

Pursuant to the Settlement Stipulation, Segal had options to purchase certain insurance policies and to repurchase an economic interest in the Bulls partnerships which the Government acquired as part of the settlement. Segal had six months to exercise these options.

Hogan deliberately interfered with Segal's access to his funds (as described above) and critical information regarding the insurance policies Segal had an option to acquire, which prevented Segal from timely exercising his rights under Paragraph 9(e) of the Settlement Stipulation with respect to the insurance policies. Specifically, immediately after the settlement was approved by this Court, Segal repeatedly sought information from the insurance companies (*e.g.,* who owned the policies, what liens existed on the policies, cash surrender values, etc.) to determine whether it made economic sense to exercise his options to purchase the remaining policies. None of the insurance companies would talk to Segal in light of the Government's restraining orders. Segal asked the Government on several occasions to assist him, consistent with Paragraph 19 of the Settlement Stipulation, with getting information from the carriers, including by lifting the restraints in place that were preventing the carriers from speaking with Segal or his agents. But Hogan continued to punish Segal and refused to cooperate so that the

insurance companies refused to speak with Segal. As Segal's option deadline neared, Segal sought relief from this Court to extend the deadline under the circumstances.

Minutes prior to presenting his motion for relief concerning the insurance deadline, Hogan met with and convinced Segal and his counsel that Segal could have more time to decide which policies he wanted to purchase. The Parties represented to this Court that they had dealt with the issue so this Court entered and continued Segal's motion for more time to exercise his insurance option until after the deadline. Then, when Segal decided to exercise his option to purchase the Bulls (discussed below), Hogan retracted his position on the insurance. Segal had neither the funds (because the Government refused to release them) nor information necessary to exercise his option to purchase the insurance before the deadline for doing so lapsed. Ultimately, this Court concluded that it was "unfortunate" that the release of Segal's funds was delayed, which resulted in Segal being unable to timely exercise his insurance options, but granted Segal no relief.

As it concerns the Bulls partnerships, the Government sought to moot Segal's option to purchase by obtaining a last minute buyer and a purported "offer to purchase" the Bulls partnerships for nearly 1.5 times what Segal was required to pay under the Settlement option. Although the Government retained the right to obtain a higher price for the economic interests which Segal released in the Bulls partnerships, the Government could only trump Segal's option exercise by obtaining a "commercially reasonable, responsible cash offer to purchase" these interests by August 13, 2013. The Government presented an "offer to purchase" literally hours before Segal's deadline to exercise his right of first refusal, which offer clearly stated the offer "is not intended to be binding on any party." Hogan knew this offer was bogus. His conduct in securing this alleged "offer to purchase" was deliberately done to further punish Segal. The

Government persisted and this Court allowed the "offer" to proceed even though the so-called offer said it "is not intended to be binding on any party." The Government did not disclose to the last minute buyer that it only had an "economic" interest and not a partnership interest to sell. Not surprisingly, the Government's purported "offer to purchase" never came to fruition.[37] On November 13, 2014, even though no closing had occurred on the Government's purported "offer to purchase" and the purchaser had withdrawn his offer, this Court issued an order denying Segal's Motion to Compel the closing of his option to purchase. The Seventh Circuit reversed that decision by this Court.

c. In The Months After the Settlement Was Approved, Hogan Continued His Vindictive Behavior Toward Segal By Claiming Segal's Partnership Distributions.

Ten months after the Settlement Stipulation was approved and ten months after Segal satisfied his $15 million forfeiture judgment in full, the Government argued that it was entitled to a turnover order relating to certain distributions made by the 1028 North Rush Street Corporation and River Road Associates partnerships -- *i.e.,* assets which Segal always indisputably owned. Those distributions were neither held by, nor ever transferred to, the U.S. Marshal and therefore, they were not listed on Exhibit A of the Settlement Stipulation (*i.e.,* the exhibit identifying the restrained assets at issue). Instead, those distributions were held by counsel to those entities. (R. 1834, 1843; Exhibit 20.)

[37] The offer was made by Peter Huizenga, of Waste Management. After the Seventh Circuit reversed this Court's decision on the Bulls (discussed *infra*), Huizenga was interviewed by the Chicago Tribune and told them that although he could not remember who brought the Bulls investment opportunity to him, he lost interest in the deal after he negotiated with the Bulls and learned of the back story to Segal's punishment. Huizenga stated, "Why was the government doing this to him?" Huizenga said of Segal. "I didn't want any part of that ... I wasn't interested in doing harm to Mickey Segal."" This further demonstrates that Hogan's last minute efforts to obtain a buyer to punish Segal were motivated by pure animus. Even Huizenga was duped by the Government's misconduct. (*See,* Exhibit 19 - http://www.chicagotribune.com/business/ct-segal-bulls-court-0127-biz-20160126-story.html.)

The Government argued without specific reference to any paragraph in the Settlement Stipulation that the Settlement Stipulation contemplated that all partnership distributions made from the entry of the restraining orders in 2005 until February 13, 2013 (when this Court approved the Settlement Stipulation) were to be retained by the Government to satisfy the "forfeiture judgment and enormous debts of the defendants." (R. 1843 at p. 2.) But the Settlement Stipulation only related to the satisfaction of Segal's forfeiture obligation. Nowhere in the Settlement Stipulation is there any reference to using Segal's assets to pay debts allegedly owed by some other defendant.

The Government again falsely argued that the distributions it was seeking should go to the U.S. Marshal to satisfy creditors' claims, tax claims[38] and various outstanding obligations (presumably of Near North), even though after forfeiting his 100% interest in Near North, Segal is not legally responsible for satisfying any claims against NNNG. (*See,* January 9, 2014 Transcript of Proceedings at p. 9.)

On January 9, 2014, even though Segal had satisfied his forfeiture obligation in full, this Court entered an order granting the Government's request which ordered that "the partnership distributions maintained in the custody and control of the law firm Martin, Brown, Sullivan, Roadman & Hartnett ("Martin Brown") on behalf of River Road Associates and 1028 North Rush Street Corporation since entry of this Court's restraining orders shall be transferred to the custody of the United States Marshal." (*See,* January 9, 2014 Order.)

[38] Contrary to the Government's arguments, the Commissioner of Internal Revenue agreed that "there are no deficiencies in income tax due from [Segal]" and that Segal "is not liable for the fraud penalty under I.R.C. Section 6663." (Exhibit 21.) Also, the Government claims Near North owes federal income taxes, but it never explained why and, to Segal's knowledge, no federal tax liens were asserted against Near North.

C. The Parties Appealed From Several Rulings of This Court Concerning The Settlement Stipulation.

On appeal, the Parties asked the Seventh Circuit to review this Court's decisions relating to: (a) Segal's option to purchase the remaining insurance policies, (b) Segal's option to purchase the Bulls partnerships, (c) the turnover of Segal's 1028 North Rush Street and River Road Associates distributions, and (d) Segal's interest in Rush Oak Corporation stock. The first appeal, concerning this Court's ruling that Segal was entitled to the stock in Rush Oak Corporation was filed by the Government. The Government sought an extension of time to file its Appellate Brief because it did not have Solicitor General approval to proceed with the Rush Oak Corporation appeal. In the meantime, Segal appealed from this Court's decision concerning the turnover of Segal's partnership distributions. The Seventh Circuit consolidated the appeals and ordered Segal to file his Appellate Brief first. Segal filed his brief on April 22, 2014.

The Government did not get Solicitor General approval to pursue its Oak Bank appeal until June 2014. It continued seeking extensions of time to file its consolidated brief on that basis.[39] Then, on September 23, 2014, before filings its response to Segal's partnership distribution appeal, Hogan told Segal's counsel that the Government intended to withdraw its claim to the partnership distributions maintained by the Martin Brown firm and release those distributions to Segal, thus mooting Segal's appeal on that basis.

On January 21, 2016, the United States Court of Appeals for the Seventh Circuit reversed this Court's findings that the Government's "Offer to Purchase" the Bulls partnerships was a "commercially reasonable, responsible cash offer" trumping the exercise of Segal's option to

[39] In addition to these delays, this shows the obstacles Hogan overcame to pursue an appeal over the one issue that Segal was successful on before this Court, even though the substance of the appeal did not present any global or legal issue to the federal government, and it was something the federal government should not have been concerned about (especially since it had been paid the $15 million it was owed). This just further shows Hogan's vindictive punishment, including causing Segal to incur further delays and legal costs.

purchase. *United States v. Segal,* 811 F.3d 857 (7th Cir. 2016). The Seventh Circuit found that "Segal was authorized to purchase the Bulls [partnerships] at the appraised value [*i.e.,* $2,087,500, as set forth in the Parties' Settlement Stipulation because] no acceptable offer [wa]s received by the United States within six months." *Id.* at 261.

As it concerns the Bulls partnerships, Hogan was deliberately trying to either block Segal from exercising his repurchase option or make Segal pay more than he would otherwise be required to pay by Hogan purporting to have a cash buyer for Segal's Bulls economic interests. During oral argument, Justice Hamilton asked why Segal was being held hostage by the Government. Hogan's conduct with respect to the Bulls partnerships caused Segal to incur additional unnecessary fees concerning these appeals, and such conduct unnecessarily further took up the Court's time and resources. Hogan's conduct shows his pure malice against Segal.

D. Hogan is Now Stuck In His Web Of Lies and Tries To Dodge The Issues Presented In Segal's Motion to Modify.

As set forth above, Hogan has engaged in serial prosecutorial misconduct. He has engaged in known falsehoods that were intended not only to mislead Segal, but also this Court and the Seventh Circuit. And up until now, he has gotten away with such misconduct. Segal paid his forfeiture judgment more than four years ago. He is not trying to undo or rescind the Settlement Stipulation which resulted in that payoff. Rather, he is asking this Court to exercise its authority under FRCP 32.2 to oversee the objective of the settlement, *i.e.,* for Segal to pay the Government his $15 million forfeiture judgment and no more. The facts set forth herein demonstrate Hogan's repeated due process violations which cannot be tolerated.

Under the facts set forth here, any reasonable prosecutor would have determined that Segal paid his $15 million, plus millions more, and would have refunded the excess to Segal. Rather than addressing the merits of Segal's arguments, which demonstrate clearly how the

Government has received at least $20 million more than the $15 million to which it was entitled, and which further show that Segal did not receive the "$8.4 million" Hogan said the Government paid him, the Government instead accuses Segal of mischaracterizing the asset values. Hogan states that Segal's arguments are "silly," "just plain made up," "delusional fantasy," "false," etc. This is Hogan's only response to Segal's factual arguments.

The chart that follows demonstrates that the Government received far more than the $15 million Segal owed because of the Government's woefully deficient asset valuations.

Asset Segal Released to the Government to Satisfy $15 Million Forfeiture	**Value Government Ascribed to the Asset as Part of the Settlement**	**Amount in Distributions Received From Asset Since Settlement**	**Amount Received for Sale of Asset by Government Shortly After Settlement**	**Windfall To Government[40]**
Lincoln Place Associates[41]	$2,500,000	$604,891.65	$9,774,857.10	$7,879,748.75
Asbury Plaza	$25,000	$166,250[42]	(has not been sold)	$166,250
Elm Street Plaza	$25,000	$104,545.45[43]	(has not been sold)	$104,545.45
Peterson Plaza[44]	$190,000	$157,320.03	$1,959,217	$1,926,537.03

Another example of the Government receiving more than it was entitled to pursuant to the Settlement is the fact that, of the "$8.4 million" it contends it "gave" to Segal, $4 million did not benefit him. Segal received $2 million of his own ERISA assets that should never have been a component of the forfeiture negotiations. Nor should they have been restrained. Segal paid another $2 million to the Government for an insurance policy the Government never had any

[40] In addition to the windfall described in this chart, the Government has made a substantial windfall as it concerns Sheridan House Associates, discussed *supra.* Not only did the Government undervalue Sheridan House Associates in its schedules by at least $2,250,000, but since settling, the Government has received at least $573,614.80 in distributions from this partnership -- *i.e.,* a partnership which Hogan falsely claimed was only worth $750,000 to begin with.
[41] *See,* Exhibit 9.
[42] *See,* Exhibit 22.
[43] *See,* Exhibit 23.
[44] *See,* Exhibit 10.

right to sell to Segal in the first place. Hogan knew or should have known that neither Near North nor the Government had any ownership interest in the policy the Government sold to Segal. Thus, Segal gave up $4 million worth of assets to the Government in exchange for assets that either should not have been restrained or the Government had no right to sell.

The Government claims it relied on the asset owners-of-record or verifiable financial records to set the asset valuations, and further, that Segal at all times had access to this information. For the reasons explained above, Segal did not at any time have access to this information or these records. In fact, as stated above, Segal repeatedly sought and was denied this information. Second, even if the Government did contact owners-of-record, why would their opinion on value have any relevance since they were trying to purchase those interests from the Government?

For example, in its Response, the Government suggests that the $750,000 value placed on Sheridan House Associates was essentially a gift to Segal, since the General Partner of Sheridan House had previously offered to purchase Segal's interest for $510,000, but the Trustee's business advisor protested saying that amount was too low. But this argument disingenuously ignores the fact that the Government's internal schedule showed the $510,000 offer was rejected because Sheridan House Associates was worth $3 million. (*See,* Exhibit 6.) Even though the Government concluded in 2007 that Sheridan House Associates was worth $3 million or more, the Government's 2013 schedule values Sheridan House Associates at $750,000. (Ex. 2.) Thus, when Segal released this asset to the Government, it was based on the assumption that it was worth the $750,000 the Government represented on its 2013 schedule, not the $3 million or more it was really worth (which the Government knew of, but Segal did not). Thus, as it concerns Sheridan House Associates, the Government has obtained an asset worth $2,250,000 more than

the $750,000 it represented Sheridan House Associates was worth during the settlement negotiations. In other words, Hogan scammed Segal out of an additional $2,250,000.

The Government's Response also accuses Segal of lying about the verifiable and quantifiable financial accounts. For example, the Government claims that Segal falsely asserts that the Government undervalued a Merrill Lynch account by $438,000. Segal has made no false assertions. First, his assertions are based on the only verifiable account statements to which he had access. Second, although Segal cannot access all supporting statements, and even if his arguments failed to take into consideration, as the Government argues, that Segal's attached statement for Account No. 93450 reflects both Account Nos. 93450 and 93451, it does not change the result. Even the Government's Merrill Lynch exhibit, assuming it is complete and correct, shows that the Government undervalued the Merrill Lynch accounts on its schedules by at least approximately $70,000. For example, the Government argues that these balances equal $906,932, when the statement Segal attached to his brief reflects the account balance is at least $973,000. Regardless of whether the financial statements were sent to the Trustee or the Government, they were not accurately reflected on the schedules furnished to Segal by the Government. The Government's arguments, and not Segal's, are false. This is just another example of the windfall the Government received at Segal's expense.

To show that Segal was fully apprised of and involved in the management and disposition of his restrained assets, the Government argues that Segal could have been involved in the sale of his Highland Park home, but he chose not to be. This argument completely ignores the fact that Segal was in federal prison with limited ability to communicate with his lawyers. Certainly he had no ability to monitor the Government's conduct in any meaningful sense.

The Government's argument that Segal cannot now claim that the Government's valuations were completely arbitrary ignores the fact that there was nothing Segal could do with respect to valuing his assets. He was not only in federal prison, but he also was repeatedly denied access to any of his money to pay counsel and necessary experts. Although Segal disagrees with the Government's value of his Highland Park home, the real issue is that the process followed by the Government in selling his home resulted in the home being sold for $5 million less than it was actually worth. The Government sold Segal's home for $17,000,000, and shortly thereafter, the buyer resold it for $22 million. Further, the Government's argument with respect to the percentage of Segal's ownership of the Highland Park home ignores the record created by Hogan during the forfeiture hearing. As stated previously, Hogan told the jury that the Highland Park belonged to Segal. The Government claimed no interest in the Highland Park home during the forfeiture hearing. Consequently, both the net proceeds received by the Government and the Government's current position on the extent to which Segal owned the Highland Park home demonstrates that Hogan will tell any story that will permit him to punish Segal. Regardless of the Government's failure to sell Segal's Highland Park home for its true value, the biggest problem is that the Government gave Segal no credit towards the payment of his $15 million forfeiture for the $7 million plus in cash it received from the sale. Once again, the Government received a windfall at Segal's expense.

Finally ignoring its own trial testimony and evidence, and ignoring its forfeiture hearing schedules, the Government argues that Segal is lying about his ownership in the Bulls partnerships. These arguments should be rejected. As explained more fully in Segal's Motion, the Government should be estopped from taking a position now that is inconsistent with the position it took at trial and during the forfeiture hearing. At trial, the Government told the jury

Segal owned the Bulls. (Government Trial Ex. 41.) Moreover, the partnership documents which are probably the best example of who is the owner of this interest, which the Government has had in its possession since 2004, reveal that Segal is and always has been the partner/owner.

Just as its arguments in response to Segal's legal arguments fail, the arguments the Government raised in response to Segal's factual arguments, to the extent it even addresses them, likewise fail. The Government's conduct in this case, and especially Hogan's conduct, amounts to a fraud on Segal and a fraud upon this Court. *See, e.g., Matter of Whitney-Forbes, Inc.,* 770 F.2d 692 ("Fraud on the court involves a particular type of fraud which is "directed to the judicial machinery itself," *Bulloch v. United States,* 721 F.2d 713, 718 (10th Cir. 1983), and which involves circumstances where the impartial functions of the court have been directly corrupted. 11 C. Wright & A. Miller, *supra,* at §2870, p. 254.) Hogan engaged in this conduct because of a personal animus against Segal. It is part of his vindictive nature. He developed a personal animus toward Segal very early on, after Segal exposed Hogan to serious prosecutorial misconduct, and Hogan's mission has been to punish Segal ever since. This punishment must come to an end now.

CONCLUSION

For the foregoing reasons, Segal respectfully requests this Court to grant his Motion to Modify. The aforementioned abuses and violations of law demonstrate a clear and unlawful pattern of vindictiveness and piling on of penalties and punishments by AUSA Hogan because Segal exercised his legal rights and sought to expose Hogan's misconduct directed at him and his company. Instead of bringing these financially destructive proceedings to a conclusion, Hogan breached the Settlement Stipulation and demonstrated again and again that he will continue to act unlawfully until appropriate action against him.

At the very least, the Government should be ordered to: (1) provide an accounting of all of the money it has received since February 13, 2013 as a result of the assets it received from Segal through the Settlement Stipulation; (2) refund the $2 million Segal paid for the insurance policy which the Government had no ability to transfer to Segal since neither the Government nor Near North owned the policy; (3) refund to Segal the $345,000 which he paid the Government for the East Bank Club limited partnership interest which was owned by Joy Segal and not Near North or the Government; and (4) reimburse Segal for the legal fees he incurred seeking to enforce his rights under the Settlement Stipulation and for seeking to have this Court perform its duties under FRCP 32.2.

Dated: April 21, 2017

Respectfully submitted,

MICHAEL SEGAL,

By: /s/ Edward T. Joyce

Edward T. Joyce
Jennifer L. Doherty
The Law Offices of Edward T. Joyce & Associates, P.C.
135 South LaSalle Street, Suite 2200
Chicago, Illinois 60603
312.641.2600
ejoyce@joycelaw.com
jdoherty@joycelaw.com