

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

TODD DISNER)	COMPLAINT FOR
&)	DECLARATORY RELIEF
DWIGHT OWEN SCHWEITZER)	
)	
Plaintiffs)	Civil Action No.:
)	
vs.)	
)	
THE UNITED STATES OF AMERICA)	
c/o United States Attorney's Office)	
555 Fourth Street N.W.,)	
Washington, DC 20530)	
)	
Defendant)	
<hr style="width: 40%; margin-left: 0;"/>)	

COMPLAINT FOR DECLARATORY RELIEF

1. This action arises under the Fourth Amendment to the United States Constitution and 18 U.S.C. § 981(a)(1)(C).
2. The plaintiffs are residents of the state of Florida and the acts complained of occurred within the state of Florida as more fully described herein.
3. On or about August 8th 2008, the defendant, purporting to be acting under the authority vested in them pursuant to a verified complaint seeking a **Forfeiture in Rem**, pursuant to the authority granted under Title 18 U.S.C. 981 et. sec. and bearing case number 1:08-cv-01345, came to the state of Florida and confiscated money, un-cashed checks, unendorsed checks, books, computers and other assets and records of a business known as 'Ad Surf Daily' (**hereinafter 'ASD'**).

4. The Complaint alleged that the forfeiture was based upon the business conducted by ASD being an illegal Ponzi Scheme, a copy of which is attached. **See Exhibit 1**
5. Among the items seized were the accounts, funds and records specifically identified as belonging to the plaintiffs which were separately accounted for on the computer programs and data seized as they were members of ASD, having bought ad packages as specified in the rules and regulations of the ASD business model.
6. Consistent with the rules and regulations applicable to the plaintiffs' their information was confidential and could only be accessed by them through the use of their password protected account with ASD and their accounts were separate and distinct from any other individuals or businesses who were participants in the ASD advertising program.
7. The defendant, in carrying out its' activities as alleged herein was operating under the following statutory requirements:

Rule G. Forfeiture Actions In Rem

(1) SCOPE. This rule governs a forfeiture action in rem arising from a federal statute. To the extent that this rule does not address an issue, Supplemental Rules C and E and the Federal Rules of Civil Procedure also apply.

(2) COMPLAINT. The complaint must:

- (a) be verified;**
- (b) state the grounds for subject-matter jurisdiction, in rem jurisdiction over the defendant property, and venue;**
- (c) describe the property with reasonable particularity;**
- (d) if the property is tangible, state its location when any seizure occurred and, if different, its location when the action is filed;**
- (e) identify the statute under which the forfeiture action is brought; and**
- (f) state sufficiently detailed facts to support a reasonable**

belief that the government will be able to meet its burden of proof at trial.

8. Statutory interpretation requires that the obligations imposed upon the defendant by Rule G cannot authorize a search and seizure of the property of another with requirements that abrogate rights guaranteed to citizens of the United States by the Constitution of the United States but must be interpreted consistent with affording the plaintiffs with the protections afforded them by its provisions and in the above captioned matter, the protections afforded them by the Fourth Amendment.
9. Specifically, a verified complaint, presented to the court, pursuant to the obligations imposed by Rule G. above, incorporate the same requirements to authorize a search and seizure as the Fourth Amendment to the United States Constitution and therefore should be governed by the same standards as any other warrant to authorize a search and seizure of the property of a citizen of the United States.
10. The plaintiffs', although their individual interests appeared in the documents, records and data seized by the defendant on August 8th 2008, were segregated therein, and could therefore be identified from the documents and records seized, the plaintiffs were never notified by the defendants that their personal data or their property had been seized as required by Rule 983, and contrary to the representations of the defendants in ¶ 7 of their complaint. **See Exhibit 2.**
11. An examination of the allegations made in the complaint that purported to justify the authorization of a search and seizure of the property of the plaintiffs' does not rise to the level required by judicially defined standards to authorize a search and seizure warrant in numerous material respects.

12. The litany of the “bases for forfeiture” in ¶ 8 of the defendants’ complaint allege that there is ‘reasonable cause’ to believe that the property of the plaintiffs, that they deposited into the accounts enumerated by the defendants’ were done in violation of the statutes enumerated therein, however, nowhere in that paragraph or thereafter is there offered anything but their unsupported conclusions as a basis to support those allegations.
13. The section of the defendants’ complaint that is entitled ‘Facts’ assumes that simply ‘saying makes it so’ as ¶¶ 9, 10, 11, and 12, have no factual allegations at all about the business model of ASD.
14. Similarly, ¶ 13, while alleging that ASD is a clone of business models that were found to be Ponzi schemes in other cases does not contain any facts attributable to the operations of ASD let alone compares them to the entities they claim to be the same.
15. In ¶ 14, they allege that they received information from a “reliable source” however the basis for their conclusion of reliability of that source is nowhere to be found.
16. The allegations of ¶ 16, do not quote language from any ASD related source material but simply make certain claims purported to be accurate descriptions of ASD’s operations and where it purports to offer specifics, does so out of context to the point of being purposely misleading.
17. The plaintiffs are not coming before this court to request it to decide if the ASD business model is, or is not, a Ponzi scheme, although the leading expert in the country on multi-level marketing has opined under oath that it is not, and has spelled out the reasons and the specifics upon which he bases his opinion as an expert in the field. **See Exhibit 3.**

18. The plaintiffs are here simply to ask that the court rule on whether the defendants' complaint, *and the verification supporting it*, when taken in the context of an application for a search and seizure warrant, meet the standards and legal requirements of the Fourth Amendment to the United States Constitution and the added requirement of Rule G(2)(f) that their pleading contain "*sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial*". [Emphasis supplied]
19. The entire premise of the defendants complaint is predicated upon ASD offering a guaranteed return; an allegation belied by the actual published terms and conditions of ASD which the defendants specifically do not refer to.
20. Had they done so they would have to then characterize it in its proper context as *the maximum return* that can be received, not the minimum and it is on that distinction that the whole house of cards of the defendants complaint fails to establish that they can meet their burden of proof at trial with sufficient facts.
21. In ¶ 17, the defendants offer what can only be described as a tissue of lies concerning the operations of the ASD business model but for the one allegation that belies the rest; to wit: "But ASD states that it allocates only 50% of its' revenue to cover its rebate program".
22. When taken in the context of the clear disclaimer in ASD's description of its' program; to wit:
- "All payments made to ASD are considered advertising purchases, not investments or deposits of any kind. All sales are final. ASD does not guarantee any earnings and / or rebates. All rebates paid to advertisers are for the service of viewing other advertiser's web sites. All commissions are for referring advertisers to ASD. All advertising**

purchases are non-refundable after the passing of the 3 days right of rescission.” (Emphases supplied)

23. The defendant alleges in ¶ 17, inter-alia, that “to fulfill its’ (sic) promise to rebate 125% of ‘that revenue’ ASD must...etc. When nowhere in the documents of ASD, do the defendants cite to the court to the location of any such promise made anywhere in the source documents authored by ASD which define the duties and responsibilities of ASD to and from its members.
24. The defendant further misleads the court in ¶ 17, by taking a press release from ASD outlining past conduct as a representation from ASD of future conduct although no such representation was made or even implied and then bootstraps its’ allegations by using this fictitious ‘fact’ to demonstrate that ASD cannot do what it in fact never promised to do.
25. The defendant then goes on to conclude and represent to the court that “there is reasonable cause to believe that ASD is a sophisticated Ponzi scheme that will by its’ very nature, result in the loss of millions of dollars from its’ (sic) participants” however their reference to the existence of ‘reasonable cause’, if it is to be found at all, can only be found by the mischaracterization of the ASD business model they themselves created out of whole cloth.
26. The defendant then devotes ¶¶ 18, 19, and 20 to the character assassination of Thomas Anderson Bowdoin, Jr. when, even if every allegation and claim were true, has no bearing on the validity of the business model of ASD, let alone providing ‘probable cause’ to create a nexus between those allegations and the conclusions they draw concerning the operations of ASD being a Ponzi scheme.

27. The defendants then continue their conclusory litany in ¶ 21, by including ‘buzz words’ like “and his co-conspirators” designed to further instill bias in the mind of the court reviewing the document when there are no factually supported allegations of the existence of a conspiracy anywhere in the document or its’ exhibits.
28. The defendant then continues in ¶ 21, to quote from a prior business model of ASD, a series of ‘facts’ which, whether true or not, are not then supported by a factual analyses of the significance of those allegations in relation to their claim that ASD was or is a Ponzi scheme.
29. The defendant then attempts in ¶ 22, to link the fate of ASD with that of several e-payment providers; e-Gold and Virtual Money. The defendant describes the fate of those entities, even going so far as to call them Ponzi schemes when their own description of the indictments of those firms did not include such claims and the defendants omit disclosing to the court that other legitimate businesses also used those companies as methods of payment for their goods and services.
30. The defendant however does admit that, when publicity surrounding the business practices of those e-money services was made public, ASD’s predecessor business model ceased using them as any prudent business would also have done.
31. from ¶ ¶ 23, 24,25,26,27,28, and 29, under the term ‘ASD’s Current Website’ the defendant purports to selectively describe the operations of ASD with the underlying premise, which is not cited from any of the appended materials especially the defendants ‘Exhibit 3’ that ASD guaranteed to pay a fixed amount to their members in a fixed period of

time; a factual allegation crucial to the establishment of probable cause that the ASD business model was a Ponzi Scheme.

32. Furthermore there is no financial analysis in the defendants' Complaint of the operations of the ASD business model to demonstrate that, even as phrased, the three interdependent pre-conditions necessary to establishing a Ponzi scheme; to wit:

- a) the promise of a return on investment,
- b) the lack of any underlying product, and
- c) the necessity of a continuing flow of new investors/participants to fund the promised payouts;

are present in the actual ASD business model as opposed to the selective mischaracterization of its' activities found in the defendants complaint which were designed to mislead the court into misunderstanding what the ASD business model provided it's members and the circumstances under which they *may* receive income, capped at fixed amounts, and conditioned upon certain well defined assumptions and disclaimers all spelled out by ASD in its' terms and conditions as fully described in the agreements attached hereto and incorporated by reference herein. **See Exhibit 4.**

33. The defendant then includes a section entitled 'Federal Agents Join ASD' and in ¶¶ 30,31,32, and 33 which contain the hearsay litany of activities of unnamed individuals whose credibility cannot be ascertained and the addition of claims made therein that do not go to the establishment of Probable Cause or that the alleged conduct of the unnamed TFA agents demonstrated the existence of any, let alone the

three components necessary for the activity to constitute a Ponzi scheme.

34. The defendant then adds a section in ¶¶ 34, 35, 36, and 37 entitled “Few Legitimate Advertisers” again authored by an anonymous TFA agent whose credibility is not and cannot be established, nor are the claims made either supported by actual evidence or consistent with the Rules and Regulations of ASD which specifically prohibit the addition of social networking sites in the advertising that may be purchased to be offered there.
35. The section is replete with false and misleading statements which create the impression that the ASD business model only exists to place advertising when the obligation to obtain any return is based upon viewing advertising as well as placing it, and while the unnamed and unverifiable TFA agent stated that in his opinion, that offering the member the option of selecting other advertising sources will result in random and meaningless choices when it is just as easy to conclude that they would want to promote a family business or that of a product they believed would be a benefit to others based upon their experience and it then becomes only 1 of a minimum of 15 advertisements needed to be viewed and therefore it is just as easy to presume that the majority of them were placed by legitimate firms wanting to promote their products.
36. ¶ 37 is especially disturbing in that it refers to activity that is specifically prohibited by ASD’s terms of service and had the TFA’s lived up to the obligations they took on by becoming members of ASD

they would have reported these violations of the ASD terms of service with the result that those sites would have been removed and the benefits to the advertiser forfeited as the ASD rules mandated.

37. The next section is entitled ‘Members Upgrade for Returns’ which, as in the rest of the Complaint, it’s ¶¶ 38,39,40,41,42 and 43 are replete with hearsay out of the mouths of anonymous TFA agents whose credibility is impossible to ascertain and whose statements, were they used to support the issuance of a search warrant would make the results if granted, inadmissible, as there is no indication in the verification of the complaint that the information contained there was, in fact reliable or specifically relied upon, and if so why it could be, either by the party verifying the complaint of the court being called upon to review it and authorize a search and seizure based upon that verification.

38. The plaintiffs were thereafter presented with a “Remission Form” from an individual entitled ‘Ad Surf Daily Remission Administrator’ which, inter-alia, required them to furnish information which had been confiscated by the defendant and was no longer in the possession of the plaintiffs and had the additional requirement that they admit and characterize themselves as investors; thereby legitimizing the defendants claims which the plaintiffs know to be illegitimate. *See Exhibit 5.*

38. The remainder of the Complaint continues on in a similar vein, all attached to the unsubstantiated and indeed false premise that ASD meets all of the necessary criteria of a Ponzi scheme, and based upon that factually unsupported assumption all else flows when, but for the

aspersions, unsupported hearsay of anonymous individuals (for whom there is no justification offered either for their credibility or their anonymity such as their being confidential informants in RICO or organized crime undercover activities where the secrecy of the source of the information in support of a search warrant needs to be protected but who has provided reliable information in the past); were this document offered to a court to authorize a search and seizure warrant it would be found defective.

38. Nowhere is this more evident than in the ‘Verification’ attached to and purporting to be the equivalent of the Fourth Amendment requirement that any search and seizure warrant can only issue ‘but upon probable cause supported by oath or affirmation’, a verification here that is both factually and legally defective. It should be noted that the complaint was authored and signed by an Assistant United States Attorney who is charged with the accuracy of the content however unlike a search and seizure warrant where the author and the verifier are one and the same, here we have a complaint signed by one representative of the government but verified by another whose name never appeared in the complaint as having done or participated in any of the activities cited therein nor does he take credit for them in the verification of the complaint.

39. The verification of the Complaint reads as follows:

I, Roy Dotson, a Special Agent with the United States Secret Service, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing Complaint for Forfeiture *In Rem* is based upon reports and information known to me and/or furnished to me by other law enforcement agents and that everything represented herein is true and correct to the best of my

knowledge and belief. (Emphasis supplied)

Executed on this 2d day of August 2008

While the plaintiffs understand it is inappropriate within the body of this Complaint to plead the law, the facts as alleged by the plaintiffs, are deemed by them to be sufficient to raise the question as to whether the complaint or the verification purporting to establish probable cause violated rights guaranteed to them by the Fourth Amendment to the United States Constitution and further secured to them by the requirements of 18 U.S.C. § 983.

Therefore the plaintiffs demand that:

- (a) The complaint of the defendants that they used to obtain the authorization to search and seize their accounts, money and records be declared an illegal search and seizure in that it failed to meet the requirements of the fourth amendment to the United States Constitution and that therefore the search and seizure of their assets was illegal and void.
- (b) a judgment be entered requiring the defendant to return all of the property of the plaintiffs obtained as a result of the actions by the government on August 8th 2008 in it's possession or control including all records, and other items belonging to the plaintiffs and seized pursuant to the defendants' complaint.
- (c) The plaintiffs reserve any other rights and remedies available to them based upon the judgment obtained herein.

(d) That the defendants provide an accounting of what they have done with the property of the plaintiffs including the the cash balances of record on August 8th 2008.

(e) Such other relief in Law or in Equity to which the plaintiffs may be entitled.

Dated at Miami, Florida on this the _____ day of _____ 2011

Plaintiffs

Todd Disner, Pro-se
Address etc.

Dwight Owen Schweitzer, Pro-se
Address etc.

List of Exhibits to the Disner/Schweitzer Complaint to be filed in the Federal District Court for the Southern District of Florida

Exhibit 1. The complaint filed with Judge Collier to effect the S&S of the assets of ASD etc.

Exhibit 2. Rule 983

Exhibit 3. The Nehra Documents

Exhibit 4. The 'Terms of Service' Member and Advertiser documents

Exhibit 5. The Document Required to be Submitted to the Remission Administrator Requiring the Applicants to Admit they were Investors

