No. 17-2842
(Consolidated with No. 17-3317)

In the

UNITED STATES COURT OF APPEALS

for the

SEVENTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

MICHAEL SEGAL,

Defendant-Appellant.

On Appeal from the United States District Court
For the Northern District of Illinois
Case No. 02 CR 112
The Honorable Ruben Castillo, Presiding
Petition to Reverse July 12, 2017 and August 16, 2017 Orders

BRIEF AND REQUIRED SHORT APPENDIX OF DEFENDANT-APPELLANT, MICHAEL SEGAL

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APPELLANT ATTORNEY EDWARD T. JOYCE'S DISCLOSURE STATEMENT

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-2842

Short Caption: United States v. Michael Segal

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The Law Offices of Edward T. Joyce & Associates, P.C.; Albert Alschuler; Marc W. Martin, Ltd.; Jones Day; Perkins Coie, LLC; Katten Muchin Rosenman LLP (Katten Muchin Zavis Rosenman); Good Smith Gregg & Unruh LLP; Jeff Steinbeck; Robert Cummins

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Attorney's Signature: s/ Edward T. Joyce Date: 09.13.17

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2017, I electronically filed the foregoing **Circuit Rule 26.1 Disclosure Statement** with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Edward T. Joyce
Edward T. Joyce

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JURISDICTIONAL STATEMENT

The district court had jurisdiction pursuant to 18 U.S.C. § 3231 because Defendant Michael Segal ("Segal") was charged with violating 18 U.S.C. §§ 371, 1001, 1033(a)(1), 1341, 1343, 1346 and 1962(c). A jury found Segal guilty on all counts submitted and returned a forfeiture verdict. (R.333, 341.) On Segal's post-trial motion, the district court entered judgment of acquittal on the counts alleging violations of §1033(a)(1). (R.471.)

On December 13, 2005, the district court entered a final judgment which imposed a sentence of 121 months imprisonment, ordered restitution, re-entered preliminary orders of forfeiture and held that Segal shall forfeit "$30,000,000 plus [his 100% ownership] interest in Near North National Group" ("NNNG"). (R.790.) Segal filed a timely notice of appeal. (R.792.)

On August 2, 2007, this Court remanded Segal's appeal "for a determination of what portion of the $30 million was not 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 Government's petition for rehearing was denied (*United States v. Segal,* 2007 U.S. App. LEXIS 30080 (7th Cir. December 17, 2007)). On August 31, 2009, the district court entered its findings on the remanded issue. (R.1483.) On September 18, 2009, the district court entered a final amended judgment holding, *inter alia,* that Segal "shall forfeit $15 million, plus [his 100% ownership] interest in Near North Insurance." (R.1493.) Segal filed a motion to reconsider on September 21, 2009.

(R.1494.) The district court denied Segal's motion to reconsider on September 24, 2009. (R.1496.) Segal filed a timely notice of appeal on September 28, 2009. (R.1497.) The Government filed a timely notice of appeal on October 28, 2009. (R.1510.)

On May 3, 2011, this Court affirmed the judgment of the district court. *United States v. Segal,* 644 F.3d 364 (7th Cir. 2011). This Court also noted that the United States Supreme Court in *Skilling v. United States,* 130 S. Ct. 2896 (2010) "trimmed the theory of honest services fraud so it only applies to a defendant involved in either bribery or a kickback scheme." *Id.* at 365. Because Segal was not involved in either bribery or a kickback scheme, this Court found that the instructions given to the jury regarding honest services were wrong. *Id.* However, this Court noted that *Skilling* did not require reversal of Segal's conviction where it is shown to be harmless error beyond a reasonable doubt. *Id.* at 366. This Court thus remanded the matter for a determination by the district court regarding whether Segal should be resentenced if any honest services conviction affected his sentence. *Id.* at 368. Certiorari was denied on March 19, 2012. *Segal v. United States,* 132 S. Ct. 1739 (2012). A year later, on May 29, 2012, the district court resentenced Segal to time served.[1] (R.1669.)

On February 13, 2013, the district court entered an Order Approving Settlement of Certain Forfeiture Claims and Modification of the Forfeiture Order Relating to Defendant Segal. (R.1706.) Thereafter, several disputes arose

[1] Considering time served, Segal probably would have been released in the fall of 2012, in which case, the reduction was five months.

concerning the provisions of that Settlement Stipulation, and four appeals were subsequently taken. This Court decided those appeals on January 21, 2016. *United States v. Segal,* 811 F.3d 257 (7th Cir. 2016).

On October 5, 2016, Segal filed a Motion to Modify the Forfeiture Order ("Motion to Modify"). (R. 2065.) Segal's Motion to Modify did not contest the district court's $15 million amended forfeiture judgment. (*Id.*) Rather, it asked the district court to exercise its independent duty pursuant to Federal Rule of Criminal Procedure ("FRCP") 32.2 to ensure that the Government received the $15 million to which it was entitled pursuant to the amended forfeiture judgment, but no more. (*Id.*) Segal's Motion to Modify both requested that amounts already collected by the Government pursuant to the Settlement Stipulation in excess of $15 million be remitted to Segal and the Government revert the more than $4,000,000 Segal "paid" to the Government to obtain assets the Government had no right to "sell." (*Id.*) On January 30, 2017, the Government filed its Response to Segal's Motion to Modify. (R.2088.) On April 21, 2017, Segal filed his Reply in Support of His Motion to Modify. (R.2093.)

On July 12, 2017, the district court denied Segal's Motion to Modify. (R.2100, attached hereto as A1-12.[2]) On August 9, 2017, Segal filed a Rule 59 Motion to Amend the July 12, 2017 Order. (R.2106.) On August 16, 2017, the district court denied Segal's Motion to Amend. (R.2107, attached hereto as A13.) On September 6, 2017, within 60 days after entry of the August 16, 2017 Order, Segal timely

[2] All citations to documents within the appendix herein are referred to as "(A_____)."

appealed from the district court's July 12, 2017 and August 16, 2017 Orders. This Court has jurisdiction pursuant to 28 U.S.C. §1291.

STATEMENT OF THE ISSUES

A. Whether the Government received a windfall in excess of the $15 million to which it was entitled in violation of: (1) Segal's due process rights; (2) this Court's mandate ordering Segal to forfeit $15 million, but no more; and (3) the Excessive Fines Clause of the Eighth Amendment;

B. Whether the district court failed to exercise its independent duty under FRCP 32.2 to ensure that the Government received the $15 million to which it was entitled, but no more;

C. Whether the district court erred concerning the benefits Segal received as part of the settlement when it concluded that the settlement "gave him immediate access to roughly $8 million in assets . . .";

D. Whether the district court erred when it found, as a matter of law, nothing unconscionable in either the settlement negotiation process or the ultimate Settlement Stipulation terms;

E. Whether amounts collected by the Government in excess of Segal's $15 million amended forfeiture judgment should be remitted to Segal; and

F. Whether the Government should remit to Segal the $4,540,496 Segal paid for certain assets as part of the settlement which the Government never had the right to sell.

STATEMENT OF THE CASE

This appeal concerns Segal's $15 million personal forfeiture obligation and the district court's independent duty pursuant to FRCP 32.2 to ensure that the Government received $15 million from Segal, but no more.

I. Procedural Background Relating to Segal's Personal Forfeiture.

A. Segal Was Convicted of Operating His Business Through a Pattern of Racketeering and Ordered to Forfeit His 100% Interest In NNNG and $30 Million of Racketeering Proceeds.

At trial, the Government argued that Segal used millions of dollars stolen from NNNG to grow NNNG's business, support his personal expenditures, and acquire significant amounts of real and personal property. (R.790.) Significantly, all of Segal's restrained assets were acquired before the start of the racketeering period. Among the documents relied upon by the Government at trial to support these arguments was Government Trial Exhibit 41 (an audit memorandum prepared by Deloitte & Touche ("Deloitte")("Ex. 41")), which demonstrated that Segal owned all the restrained assets but four of the partnerships. (Ex. 41.) This Deloitte memorandum made clear that as part of NNNG's 1994 audit, Deloitte analyzed both Segal's and NNNG's noninsurance assets, and determined that those assets should be "sold" to Segal and then made appropriate accounting entries in NNNG's books and records to reflect Segal's personal ownership of those assets. (*Id.*) This resulted in Segal's exchange account balance being increased to $3.6 million. (R.2093, Ex. 13; Government Trial Exhibit 247 ("Ex. 247").) The

Government's trial witnesses testified consistent with Ex. 41. (*See, e.g.,* Tr. 960, 1082, 1091, 1101, 1147, 1275, 1277, 1280, 1302, 5920.)

On June 21, 2004, Segal was convicted of operating an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. 1962(c) and conspiring to defraud the Internal Revenue Service.[3] (R.1483.) After trial, the Government requested an immediate forfeiture trial.[4] At trial and the forfeiture hearing, the Government told the jury that the assets at issue were owned by Segal. (R.2093.) The Government never said that the assets were owned by NNNG. "[T]he jury returned a forfeiture verdict finding Segal personally liable for $30 million, representing proceeds and interest he acquired by virtue of the racketeering activity" and Segal was immediately incarcerated. (*Id.*; R.1706, 341, 347.) This finding is ironic since all of the restrained assets, but one, were acquired before the start of the racketeering period.

In order to insure collection of that forfeiture, the Government was granted a Preliminary Order of Forfeiture. (R.346, 347, 498.) The Government then seized

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[3] Ten years after being convicted of conspiring to defraud the IRS, the United States Tax Court found in the IRS's civil tax fraud case against Segal, which was based on the same facts alleged in this matter, that "there are no deficiencies in income tax due" from Segal, and further that there was no civil fraud penalty. (R.2093, Ex. 21, attached hereto as A14-15, of which Segal respectfully requests this Court to take judicial notice. *See,* Fed. R. Evid. 201.)

[4] The Government insisted on rushing into the forfeiture hearing the day after Segal was convicted because it wanted Segal convicted immediately. The Government had two years to obtain evidence to prepare for the forfeiture hearing. The Government seized all of Segal's and NNNG's books, records and computers (which, to this day, have never been returned) and issued subpoenas related to those assets. (R.2093, Ex. 14.) In other words, the Government possessed evidence to demonstrate the ownership of each of these assets and the dates the assets were acquired. The Government focused on the fact that Segal owned all of these assets, and that these assets could be used as substitute assets to satisfy Segal's forfeiture obligation. (Tr. 6085; R.2065, Ex. F.)

assets that it not only claimed were acquired with stolen funds, but it also seized "substitute" assets. The truth is, all of the seized assets, with the exception of one, constituted substitute assets because they were all purchased in the late 1970s or early 1980s (R.2065, Ex. C), long before the beginning of the "forfeiture period" in 1990. (R.1483.)

At 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. (R.2093, Ex. 14.) Neither the subpoenas nor the documents obtained through the subpoenas were shared with Segal. The Government then created a schedule entitled "Schedule of Assets (attachment to Forfeiture Sentencing Order)" which identified Segal's restrained assets. (R.2093, Ex. 3.) This schedule identified Segal as the owner of, *inter alia*: (a) 1.07792% of BSV Limited Partnership; (b) a "substantial interest" consisting of 25% in Lincoln Place Associates; (c) a 1.72117% limited partnership interest in the Chicago Bulls; (d) "480 out of 6,838 shares of Lakeshore Entertainment Corp." and (e) 11% of Sheridan House Associates. (*Id.*) Only a select few restrained assets were identified as being owned by someone other than Segal. (*Id.*) The Schedule of Assets identified NNNG as the owner of Sheridan Road Lifestyles. (*Id.*)

Although the district court ruled that no insurance company or brokerage client suffered an economic loss, there were no victims of Segal's misuse of the PFTA, there were no material misrepresentations to any insurance regulator, and Segal had no fraudulent intent, on November 30, 2005, the district court entered a

personal forfeiture judgment against Segal in the amount of $30 million. (R.471, p. 9; 790; PSR841; Sentencing Transcript, p. 15.) The district court also ordered Segal to forfeit his 100% ownership interest in NNNG, which was valued at between $150 and $250 million shortly before Segal's arrest and for which Frontenac made a substantial cash offer to purchase after his arrest (with purchase funds in escrow before trial commenced), which offer the Government caused to be withdrawn. (*Id.*; R.1473,Ex. A; Tr. 4988, 5478, 5459, 5598; Tr. Exs. 101 and 102.)

B. This Court Remanded Segal's $30 Million Forfeiture Judgment to Determine How Much of the Racketeering Proceeds Went to Benefit Segal Personally.

On appeal, this Court affirmed in part, concluding that Segal was required to forfeit his 100% ownership interest in NNNG and further, that the $30 million taken from NNNG's PFTA constituted "net proceeds." (*U.S. v. Segal,* 495 F.3d at 839; Tr. 4988, 5478, 5459, 5598; Tr. Exs. 101 and 102.) This Court also concluded that although, at least in part, Segal misused NNNG's PFTA to expand the business of NNNG (*U.S. v. Segal*, 495 F.3d at 830), it was "… not clear from the record [ ] how much of the $30 million was poured back into the enterprise and how much went to benefit Segal personally." *Id.* at 839. Without that information, this Court could not "determine whether at least part of the $30 million forfeiture would constitute double billing." *Id.* Since Segal forfeited NNNG, and because the Government recovered the considerable racketeering proceeds that had been retained by the enterprise, recovering these proceeds from Segal a second time would be double counting. *Id.* at 839.

This Court thus remanded this case to determine "what portion [if any] of the $30 million was not reinvested in the enterprise, but rather went to benefit Segal personally and is subject to forfeiture as proceeds of the illegal enterprise." *Id.* at 840.

C. On Remand, the $30 Million Forfeiture Judgment Was Reduced to $15 Million, Which This Court Affirmed.

When this case was remanded, the district court directed the Parties to file briefs concerning the remanded forfeiture issue. On February 20, 2008, Segal filed his Position Paper on the remanded forfeiture issue ("Position Paper") and based on the trial record and PSR, he demonstrated that he should be required to forfeit no more than $1.5 million, plus his 100% ownership in NNNG. (R.1315.) Segal also requested an accounting of what interest, income and profit distributions the Government received by virtue of holding those assets. (R.1412.)

1. The Government Ignored Both This Court's Mandate on Remand and The District Court's Direction to File a Position Paper Regarding the Net Assets Segal Received.

On May 6, 2008, the Government filed a response to Segal's Position Paper which ignored this Court's mandate concerning what net proceeds went to benefit Segal personally. (R.1343.) Instead, the Government argued that Segal stole[5] $30 million from the PFTA. (*Id.*)

The district court thereafter ordered the Government to submit its evidence. (R.1380.) The Government's Evidentiary Submission continued to ignore this Court's mandate. (R.1394.) On November 19, 2008, Segal filed his response to the

[5] Neither the district court, nor the jury, ever concluded Segal "stole" one dollar.

Government's Evidentiary Submission, as well as a Motion to Strike Certain Arguments raised by the Government. (R.1415, 1416.) The Government filed a reply in support of its Evidentiary Submission on January 14, 2009, but it never responded to Segal's Motion to Strike. (R.1426.) The district court never ruled on Segal's Motion to Strike.

On April 17, 2009, the district court entered an order stating that the only way it could honor this Court's mandate was to search the trial record for "what portion of the $30 million . . . went to benefit Segal personally." (R.1453.) The district 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.*)

The district court then afforded the Government "one more opportunity to . . . offer its analysis of what the evidence shows regarding what amount 'went to benefit Segal personally . . .'" (*Id.*)

2. The Government Misrepresented the Trial Record Evidence In An Effort to Convince the District Court that Segal Should Forfeit At Least $18 Million.

Now knowing that Segal might only have to personally forfeit $1.5 million if the Government was unable to provide some other figure supported by evidence, the Government argued that Segal should be required to forfeit, at a minimum, $18 million. (R.1466.) However, the Government supported this argument by reference to unauthenticated, undated and unsigned charts and summaries which were never submitted, let alone admitted, at trial. (*Id.*; R.2093, pp.31-36.)

3. In Order to Recover Even More, the Government For the First Time Claimed That Certain Restrained Assets Were Owned By NNNG So That They Would Be Forfeit As Part of the Enterprise Forfeiture.

Although at trial the Government argued that Segal owned the assets (*see,* Exs. 41 and 247 and Boysen's Affidavit at R.2093, Ex. 13), the Government now, for the first time, claimed that NNNG owned approximately $31 million of the restrained assets, whereas Segal only owned $16 million. (R.2093, Ex. 1.) The Government therefore claimed Segal's assets would be insufficient to satisfy an $18 million forfeiture judgment.

The Government also now claims that NNNG owns 56% of Segal's Highland Park home, which is directly contrary to the Government's trial position that Segal owned 100%. (*See, e.g.,* Tr. 2620, 5201, 6085.) But there had never been (and to this date, there has not been) a determination (other than the one made by Deloitte, as reflected in Ex. 41, Boysen's Affidavit and the Deloitte work papers relating thereto, which work papers have never been produced) regarding: (a) who owned the

partnerships that the Government claimed were "NNNG partnerships," or (b) who was entitled to the distributions from those partnerships.

As set forth below, the Government never updated any of the asset valuations listed on its schedules of seized assets over the 9 years that they had been restrained, nor did the Government ever have an appraisal performed concerning the asset valuations. Even the trial exhibits that the Government attached to its Supplemental Evidentiary Submission ("SES") are misleading. (*See,* R.2093, pp. 31-36.) The Government's "evidence" was not supported by the trial record. (*Id.*) Segal's response to the Government's SES not only established the money he received from Near North, but it also 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 NNNG. (Tr. 1290-91, 1702-03, 2201, 2204, 2752, 2887, 5903-04; PSR26; Tr. Ex. 503; R.1473.)

4. The District Court Reduced the $30 Million Forfeiture Judgment to $15 Million.

On August 31, 2009, the district court entered an Opinion: (a) acknowledging that the Government was asking the district 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 this Court; (c) finding that, after giving the Government "one final opportunity" to provide its answer to the question posed by this Court, the Government inexplicably continued to urge the district 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 submitting new evidence. (R.1483.) Notwithstanding the foregoing, and not considering the $17 million that Segal loaned or otherwise transferred to NNNG, the district court concluded that Segal personally received at least $15 million from the racketeering enterprise. (R.1482, 1483, 1493.) That judgment was affirmed by this Court on May 3, 2011.[6] *United States v. Segal,* 644 F.3d 364. Certiorari was denied on March 19, 2012. *Segal v. United States,* 132 S.Ct. 1739 (2012).

II. The District Court Set a Hearing Concerning Segal's Forfeiture Obligations.

On remand, the district court entered an amended forfeiture judgment and set a bifurcated hearing: (1) to resolve the conflicting ownership claims to some of the assets restrained by the Government[7]; and (2) after determining which assets Segal owned, to determine how Segal would satisfy his $15 million forfeiture. (R1669, 1678, 1701.)

[6] This Court likewise did not consider Segal's loans or contributions of funds when ruling on which net proceeds went to Segal personally. *United States v. Segal,* 644 F.3d 364.

[7] According to the Government, if an asset was acquired with NNNG corporate funds, it belonged to the Government as part of the enterprise forfeiture. However, this proposition flies in the face of the Government's trial evidence and witness testimony, like Exs. 41 and 247 and Boysen's Affidavit (R.2093, Ex. 13), which shows that even if assets were originally acquired with NNNG funds, those assets became Segal's after Deloitte's audit, which realigned the ownership of most partnerships to Segal by charging Segal's exchange account for the cost of those assets. In fact, the district court's $15 million forfeiture judgment accounts for the amounts that were charged in Segal's exchange account for these partnerships. (R.1483.)

As it relates to that part of the hearing concerning ownership of the restrained assets, the Parties were prepared to present evidence regarding their ownership of certain assets, including but not limited to interests in partnerships (and distributions from those partnerships), insurance policies and bank and investment accounts. The hearing should have been simple, since, as explained above: (a) at trial, Ex. 41 stated that Segal owned all but four of the restrained partnerships, (b) the Government witnesses testified in a consistent manner, (c) the Government's original schedules identified all restrained assets, apart from Sheridan Road Lifestyles, as Segal assets, and (d) at the forfeiture hearing, the Government took the position that Segal owned the Highland Park home and all but four of the restrained partnerships. Thus, Segal's $15 million forfeiture judgment could have easily been satisfied by Segal without the need for a hearing. Segal could have used his proceeds from the sale of his Highland Park home (*i.e.,* $6,009,541.07)[8] and his partnership distributions (*i.e.,* $7,953,070.79), totaling $13,963,070.79 in cash, which would have nearly covered Segal's forfeiture obligation. (R.2093, Ex. 2.) Then, Segal could have paid the remaining $1 million with funds from one of his financial accounts (which exceeded $5 million) and that would have been the end of the story.

[8] Segal's Highland Park home was sold for $17,600,000. (R.1166.) Notwithstanding its forfeiture hearing position that Segal owned the Highland Park home, Segal was only credited with $6,009,541 of the sale proceeds. Five months later, the Highland Park home sold for $22,000,000.

III. As the Hearing Concerning Segal's Forfeiture Obligations Approached, the Government Changed Its Position Yet Again.

The Government routinely changed its position concerning the ownership of restrained assets to suit its needs. At the trial and forfeiture hearing, the Government took the position that Segal owned all but four of the restrained assets. The jury relied on the Government's position and entered a $30 million personal forfeiture. When the Government first seized all of Segal's assets, it identified only one asset – Sheridan Road Lifestyles – as a NNNG owned asset. (R.2093, 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 Government's schedule was updated in 2007. (R.2093, Ex. 6.) The 2007 schedule was similar to the schedule originally prepared as part of the forfeiture proceedings, except this time, it reflected that NNNG owned the Bulls and White Sox partnerships, 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 NNNG's assets were valued at $6,099,650, those assets improperly included the Chicago Bulls and White Sox partnerships (which as

explained above, the Government previously acknowledged were owned by Segal). (*Id.*)

After the district court entered its April 21, 2009 Order giving the Government "one more opportunity" to identify Segal's net proceeds, the Government had a problem. It had seized enough property to satisfy a $30 million forfeiture. Thus, the Government again changed its position. The Government updated its 2007 schedule to reflect that Segal only owned $16 million in assets, and that NNNG went from owning $6 million in assets (including the Government's wrongful inclusion of the Bulls and White Sox) to $31 million. (R.2093, Ex. 1.) Then, after this Court 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 and even contrary to what it claimed during the 2007-2009 remanded forfeiture proceedings, the Government now claimed that far more than half of the partnerships were owned by NNNG. By the time the Government created its 2013 schedule, its position was that Segal only owned $12 million in assets, whereas Near North owned $33 million in assets. (R.2093, Ex. 2.) When this case was remanded for the second time, the Government's position as to ownership directly contradicted not only the trial evidence, including Ex. 41, but also the documents received in response to Government subpoenas and the Government's initial schedules. (*See, e.g.,* R.2093, Ex. 14.)

The following chart reflects the evolution of the Government's approach to asset ownership:

Government Schedule	Michael Segal Assets	Near North Assets
2005 Forfeiture Sentencing Order Schedule (R2093, Ex. 3)	All, but Sheridan Road Lifestyles	Sheridan Road Lifestyles
2007 Schedule (R.2093, Ex. 6)	Most assets – totaling at least $28,339,461	$6,099,650, ($3,699,650 of which represented Segal's interests in the Bulls and White Sox partnerships)
2009 Schedule (after this Court gave the Government "one final opportunity")(R.2093 Ex. 1)	$16,022,451	$31,518,881 (comprising a significant number of assets which had previously been properly categorized as Segal's assets)
2013 Schedule (used for settlement negotiations)(R.2093, Ex. 2)	$12,783,556.45	$33,838,290

IV. Based on the Government's Changed Position, Segal Had No Choice But To Prepare for the Ownership Hearing.

To prepare for the ownership hearing, Segal contacted the general partners of the restrained partnerships to obtain proof of his ownership. (R. 2093.) Only three would talk to him in light of the Government's restraining orders. (*Id.*) Segal also reached out to the insurance carriers who had issued the restrained insurance policies, but they also refused to talk to Segal because of the Government's restraining orders. (R.1758.) 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 Ex. 41. Boysen provided Segal with an affidavit confirming that Ex. 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 assets (Ex. 247)). (R.2093, Ex. 13.) Boysen described the audit, including how Deloitte reached its conclusions in Ex. 41. (*Id.*) He also confirmed that there were work papers supporting those conclusions. (*Id.*) Boysen further averred that at the end of his process, Segal's exchange account was increased to $3.6 million to reflect his purchase and ownership in all but four of the restrained assets. (*Id.,*¶7.) 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. (R.2093.) The subpoena to Deloitte sought all work papers supporting the Ex. 41. (*Id.*) Neither the Government nor Deloitte produced those work papers. (*Id.*)

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 were funded prior to the forfeiture date. (*Id.*) On December 7, 2012, Segal wrote to the Government expressing his belief that the ERISA accounts fell outside of the forfeiture proceeding and thus, were not forfeitable. ((*Id.*, Ex. 15.) The Government responded that the ERISA accounts were subject to forfeiture. (R.2093.)

V. Segal Was Forced to Engage in Settlement Negotiations.

As the hearing quickly approached, Segal's hands were tied. He had no money to hire accountants and appraisers and pay his lawyer (who had been paid nothing for over seven years) and he had none of his personal information to use at the hearing. After Segal emerged from years in federal prison, the Government continued to deny Segal access to his personal records and computers. (R.2093.) Segal's only source of money was his monthly $2,900 social security check (a third of which was used to satisfy his restitution obligations). (R.2065.) On several occasions, 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. (R.1360, 1491, 1568, 1624.) If the amounts Segal sought were released, the Government would still have had sufficient funds to pay Segal's forfeiture obligation in full. Nevertheless, the Government objected to each request and Segal's motions were all denied. (R.1368, 1508, 1570.) Even after the district 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. In sum, Segal had no funds with which to present an ownership and valuation case.

Segal believed, consistent with the evidence the Government introduced at trial, that he owned the restrained assets. However, as explained above, the Government later changed its trial position and argued that Near North owned those assets. Now Segal was forced to bargain for the recovery of assets which the

Government previously admitted were owned by Segal. As explained above, throughout the course of this litigation, Segal requested information concerning his restrained assets. However, none of the owners of those assets (except the Bulls, the White Sox and Lakeshore Entertainment Corp.) would speak with Segal or his counsel. As the hearing approached, and 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, and without his personal records and personal computer and without the money to hire experts to determine asset valuations, Segal had no choice but to reach a settlement with the Government. Segal had lost nearly every motion he submitted to the district court, including each request for a release of funds. If Segal proceeded to hearing, he risked losing everything.

The Parties met several times to discuss settlement. (R.2093.) The meetings were usually unproductive. (*Id.*) As part of the settlement negotiations, Segal was required to rely on the Government's 2013 schedule which identified the ownership and valuations of the restrained assets. (*Id.*, Ex. 2.) The Government told Segal that if he wanted to settle he should select the assets he wanted to use to pay his $15 million forfeiture judgment, and he could select $8 million of assets to keep provided he accepted the Government's valuation of those assets.[9] (*Id.*)

[9] The Government said it was restraining $47.5 million worth of partnership investments, partnership distributions and dividends, financial accounts, etc., but this figure was pure fiction since the Government never had an independent appraisal performed on any of those assets. (*Id.*)

The Government knew its values were low as evidenced by its own internal charts. For example, the 2007 schedule shows that the value of Sheridan House Associates should have been at least $3 million. (R.2093, Ex. 6.) Yet, the Government never changed the $750,000 value of Sheridan House Associates on its 2013 schedule. (R.2093, Ex. 2.) 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. Even though the 2013 schedule 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. Given the Government's take it or leave it offer, Segal had no choice. He therefore decided to release his ownership interest in certain restrained assets to pay his $15 million forfeiture. (R.1707, 1856, 1858, attached hereto as A16-29.)

Although Segal was focused on releasing his interest in the restrained assets 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. The Government initially permitted Segal to pick whichever assets he wanted to release and retain, but once Segal did so, the Government changed its position and told Segal that in order to settle, 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. (R.2093.) To make this a somewhat 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. (*Id.*) The Government then changed its arbitrary value of Lakeshore Entertainment from $2.5 million to $1.6 million, further demonstrating how arbitrary and unsupported its valuations were. (R.2093, Ex. 2; A16-29.) Although the Government reneged on its offer that Segal could select whichever assets he desired, Segal had no choice but to go along.

The Government, knowing of Segal's concerns about his family, played on Segal's emotions and persuaded him to take two insurance policies with a purported cash value of $2,043,780. (R.2093.) The Government misrepresented through its 2013 settlement schedule that NNNG owned the restrained insurance policies. (*Id.*) 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 the Government's representation that the insurance policies were something NNNG owned and could "give," "transfer" or "sell" to Segal. As it turns out, the Government knew, based on information it received from the insurance carriers, that the two policies Segal acquired as part of the settlement were not owned by NNNG (or Segal), and thus, there was no way NNNG could transfer ownership of the policies to Segal.[10] When the Government finally approved the release of information concerning the policies that Segal purchased as part of the alleged $8.4 million the Government "allowed" him to keep, Segal learned that neither NNNG, nor Segal, owned the policies. Instead, the owner was Harvey Silets, as Trustee. (R.

[10] Segal did not learn this until months after the settlement because of the Government's restraining orders and instructions to not communicate with Segal or his counsel. (R.1758.)

2093, Ex. 16.) Thus, although the Government still maintains that it gave Segal $8.4 million as part of the settlement, it really shortchanged Segal by more than $2 million on the insurance alone because it "gave" Segal a $2 million insurance asset that it did not own or control, and which did not provide any benefit to Segal.

Similarly, of the "$8.4 million" the Government allegedly "gave" to Segal, an additional $2,151,716 was comprised of Segal's nonforfeitable ERISA accounts which could not have been forfeited and never should have been restrained. (A29.) Even looking at the settlement as the Government does, *i.e.,* that it gave Segal $8.4 million, the Government shortchanged Segal by more than $4 million.

Then, even though Joy Segal owned the East Bank Club limited partnership interest (R. 2093, Ex. 17), and even though the Government had documents reflecting that Joy Segal owned this asset, the Government claimed that East Bank Club belonged to NNNG. Thus, Segal "paid" $345,000 (the value the Government had placed on East Bank Club) for yet another asset that should have never been on the table. (A29.) Although Segal "paid" the Government $345,000 for East Bank Club, the Government did not have the right to sell that asset.

VI. The Parties Reached a Settlement Stipulation.

Three days before the hearing to determine contested ownership claims to the restrained assets, the Parties agreed, subject to district court approval, to settle the forfeiture judgment. (R.1702.) The Settlement Stipulation provided that Segal's $15 million personal forfeiture judgment was satisfied. (A16-29.) The Settlement Stipulation identified which restrained assets were to be retained by the

Government as full satisfaction of Segal's $15 million forfeiture judgment. (*Id.*) Specifically, Exhibit A to the Settlement Stipulation identified all of the restrained assets.[11] (A27-28.) Exhibit B to the Settlement Stipulation identified which of those restrained assets were to be released to Segal. (A29.)

On February 13, 2013, the district court approved the Settlement Stipulation. (R.1706.)

VII. As a Result of the Settlement Stipulation, the Government Received an Enormous Windfall.

Over time, Segal obtained evidence that shows the actual value of the property seized by the Government. The evidence shows that the Settlement Stipulation, which was drafted by the Government, was grossly and unconscionably one-sided in favor of the Government. As a result of the settlement, the Government received at least $20 million more than the $15 million Segal was ordered to forfeit. 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.

[11] The Government's claim to ownership of some of those assets was contested.

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[12]
Lincoln Place Associates (R.2093, Ex. 9.)	$2,500,000	$604,891.65	$9,774,857.10	$7,879,748.75
Asbury Plaza	$25,000	$166,250[13]	(has not been sold)	$166,250
Elm Street Plaza	$25,000	$104,545.45[14]	(has not been sold)	$104,545.45
Peterson Plaza (R.2093, Ex. 10.)	$190,000	$157,320.03	$1,959,217	$1,926,537.03

In sum, the Government has: (a) collected at least $29,642,969.25 in cash from distributions and sale proceeds from the disputed assets, (b) seized retirement accounts, which are exempt from forfeiture by the Employment Retirement Income Security Act of 1974, with a value of at least $2,603,094.66, and (c) seized partnership interests in the Chicago White Sox, Sheridan House Associates, Asbury Plaza Venture LLP, Elm Street LLP and Joe's Stone Crab of Chicago, LLC, which were valued by the Government for a total of $3,034,000.00. (R.2065, Exs. A and C.) In total, the Government has collected a minimum of $35,280,063.91 of Segal's

[12] 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 the Government falsely claimed was only worth $750,000 to begin with.

[13] R.2093, Ex. 22.

[14] R.2093, Ex. 23.

personal property instead of the $15 million that was ordered and affirmed by this Court. (*Id.*)

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, over $4 million did not benefit Segal. Segal received $2,151,716 of his own ERISA assets that should never have been restrained in the first place. Segal paid another $2,043,780 to the Government for two insurance policies the Government never had any right to sell. The Government knew or should have known that neither NNNG nor the Government had any ownership interest in the policies sold to Segal. Thus, Segal gave up more than $4 million worth of assets to the Government in exchange for assets that should not have been restrained or the Government had no right to sell.

VIII. Segal Filed a Motion Asking the District Court to Direct the Government to Provide an Accounting and Remit Any Amounts Received in Excess of $15 Million.

On October 5, 2016, Segal filed his Motion to Modify, which highlighted the above history and the Government's windfall as a result of the Settlement Stipulation. (R.2065.) Segal's Motion asked the district court to exercise its FRCP 32.2 duties to ensure that the Government received the $15 million to which it was entitled, but no more. (*Id.*) The Government filed its response on January 30, 2017. (R.2088.) Segal filed a Reply on April 21, 2017. (R.2093.) On July 12, 2017, the district court denied Segal's Motion. (A1-12.) Segal filed a Motion to Amend the July 12, 2017 Order, which was also denied, and this appeal followed. (R.2106, 2107.)

SUMMARY OF ARGUMENT

The district court committed plain error when it failed to exercise its independent FRCP 32.2 duties, and instead, denied Segal's Motion to Modify. Pursuant to the district court's August 31, 2009 amended forfeiture judgment, Segal was required to personally forfeit $15 million. The district court set a hearing to determine the ownership and value of the restrained assets to determine how Segal would satisfy his $15 million obligation. Before the hearing commenced, however, Segal was coerced to settle.

In the years following the settlement, as more information became available to Segal, it has become clear that the Government received far more than the $15 million Segal was required to forfeit. Thus, Segal sought relief by asking the district court to exercise its independent FRCP 32.2 duty to ensure a nexus existed between the forfeited property and Segal's $15 million forfeiture obligation. Segal is not disputing that he was required to pay the Government $15 million. Rather, he seeks by his motion to recover the amounts the Government received beyond the $15 million he owed. Had the district court exercised its FRCP 32.2 duty, it would have prevented the excessive forfeiture that has resulted from the Settlement Stipulation.

Even if the Settlement Stipulation did not result in an economic windfall to the Government, the Government shortchanged Segal of more than $4 million that he was to receive as part of the settlement. As part of the settlement, Segal received $2,043,780 in restrained insurance policies that belonged to neither Segal, nor

NNNG. Thus, the Government had no ability to convey these policies to Segal. Segal obtained nothing of value. Second, the Government released to Segal $2,151,716 in ERISA accounts which are not subject to forfeiture. Finally, the Government forced Segal to pay for an interest in East Bank Club, even though that partnership interest was titled in his ex-wife's name. Thus, the district court committed reversible error when it interpreted the Settlement Stipulation as providing Segal with $8 million in immediate benefits. It did not.

To the extent this Court does not find that the district court's refusal to enforce its FRCP 32.2 duties amounts to plain error, Segal submits, in the alternative, that the district court committed reversible error when it found nothing unconscionable in the settlement negotiation process or the terms of the Settlement Stipulation. The evidence reveals that Segal lacked the necessary bargaining power and was economically coerced into settling for no consideration. Consequently, the Settlement Stipulation should be reformed.

ARGUMENT

I. Standard of Review.

The issues in this brief concern the district court's failure to enforce its FRCP 32.2 obligations with respect to the Settlement Stipulation which resulted in Segal grossly overpaying the Government to satisfy his $15 million forfeiture judgment. A trial court's failure to observe its FRCP 32.2(b)(1)(A) duty is reviewed for plain error. *U.S. v. Beltramea,* 785 F.3d 287, 291 (8th Cir. 2015). Plain error review involves four prongs. *Puckett v. U.S.,* 129 S.Ct. 1423, 1429 (2009). First, there must

be a deviation from a legal rule that has not been affirmatively waived by the appellant. *Id.* Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. *Id.* Third, the error must have affected the appellant's substantial rights (*i.e.,* the outcome of the district court proceedings). *Id.* Finally, if the first three prongs are satisfied, then this Court has the discretion to remedy the error, which discretion "ought to be exercised only if the error "'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" *Id.* (Internal citations omitted.) "[T]he court of appeals can correct plain errors not drawn to the attention of the district court." *Capital Indem. Corp. v. Keller,* 717 F.2d 324 (7th Cir. 1983); *see also,* FRCP 52(b) and *Beltramea,* 785 F.3d at 291 (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).

The issues in this brief also relate to the district court's interpretation of the Settlement Stipulation concerning Segal's civil forfeiture judgment, which are legal in nature, and therefore appropriate for *de novo* review. *See, e.g., United States v. Rand Motors,* 305 F.3d 770, 774 (7th Cir. 2002). "A settlement agreement is interpreted as a contract." *Id.* Under the federal common law rules of contract interpretation, a settlement agreement is interpreted under an objectively reasonable standard to determine the meaning of the agreement and to give "the full effect to the intention of the parties." *Id.* Contracts with the Government require special due process protection and concern for fairness. *Carnine v. U.S.,* 974

F.2d 924, 928 (7th Cir. 1992). Here, the district court interpreted the contract as providing $8 million in immediate benefits to Segal, when, as shown below, it did not.

To the extent this Court does not find plain error with respect to the district court's failure to perform its FRCP 32.2 duties, this appeal alternatively seeks review of the district court's findings, as a matter of law, that the Settlement Stipulation was not unconscionable, which is reviewed *de novo*. *See, Rand Motors, supra.*

II. The District Court Erred When It Failed to Exercise Its Independent FRCP 32.2 Duty To Ensure a Nexus Between the Forfeited Property, Including the Amounts Collected, and Segal's Forfeiture Obligation.

The United States Supreme Court has made clear that there is no rule "that a district court must simply accept a defendant's agreement to forfeit property . . . when the trial judge . . . finds the agreement problematic." *Libretti v. U.S.,* 516 U.S. 29, 30 (1995). To the contrary, a district court must reject a forfeiture settlement if it discovers facts that call the validity of the settlement into question. Pursuant to FRCP 32.2, a district court has an independent duty to: (a) confirm that facts justify the forfeiture, and (b) ensure the amount of property forfeited accurately represents the defendant's gains from illegal conduct, *i.e.,* in this case, Segal's $15 million personal forfeiture. If there is insufficient proof of either requirement, the district court has the independent duty to disregard a forfeiture agreement and rule accordingly.

A. The Facts Fail to Justify Forfeiture of the Property Segal Agreed to Release.

The Government failed to offer any evidence that the assets it sought to use to pay Segal's $15 million forfeiture judgment were only worth $15 million. As explained herein, the values which Segal was required to accept if he wanted to settle were not supported by any appraisals, and in several instances, were severely undervalued. For example, Segal released his interest in Lincoln Place Associates to the Government at the Government's ascribed $2.5 million value to satisfy, in part, his $15 million forfeiture. Once Segal released his interest, the Government turned around and sold that interest for $9,774,857.10.

Moreover, although Segal agreed to release his interest in certain restrained assets to the Government to satisfy his $15 million forfeiture obligation, the Parties never stipulated to who owned these assets, nor did the district court ever make a finding concerning asset ownership. Pursuant to FRCP 32.2, the district court was required to address this issue to ensure that, regardless of the Parties' settlement, there is a nexus between the property forfeited and the criminal offense.

The district court erred when it found -- in a footnote to its July 12, 2017 Opinion which directly contravenes the holdings in *Beltramea* and *U.S. v. Newman,* 659 F.3d 1235 (9th Cir. 2011)(discussed *infra*)[15] and offers no factual support or reasoning -- that: (1) Segal waived his FRCP 32.2 argument because he did not raise it in a timely fashion, and (2) even if Segal's FRCP 32.2 argument was timely, a

[15] Although *Beltramea* and *Newman* are out-of-Circuit cases, they are directly on point and provide guidance concerning a district court's obligations under FRCP 32.2, regardless of whether a defendant agrees to any kind of forfeiture.

nexus existed between the forfeited property and the offense. As set forth above, the district court is wrong because: (1) Segal could not waive the district court's independent FRCP 32.2 obligation, and (2) the facts fail to demonstrate a nexus between the forfeited property in excess of Segal's $15 million forfeiture obligation. As explained below, *Newman* proves this. There, the defendant did not just fail to make a timely FRCP 32.2 argument; he never made a FRCP 32.2 argument at all. The Ninth Circuit nevertheless corrected the plain error in *Newman*. This Court should do the same here.

B. The Settlement Stipulation Resulted In An Inaccurate and Excessive Forfeiture Amount.

It is not enough for the Government to prove the facts that justify forfeiture; the *amount* of the forfeiture and the value of assets used to pay the forfeiture must also accurately represent a defendant's gain from his criminal conduct. "The district court has an independent duty to 'determine the amount of money that the defendant will be ordered to pay,'" and by analogy, the value of the assets taken to pay the forfeiture. *Newman,* 659 F.3d at 1245 (citing FRCP 32.2(b)(1)(A)). Under FRCP 32.2, the district court's duty continues in order to prevent an excessive forfeiture, even if the defendant stipulates to such. Settlements resulting in an inaccurate or excessive forfeiture should be rejected by the district court.

For example, in *Newman*, the Ninth Circuit explained a district court's duty when it faces a "problematic" cash forfeiture stipulation as the Supreme Court envisioned in *Libretti*. *Newman,* 659, F.3d at 1245. In *Newman*, the defendant was convicted of running a mortgage fraud scheme. *Id*. at 1238. As part of his plea

agreement, he stipulated to forfeiting $1,000,000.00 in ill-gotten gains. *Id.* at 1239. Despite the defendant's agreement, the district court reduced the forfeiture to $100.00. *Id*. On appeal, the Ninth Circuit made it clear that the district court had the independent power to reject the $1,000,000.00 forfeiture stipulation if the court found that amount to be excessive. *Id*. at 1245. "[T]he existence of a stipulated amount of forfeiture [and by extension, the stipulated value of assets used to pay the forfeiture,] does not necessarily suffice." *Id*. The Ninth Circuit then referred to the holding in *Libretti*, saying "[t]he Supreme Court has expressly recognized the potential for abuse in situations like these[.]" *Id*.

In *U.S. v. Wendfelt*, the court similarly invoked its power to reject a stipulation of forfeiture that would result in a windfall to the Government. *U.S. v. Wendfelt*, 2012 WL 2681842 (D. Nevada 2012). Exercising its independent duty, the district court disregarded the defendant's agreement to forfeit $2,890 and found, based on "the exception under *Libretti,*" that the money was not connected to the criminal offense. *Id*. Like *Newman*, *Wendfelt* makes clear that a district court should reject any forfeiture stipulation that does not accurately represent a defendant's gains from criminal activity.

Newman and *Wendfelt* are directly on point. Here, the Settlement Stipulation allowed the Government to recover far more than the $15 million Segal was ordered to personally forfeit. In fact, the Government has collected at least $35,280,063.91 from assets which the Government admitted at trial and during the forfeiture hearing were owned by Segal. Despite the Government later changing its position

concerning ownership to those assets, NNNG never had any legal claim for ownership or any contractual right to enforce a claim to distributions or sales proceeds of those assets. Accordingly, the Settlement Stipulation is grossly inaccurate. The district court erred when it ignored the evidence and failed to exercise its power to reject the inaccurate forfeiture stipulation in the Settlement Stipulation. In essence, the district court failed to enforce the $15 million amended forfeiture order by allowing the Settlement Stipulation to stand as is.[16] The district court simply reasoned that the Government ran the risk of the forfeited assets being worth less than $15 million, even though it turns out they were not. The district court's failure to fulfill its FRCP 32.2 obligations was plain error.

The district court also had a duty under the Eighth Amendment to enforce the $15 million amended forfeiture judgment. "It is well recognized that the Eighth Amendment's limitations apply where a judgment of forfeiture has been entered against a criminal defendant in connection with the conviction of a federal offense. *U.S. v. Malewicka,* 664 F.3d 1099, 1103 (7th Cir. 2011). The United States Supreme Court has instructed that "[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: the amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *U.S. v. Bajakajian,* 524 U.S. 321, 334 (1998).

[16] It is important to note that Segal is not trying to undo or rescind the Settlement Stipulation which resulted in paying his forfeiture judgment in full. Rather, Segal 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 Government engaged in repeated due process violations, ignored this Court's mandate over and over again, fabricated the record, changed its trial position and ultimately recovered millions more than it was entitled to recover as part of the settlement.

Here, the district court determined that Segal must be punished by forfeiting not only his 100% ownership in NNNG, a business with annual revenues of $130 million in 2003 that someone offered to purchase for $150 million after the indictment and before trial, but also $15 million personally. Segal consequently forfeited approximately $200 million in a situation where the trial court found the insurance companies were paid their premiums, the insureds received their insurance coverage and Segal had no intent to defraud. This forfeiture is especially egregious since Segal's honest service conviction was reversed and his tax fraud conviction is highly suspect since the IRS in a civil collection case concluded no tax was due and dismissed the case. *See,* fn 2, above.

As reflected in the Motion to Modify, Segal entered into a settlement with the Government which resulted in the Government receiving far in excess of $15 million Segal was to personally forfeit. In fact, the evidence shows that the Government collected more than two times what Segal was required to forfeit as a result of the Settlement Stipulation. Allowing the Government to collect at least $35,280,063.91 on a $15 million order would render the district court's work a nullity and offend the Excessive Fines Clause and Eighth Amendment concerns raised in *Bajakajian*. Based on those facts, how could this more than $200 million forfeiture meet the Eighth Amendment's proportionality test? The *Libretti* line of cases make clear that the district court is empowered with a duty, independent of the Parties' actions, to prevent that result. The district court erred when it failed to exercise its independent duty to reject the inaccurate and excessive forfeiture. This Court

should correct the plain error by the district court.

III. The District Court Erred When It Found That Segal Received Approximately $8 Million in Assets as a Result of the Settlement.

The district court, in its July 12, 2017 Opinion denying Segal's Motion to Modify, ruled that Segal received $8 million in immediate benefits as a result of the settlement. The district court is wrong.

In their negotiations leading to the Settlement Stipulation, Segal was forced to rely on schedules prepared by the Government which identified the restrained assets, including several insurance policies which the Government represented were owned by NNNG and forfeit as part of the enterprise forfeiture. Among those insurance policies were Guardian Life Insurance Policy No. XXX8790 and Connecticut Mutual Insurance Policy XXXX0680. Playing on Segal's well-known concern for his family, the Government persuaded Segal to take those two "Near North owned" insurance policies, which had a $2,043,780 cash surrender value, in order to ultimately benefit his family. The Government represented by operation of the Settlement Stipulation those policies would become Segal's "sole and separate property." Because those policies had been restrained pursuant to the Preliminary Order of Forfeiture, and because the insurance companies refused to speak with Segal because those restraining orders, Segal had no choice but to rely on the Government's representations that those policies were owned by Near North and were something Near North could "give," "transfer," or "sell" to Segal. Relying on the Government's representations, Segal took those two policies as part of his settlement with the Government.

Paragraph 9 of the Settlement Stipulation set forth the assets that would be transferred to Segal. Paragraph 9(e) granted Segal "all right, title, and ownership interest in the following two insurance policies: the Guardian Life Insurance Policy No. XXX8790 and Connecticut Mutual Insurance Policy XXXX0680[.]" On its face, Paragraph 9(e) contemplates a full transfer of these two policies, including the cash surrender value of approximately $2,043,780, to Segal. But Segal later learned (months after the settlement), once certain restraining orders were lifted and the insurance companies would finally talk to him, that Near North did not own these policies. Thus, the Government never had the power to transfer these policies to Segal, nor could Segal ever obtain ownership of them. The face of the policies and the updated annual policy statements, which the Government had in its possession since 2004, but which Segal did not receive until after the Settlement Stipulation was signed, reflect that they are owned by the Trustee of an irrevocable trust. Accordingly, Segal cannot "cash in," control, or possess the policies. The inevitable conclusion is that these facts violate the terms in Paragraph 9(e), as confirmed in Exhibit B.

Exhibit B to the Settlement Stipulation reflects the total value of "Segal's share" of the assets released to Segal as part of the settlement, including the cash surrender value of the above-referenced insurance policies, as follows:

Partnerships	$4,232,500.00
Financial Accounts	$2,151,716.47
Insurance Policies	$2,043,780.00
Total to Segal	$8,427,996.47

The Government knew or should have known the two policies comprising the "Insurance Policies" should never have been seized, and for that reason, could never have been transferred by the Government to Segal. Thus, the cash surrender value of these policies to Segal was not $2,043,780 – it was zero. Therefore, the total benefits Segal received as a result of the settlement was at least $2 million less than he bargained for.

Despite the foregoing facts, the district court erroneously concluded that "[t]he settlement provided [Segal] with clear benefits: It extinguished his personal debt to the government and gave him *immediate access to roughly $8 million in assets*." (A6-7.)(Emphasis added.) The district court made a manifest error concerning the benefits Segal received. The Government should be directed to refund $2,043,780, plus appropriate interest, in cash to Segal.

The insurance policies do not reflect the only instance in which Segal did not receive the benefit he bargained for. As explained above, Exhibit B to the Settlement Stipulation reflects that Segal received $2,151,716.47 in financial accounts. But these amounts came from his ERISA accounts which are exempt from forfeiture. *See, e.g., Guidry v. Sheet Metal Workers Nat'l Pension Fund,* 493 U.S. 365, 376 (1990)(ERISA's anti-alienation statute, 29 U.S.C. §1056(d)(1), prevents assigning or alienating pension benefits). These assets never should have been on the negotiating table, let alone restrained. *Id.* Similarly, the Government threatened that Joy Segal would lose her interest in East Bank Club if Segal did not pay $345,000.

In sum, of the $8 million immediate benefit which that the district court found Segal received, Segal did not receive a $2,043,780 benefit for the insurance policies. Further, he should not have had to pay $2,151,716 for his nonforfeitable financial accounts, and another $345,000 for an asset owned by his ex-wife. Not only should the Government be directed to return all amounts received in excess of Segal's $15 million forfeiture obligation (*see,* Section II, *supra*), but this Court should also direct the Government to return to Segal the $4,540,596 he paid for the two insurance policies, the ERISA accounts and the East Bank Club interest.

IV. The District Court Erred When It Found, As A Matter of Law, Nothing Unconscionable In Either the Settlement Negotiation Process or the Ultimate Settlement Stipulation Terms.

As the district court explained in its July 12, 2017 Opinion, "a contract is unenforceable under Illinois law if it is 'unconscionable.'" (A4, citing *Razor v. Hyundai Motor Am.,* 222 Ill.2d 75, 100 (2005).) Unconscionability can be either "procedural" (which "takes into account a lack of bargaining power" and is found when "impropriety in the process of forming the contract deprive[s] a party of a meaningful choice") or "substantive" (*i.e.,* when contract terms are "totally one-sided or harsh"), or a combination of both. *Id.*; *see also, Hanover Ins. Co. v. Bldg. Co.,* 751 F.3d 788, 794 (7th Cir. 2014).

Segal's Motion to Modify argued, *inter alia,* that (a) he was deprived of adequate bargaining power during the settlement negotiations, (b) he had no meaningful choice but to settle, and (c) the resulting Settlement Stipulation was "grossly and unconscionably one sided in favor of the Government." (A5.) Segal

argued, in the alternative, that if the district court was not going to exercise its FRCP 32.2 duties, the Settlement Stipulation should be deemed unenforceable because it is unconscionable. The district court denied this alternative requested relief. It found "nothing remotely approaching unconscionability in either the negotiation process or the ultimate terms the parties agreed upon." (A10.) In so finding, the district court ignored the Government's misconduct in connection with the settlement's economic underpinnings. *See, Contempo Design Inc. v. Chicago and Northern Illinois District Counsel of Carpenters,* 226 F.3d 535 (7th Cir. 2000). The district court's opinion should be reversed.

A. The Settlement Stipulation Was Procedurally Unconscionable.

As the Parties approached the hearing to determine ownership of the restrained assets, and thus, how Segal would satisfy his forfeiture obligation, the Government knew Segal had no money, could not hire experts, could not pay his lawyers and had no ability to talk with the people who controlled the restrained assets. Once the Government learned it would not recover $30 million from Segal personally, it persisted with an ongoing strategy to make up for that loss by trying to convince the district court, through false evidence, misleading proofs and a newly devised theory that contradicted its trial theory, that most of the restrained assets belonged to NNNG, and not Segal. (R.2093, pp.31-36.)

The Government had three sources of information concerning ownership of the restrained assets, which it would later contradict: (1) Exs. 41 and 247, which conclusively demonstrated that all but four of the restrained partnerships belonged

to Segal; (2) original asset documentation produced by asset holders (*e.g.,* general partners of partnerships) to the Government in response to the Government's forfeiture subpoenas, which showed that Segal was the owner of those assets; and (3) Government schedules concerning the ownership of the restrained assets. At the 2005 forfeiture hearing, the Government claimed that Segal owned all of the restrained assets, with the exception of Sheridan Road Lifestyles. (R.2106, Ex. 1.) As of 2007, the Government claimed that Segal owned assets totaling at least $28,339,461. (*Id.,* Ex. 2.) In 2009, the Government took the position that Segal owned assets totaling $16,022,451. (*Id.*, Ex. 3.) And then finally, in 2013, after this Court affirmed the $15 million forfeiture judgment and as the hearing on asset ownership approached, the Government took the position that Segal owned assets totaling only $12,783,556.45. (*Id.,* Ex. 4.)

Although Segal filed motions during the forfeiture remand proceedings which outlined the Government's misconduct, these motions went unanswered by the Government and were not considered by the district court. (*See, e.g.,* Docket Nos. 1421, 1425.) Given the awesome power the Government always wheels when dealing with criminal defendants (*see, e.g., In re Altro,* 180 F.3d 372, 379 (2nd Cir. 1992)), and especially the success the Government had over Segal here, and given that Segal had no money to protect himself, the Government insisted that Segal accept its position on the valuation of the restrained assets or it would not settle with him. In essence, the Government sought to take away Segal's FRCP 32.2 rights and get the district court out of the mix. The Government succeeded.

At the time the Parties were negotiating the Settlement Stipulation, Segal had only recently been released from prison, was suffering from ADD, and his only sources of cash to pay for lawyers, accountants and appraisers was 2/3 of his Social Security check; the remaining 1/3 was withheld to pay a federal tax lien. Although Segal moved the district court to release funds on several occasions, his requests were always denied. In fact, the district court not only ignored the pleadings that Segal filed concerning the Government's ongoing misconduct, but it denied every substantive motion that Segal presented.

Under these circumstances, Segal's only alternative was to settle, even if the terms of the settlement were far less favorable than his Amended Forfeiture Judgment obligation. If he proceeded to hearing, he risked losing everything and still owing the Government millions of dollars. Given the district court's refusal to consider Segal's motions, the Government's consistent failure to comply with its discovery obligations and turning over documents, Segal's inability to speak with any asset holder and Segal's lack of funds, it would have been impossible for Segal to present his case. These circumstances led Segal to believe that he would not be able to convince the district court that the forfeited assets were his, not NNNG's, and that the Government's new "evidence" and theories were false. Segal had no meaningful choice but to succumb to the Government's coercion and agree to settle. In sum, the Settlement Stipulation was procedurally unconscionable.

The district court ignored the undisputed facts setting forth the Government's ever-changing positions on Segal's ownership of the restrained assets,

and instead found that "the record shows that Segal is a highly intelligent, sophisticated businessperson. Prior to his conviction, he was a licensed attorney, a certified public accountant and the owner and sole shareholder of a company that in its prime earned 'close to $50 million annually.'" (A5.) In making these observations, the district court was suggesting that Segal could not have been forced to settle. But if there ever was a finding that proved coercion existed - it is the district court's finding. Why else would a highly intelligent businessman, like Segal, accept $8 million of his own assets, when he was entitled to at least $22 million based on the Government's own schedules, unless he was coerced into settling?

B. The Settlement Stipulation Was Also Substantively Unconscionable.

A contract is substantively unconscionable when it is "totally one-sided or harsh." The Settlement Stipulation here forced Segal to give up title to property he rightfully and admittedly (at least at the trial) owned in exchange for property that he also owned. Pursuant to the Settlement Stipulation, Segal was to receive $8.4 million in assets, even though the Government was only entitled to receive $15 million and should have returned over $20 million in restrained assets to Segal. Nevertheless, as a result of the settlement, the Government received at a minimum $35,280,063.91. (*See,* R.2065-1, Ex. 1 (consisting of original documentary evidence reflecting Segal's ownership and checks received by the U.S. Marshal's office).) Moreover, as explained in Section III above, Segal did not even receive the $8.4 million in assets for which he negotiated. The disparity in the negotiations that

resulted in the Settlement Stipulation is appalling. The district court erred when it found no part of the negotiations or the ultimate settlement terms unconscionable.

C. The Settlement Stipulation Is Unenforceable Under *Contempo* Because There Was No Consideration.

Just because a party signs a contract does not mean the contract is valid and enforceable. *Contempo,* 226 F.3d 535. In *Contempo,* this Court found there was no consideration for a second contract that modified (with less favorable terms) the terms of an earlier contract because the matter at issue between the parties was already governed by the earlier contract. *Id.* at 549. This Court held that "the basic requirement that a contract needs consideration to be enforceable has a distinct function in this area of contract modification[]: to prevent coercive modifications." *Id.* at 550. (Here, Segal was coerced into giving up his right to a meaningful court hearing because of a Government enforced lack of funds, the Government's withholding of relevant documents and the requirement that Segal accept the Government's position on the ownership and value of the restrained assets.) Although Contempo agreed to less favorable terms in a second contract that modified the terms of its original contract, this Court concluded that the modified second contract was unenforceable because, *inter alia,* there was no consideration given for accepting the lesser terms. Here, Segal was forced to give up his right to a meaningful hearing and the district court did not enforce FRCP 32.2, which would have protected him.

The facts here are analogous to *Contempo*. Here, similar to the original contract in *Contempo,* the Amended Forfeiture Judgment set forth the parameters

of Segal's forfeiture obligations. Segal was required to pay to the Government, and the Government was entitled to receive, $15 million. But the later agreed upon Settlement Stipulation modified those parameters in a way that was more favorable to the Government. In order for Segal to be able to enter into a settlement, Segal was forced to accept the Government's position on asset value.

The Government was restraining assets of Segal's worth at least $37 million (based on the Government's valuations). Although Segal was only required to pay the Government $15 million, when the Parties settled Segal's forfeiture obligation, the Settlement Stipulation provided that Segal was to receive only $8.4 million in assets (again, based on the Government's valuations) instead of at least $22 million in assets (*i.e.,* $37 million in assets, less $15 million to be forfeited to the Government) to which he was entitled, with the Government giving no consideration for that acceptance. Stated another way, the Settlement Stipulation, in effect, modified the terms of the Amended Forfeiture Judgment by requiring Segal to pay substantially more to the Government than the $15 million that Segal owed, without giving Segal anything but a return of certain of his own assets. Under *Contempo,* this is not consideration, and the Settlement Stipulation is therefore unenforceable.

The district court erred as a matter of law when it failed to consider the economic reality of the *Contempo* holding in reaching its decision. If this Court does not find plain error in the district court's failure to enforce its FRCP 32.2 obligations

and protect Segal, then the Settlement Stipulation must be reformed under *Contempo.*

D. The Settlement Stipulation Is Also Unenforceable Under *Contempo* Because Segal Acquiesced To Its Terms Due To The Government's Ongoing Misconduct and His Economic Situation, Which In Large Measure Was Caused By the Government's Refusal to Release Any Restrained Funds To Him.

Not only is the Settlement Stipulation unenforceable under *Contempo* because there was no consideration supporting the modification to the terms of the Amended Forfeiture Judgment, it is also unenforceable because Segal, like Contempo, acquiesced to the terms of the Settlement Stipulation because he had no other alternative.

In *Contempo,* this Court found that Contempo agreed to the new contractual terms due to economic duress. Contempo was an employer in the business of constructing, storing, setting up and taking down exhibits and displays at conventions and trade shows. The Union with whom Contempo contracted went on strike in violation of the original agreement at a time when Contempo was negotiating a multiyear, multimillion dollar contract to build minibanks inside Chicagoland grocery stores for Bank of America. When the Union strike threatened the loss of this business, Contempo had no economic choice but to enter into a new agreement with the Union to prevent disruptions to future business.

Like Contempo, as the Parties here approached the February 2013 hearing, the Government led Segal to believe he had no other economic option, but to accept the lesser terms of the settlement presented by the Government (*i.e.,* the Government promising to return to Segal $8.4 million of his own assets when it

should have returned at least $22 million of assets). Similar to the Union in *Contempo,* which had indirect power over Contempo by threatening loss of business, the Government here had Segal "over a barrel." Segal could either go to hearing without the benefit of experts and risk losing everything since he had already lost every substantive motion before the district court, or he could settle and at least recover some of his assets.

Like the Union in *Contempo,* the Government's conduct showed a planned pattern motivated by bad faith to make up for the $15 million the Government lost when the Amended Forfeiture Judgment was affirmed. The Government used its awesome bargaining power to beat Segal down (a) through its misrepresentations to the district court and Segal about the ownership and value of the restrained assets, and (b) through preventing Segal access to money to defend himself. And like Contempo, Segal acquiesced to the Government's terms due to the circumstances. He had tried to bring these issues to the district court, to no avail. He had no alternative but to accept the Government's position and settle an issue that never should have been at issue in the first place.[17] He had no money to pay lawyers, accountants or expert appraisers to assist in preparing for the hearing, and he risked the Government taking everything he owned. Thus, like *Contempo,* the

[17] The Government should have just released Segal's restrained money and property beyond the $15 million forfeiture amount. Instead, as explained above, the Government changed its trial position and started claiming that NNNG owned that property. As part of the settlement, the Government forced Segal to accept its valuations on property and then trade property he clearly owned for other property he clearly owned. Judicial estoppel should be invoked to prevent the Government from telling the jury during the trial and the forfeiture hearing that Segal owned all of the assets at issue in order to get the jury's forfeiture verdict and then at settlement time, take a different position that those assets belong to NNNG. *Walton v. Bayor Corp.,* 643 F.3d 994, 1002 (7th Cir. 2011).

modified terms agreed to in the Settlement Stipulation (*i.e.,* that Segal was to pay the Government substantially more than the $15 million he was obligated to pay pursuant to the Amended Forfeiture Judgment) amounted to a coercive modification.

Thus, the district court erred when it declined to consider the holding in *Contempo,* and conclude that the Settlement Stipulation is unconscionable, given that Segal was coerced into agreeing to its terms, and thus, unenforceable. Again, if this Court does not find plain error in the district court's failure to enforce its FRCP 32.2 obligations and protect Segal, then the Settlement Stipulation must be reformed under *Contempo.*

CONCLUSION

For all of the foregoing reasons, Segal respectfully requests that this Court enter an order: (a) reversing the district court's July 12, 2017 Order denying his Motion to Modify, (b) reversing the district court's August 16, 2017 order denying his Rule 59 Motion to Amend the July 12, 2017 Order, and (c) finding that the district court's refusal to enforce its FRCP 32.2 duties was plain error. Segal further requests that this Court enter an order directing the Government to: (a) return to Segal all funds and assets received in excess of $15 million, as set forth above, and provide an accounting of all additional monies it has received since February 13, 2013 as a result of the assets it received from Segal through the Settlement Stipulation, (b) refund the $2,043,780 Segal paid for the insurance policy which the Government had no ability to transfer to Segal, (c) refund the $2,151,718 Segal paid

to acquire his nonforfeitable ERISA accounts, (d) refund to Segal the $345,000 which he paid the Government for Joy Segal's East Bank Club limited partnership interest, and (e) reimburse Segal for the substantial legal fees he incurred seeking to enforce his rights under the Settlement Stipulation and for seeking to have the district court perform its duties under FRCP 32.2. If this Court finds no plain error in the district court's failure to perform is FRCP 32.2 duties, then Segal respectfully requests, in the alternative, that this Court find that the Settlement Stipulation is unconscionable, and thus, unenforceable and remand this matter for further proceedings.

DATED: March 6, 2018

Respectfully submitted,

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Edward T. Joyce

/s/ Edward T. Joyce
Attorney for Defendant-Appellant

Dated: March 6, 2018

CIRCUIT COURT RULE 30(d) STATEMENT

The undersigned hereby states that all material required by parts (a) through (b) of Circuit Rule 30 are included in this appendix.

/s/ Edward T. Joyce
Counsel for Defendant-Appellant

CERTIFICATE OF SERVICE

I, Edward T. Joyce, an attorney, hereby certify that I caused a true and correct copy of the foregoing Appellate Brief and Required Short Appendix of Defendant-Appellant, Michael Segal, to be served upon:

William Hogan
Assistant United States Attorney
219 South Dearborn Street, Suite 500
Chicago, Illinois 60604

to be delivered via electronic mail delivery this 6th day of March 2018.

/s/ Edward T. Joyce
Edward T. Joyce

APPENDIX

APPENDIX INDEX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	**No. 02 CR 112**
v.	)	
	)	**Chief Judge Rubén Castillo**
MICHAEL SEGAL,	)	
	)	
Defendant.	)	

ORDER

Presently before the Court is the motion of Michael Segal ("Segal") to modify a forfeiture order entered pursuant to a 2013 settlement agreement between the parties. (R. 2065, Mot.) He separately requests the turnover of corporate stock he believes is his under the terms of the agreement. (R. 2019, Br.) For the reasons stated below, Segal's motion to modify is denied, and the Court concludes that an evidentiary hearing is needed to resolve the ownership of the stock.

BACKGROUND

The facts underlying this long-running criminal case were fully set forth in several opinions of the U.S. Court of Appeals for the Seventh Circuit. *See United States v. Segal*, 811 F.3d 257 (7th Cir. 2016); *United States v. Segal*, 644 F.3d 364 (7th Cir. 2011); *United States v. Segal*, 495 F.3d 826 (7th Cir. 2007); *United States v. Segal*, 432 F.3d 767 (7th Cir. 2005). They are repeated here only as they pertain to the present filings. In brief, Segal and his company, Near North Insurance Brokerage ("NNIB"), were charged in 2004 "with a bevy of counts including racketeering, mail and wire fraud, embezzlement, false statements, and conspiracy to impede the Internal Revenue Service." *Segal*, 644 F.3d at 365. Both Segal and NNIB were convicted following a jury trial. *Id.* NNIB and its parent group, Near North National Group, Inc.

("NNNG"), were forfeited to the government, as were "all assets of these companies, including all of their interests in other companies." *Segal*, 432 F.3d at 776. Segal was ordered to serve a 121-month prison sentence and to personally forfeit $30 million to the government. *Segal*, 495 F.3d at 830. He appealed. *Id.* The Seventh Circuit affirmed his conviction but remanded for further proceedings on the forfeiture issue. *Id.* at 830-40. Specifically, the Seventh Circuit had concerns about potential double-counting if the Court did not account for personal funds that Segal had "poured back into the enterprise." *Id.* at 839. In considering that issue on remand, this Court reduced Segal's personal forfeiture obligation to $15 million. *Segal*, 644 F.3d at 365. Both sides appealed, but the Seventh Circuit affirmed the revised forfeiture order. *Id.* at 368.

Thereafter, in order to satisfy the forfeiture judgment, the parties prepared for a hearing scheduled in February 2013 to determine the ownership and value of approximately $47 million in assets being restrained by the government—including financial accounts, insurance policies, stock investments, and partnerships in real estate ventures, Chicago sports teams, and other entities—that once belonged to Segal and NNIB. Shortly before the scheduled hearing, the parties negotiated a stipulated settlement agreement ("the Settlement Stipulation") directing the sale and distribution of the restrained assets. (R. 2065-2, Settlement Stip.) Segal—by this time out of prison—"participated actively, indeed aggressively, in the negotiation of the settlement." *Segal*, 811 F.3d at 259. In essence, the Settlement Stipulation provided that all assets listed on a document attached as "Exhibit A" would be forfeited to the government and that all assets listed on a document attached as "Exhibit B" would be returned to Segal. *Id.* at 264. On February 13, 2013, this Court entered an order approving the Settlement Stipulation.[1] (R. 1706, Order.) Upon

[1] The Court also retained jurisdiction to "implement and enforce" the terms of the Settlement Stipulation. (R. 1706, Order at 14.)

entry of the Settlement Stipulation, Segal's $15 million personal debt to the government was extinguished, and he obtained the immediate return of approximately $8 million in assets. (*Id.*)

That was far from the end of the matter, however, because various disagreements arose about the terms of the Settlement Stipulation, precipitating several more orders by this Court and another round of appeals by both Segal and the government. *See Segal*, 811 F.3d at 259. As is relevant here, one point of disagreement was the ownership of "stock, worth about $467,000, in the Rush Oak Corporation, a bank holding company." *Id.* at 263. As it turned out, this stock was not listed on either exhibit to the Settlement Stipulation. *Id.* at 264. Segal argued, and this Court agreed, that since the stock was not listed on Exhibit A, it belonged to Segal. *Id.* The government appealed, and the Seventh Circuit found evidence of a "mutual mistake of fact," namely, that "both parties assumed the stock would be retained by the government but in the rush of drafting and redrafting of the settlement agreement had failed to mention it." *Id.* The Seventh Circuit reversed and remanded for further proceedings, concluding that "an evidentiary hearing . . . is necessary to resolve the issue." *Id.*

After the case was remanded, Segal filed an expansive motion entitled, "Motion to Modify Forfeiture Order." (R. 2065, Mot.) In that motion, Segal argues that the Settlement Stipulation is "unconscionable" and thus unenforceable as drafted. He argues that at the time the agreement was negotiated he was "[f]resh from prison and without witnesses, documents, or money to contest the Government's positions" and therefore simply "knuckled under" in agreeing to the government's arbitrary terms. (*Id.* at 8.) He believes that the government wrongfully forced him to negotiate for the return of assets that clearly belonged to him personally and also undervalued many of his assets. (*Id.* at 12-16.) In his view, the proper remedy is for this Court to order the government to "remit to [him] whatever amount of

distributions and sales proceeds it has received in excess of $15 million" as a result of the Settlement Stipulation, which he estimates to be more than $20 million. (*Id.* at 17, 29.)

ANALYSIS

"A settlement agreement is a contract, and contracts are interpreted according to the law of the jurisdiction in which the contract was created." *In re Motorola Sec. Litig.*, 644 F.3d 511, 517 (7th Cir. 2011); *see also Estate of Sims ex rel. Sims v. Cty. of Bureau*, 506 F.3d 509, 514 (7th Cir. 2007) ("State law governs a suit to enforce a settlement of a federal suit."). The Court therefore looks to Illinois law to interpret the Settlement Stipulation. *See Motorola*, 644 F.3d at 517. Illinois law provides that "[w]here a written agreement is clear and explicit, a court must enforce the agreement as written." *Cannon v. Burge*, 752 F.3d 1079, 1088 (7th Cir. 2014) (citation omitted). "Both the meaning of the instrument, and the intention of the parties must be gathered from the face of the document without the assistance of parol evidence or any other extrinsic aids." *Id.* (citation omitted). Nevertheless, a contract "may be reformed to conform with the intention of the parties upon proof by clear and convincing evidence of a mutual mistake of fact." *Lukas v. Lightfoot*, 476 N.E.2d 1, 2 (Ill. Ct. App. 1985) (citation omitted). "A mutual mistake exists when the contract has been written in terms which violate the understanding of both parties." *Id.* (citation omitted). Reformation is also appropriate when one party makes a drafting mistake and "the other party knows of the mistake and fails to inform the other party or conceals the truth from him." *Id.* (citation omitted).

In addition, a contract is unenforceable under Illinois law if it is "unconscionable." *Razor v. Hyundai Motor Am.*, 854 N.E.2d 607, 622 (Ill. 2005). "Unconscionability can be either 'procedural' or 'substantive' or a combination of both." *Id.* Procedural unconscionability occurs when "impropriety in the process of forming the contract deprived a party of a meaningful

choice." *Hanover Ins. Co. v. N. Bldg. Co.*, 751 F.3d 788, 794 (7th Cir. 2014). Substantive unconscionability occurs when contract terms are "totally one-sided or harsh." *Id.*

I. Modification of the Settlement Stipulation

In his motion to modify, Segal argues that the Settlement Stipulation was so "grossly and unconscionably one sided in favor of the Government" as to be unenforceable. (R. 2065, Mot. at 8.) He believes that he is entitled to a "refund" of any amounts received by the government in excess of the $15 million that was ordered to be forfeited by him personally. (*Id.* at 16.)

After careful review of Segal's voluminous filings, the Court finds Segal's effort to paint himself as a powerless victim of an overzealous government entirely unpersuasive. Instead the record shows that Segal is a highly intelligent, sophisticated businessperson. Prior to his conviction, he was a licensed attorney, a certified public accountant, and the owner and sole shareholder of a company that in its prime earned "close to $50 million annually." *Segal*, 495 F.3d at 830. He had a team of skilled attorneys representing him throughout this case, including during the settlement negotiation process. At the end of protracted negotiations, the parties reached a reasonable agreement to settle a number of thorny issues related to the "corporate maze" of entities owned in whole or in part by Segal (and, in turn, the assets of those entities) that were ordered to be forfeited. *Segal*, 432 F.3d at 769. Notwithstanding Segal's arguments, the Court finds nothing inherently unfair about the Settlement Stipulation or the process used to negotiate it.[2]

[2] Segal's 68-page reply brief contains page after page of vitriol against one of the prosecutors, going so far as to allege wrongdoing by this attorney in another case more than two decades ago. (*See* R. 2093, Reply.) The reply brief also rehashes nearly every litigation battle that has occurred in this case since its inception in 2002—both those that Segal lost and those that he won—and ascribes nefarious motives to the prosecutor throughout. (*Id.*) The Court would have been justified in striking this document as overlength and improper, but the Court allowed it to stand in the interest of affording Segal every opportunity to raise his desired arguments. However, nothing about these gratuitous attacks on counsel convinces the Court that Segal is entitled to have the Settlement Stipulation rewritten.

Segal argues in detail that the government knew or should have known that certain assets belonged to him and not NNIB because his name appeared on partnership agreements and other ownership documents. (R. 2065, Mot. at 9-17; R. 2065-3, Segal Aff. ¶¶ 3-99.) He believes that it was entirely improper for the government to include these assets in the parties' negotiations. (R. 2065, Mot. at 9-10.) But this argument overlooks the fact that Segal's personal finances were hopelessly muddled with that of the racketeering enterprise, making tracing the ownership of the restrained assets far from straightforward. "Not surprisingly, Segal did not leave detailed records of his crimes." *Segal*, 644 F.3d at 367. Instead, he used a "lackluster accounting system, which was a deliberate attempt to conceal his fraudulent conduct." *Id.* at 368 (citation omitted). This failing, coupled with the fact that "Segal essentially used funds from NNIB as his personal piggy bank for years," made it nearly impossible to conduct an accurate accounting of Segal's finances and those of NNIB.[3] (R. 1483, Order at 6.) There was also a labyrinth of corporate entities under the NNNG umbrella, some of which had been purchased with funds improperly taken from NNIB. *See Segal*, 495 F.3d at 830-31. Because of these complicating factors, the mere fact that an asset was nominally held by Segal would not conclusively prove that it was "owned" by him for purposes of the forfeiture order.

Importantly, Segal could have required the government to prove the ownership of the restrained assets at the evidentiary hearing scheduled in 2013. He did not do so and instead opted to settle. The settlement provided him with clear benefits: It extinguished his personal debt to the government and gave him immediate access to roughly $8 million in assets that otherwise could

[3] As just a few examples, the evidence at trial showed that Segal took hundreds of thousands of dollars from a trust account held by NNIB and used it for personal expenses, misapplied the proceeds of corporate distributions that belonged to NNIB to outstanding obligations he owed the company, and used $700,000 in corporate funds to pay his personal income tax obligation for tax year 1995. (R. 1483, Order at 7-8.) As of 2001, the trust account held by NNIB was short by "$24 million—even after Segal put $10 million from a mortgage on his home into the account." *Segal*, 495 F.3d at 831.

have been tied up in litigation for years. Segal has enjoyed the benefits of the Settlement Stipulation for the past four years. Indeed, his most recent appeal to the Seventh Circuit involved an effort to enforce the terms of the Settlement Stipulation as to his interest in the Chicago Bulls. *Segal*, 811 F.3d at 261-63. His arguments resulted in an order from the Seventh Circuit requiring the government to permit him to purchase this lucrative asset. *Id.* Even Segal's current position before this Court regarding his ownership of the Rush Oak stock presumes the enforceability of the Settlement Stipulation. (*See, e.g.*, R. 2019, Br. at 11 ("The unambiguous Settlement Stipulation controls.").) Principles of judicial estoppel—and basic fairness—prevent Segal from picking and choosing which provisions of the Settlement Stipulation he wants to enforce and which he wants to negate. *See Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 795 (7th Cir. 2013) ("The doctrine [of judicial estoppel] protects the courts from being manipulated by chameleonic litigants who seek to prevail, twice, on opposite theories." (citation and internal quotation marks omitted).) This is particularly so where Segal had the advice of very capable attorneys in deciding whether and on what terms to settle. In short, the Court is unpersuaded by his argument.[4]

Segal also argues about the valuation of various restrained assets; in his view, the government grossly undervalued certain assets at the time of the Settlement Stipulation, resulting in a "windfall" to the government when these assets were liquidated. (R. 2065, Mot. at 8, 15-16;

[4] Segal also argues that Federal Rule of Criminal Procedure 32.2(b)(1)(A) has not been satisfied—specifically, that the government failed to establish a "requisite nexus" between the forfeited property and his offenses. (R. 2065, Mot. at 18-24.) In support he relies heavily on two out-of-Circuit cases, neither of which were in the same unusual procedural posture as this case. (*See id.* (citing *United States v. Beltramea*, 785 F.3d 287 (8th Cir. 2015) and *United States v. Newman*, 659 F.3d 1235 (9th Cir. 2011).) Those cases were decided on direct appeal, whereas Segal has already pursued a direct appeal, an appeal of the forfeiture order, and an appeal stemming from the Settlement Stipulation. To the extent Segal could raise a challenge based on Rule 32.2 at this late stage, the Court was more than satisfied at the time the Settlement Stipulation was entered that a nexus existed between the forfeited property and Segal's extensive criminal conduct, and nothing in his present filings convinces the Court otherwise.

R. 2093, Reply at 3-7.) But placing a value on the restrained assets was not as straightforward as he suggests, given that NNNG's corporate structure collapsed like a house of cards upon his conviction. *See Segal*, 432 F.3d at 778-79. As Segal's own affidavit illustrates, many of the assets were closely held partnerships and ventures with market values that were difficult to gauge. (*See* R. 2065-3, Segal Aff. ¶¶ 3-99.) Indeed, Segal concedes in one of his filings that the bulk of his assets did not have "readily ascertainable values." (R. 2064, Reply at 5.) If anyone was in a position to estimate the value of these assets it would have been their owner—Segal. Again, Segal could have put the government's valuations to the test by simply proceeding to the evidentiary hearing. He chose not to do so. Part of accepting the settlement was accepting the asset valuations the parties estimated at that time. The government accepted the risk that the assets would be worth less than was estimated, and Segal accepted the risk that they might be worth more. That was the very basis of the parties' agreement. The fact that the valuations may have turned out differently than Segal predicted does not give him *carte blanche* to rewrite the parties' agreement. *See United States v. Bownes*, 405 F.3d 634, 636 (7th Cir. 2005) ("In a contract . . . one binds oneself to do something that someone else wants, in exchange for some benefit to oneself. By binding oneself one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one. That is the risk inherent in all contracts; they limit the parties' ability to take advantage of what may happen over the period in which the contract is in effect.").

The Court also rejects Segal's argument that he was somehow forced to accept the government's "arbitrary" valuations of his assets because he did not have access to proper information. (R. 2065, Mot. at 6-7.) Upon reviewing the government's response and supporting documentation, the Court is satisfied that the government gave Segal reasonable access to

information in its possession about the restrained assets so that he could make a meaningful choice about whether to settle.[5] (*See* R. 2088, Resp. at 18-19; R. 2051, Hogan Aff. ¶¶ 8-14; *id.*, Moriarty Aff. ¶¶ 10-14.) Segal makes a blanket assertion that there was "nothing [he] could do with respect to valuing his assets," (R. 2093, Reply at 65), but this is inaccurate. As stated, he could have put the government's valuations to the test by proceeding to the evidentiary hearing. Short of that, he and his team of skilled attorneys could have petitioned the Court for the turnover of information when the Settlement Stipulation was being negotiated if they believed the information they had was incomplete or inaccurate. The voluminous record in this case makes amply clear that Segal is not afraid to file a motion when he deems it necessary. He did not do so, and he cannot be heard to complain about the matter now.

Indeed, Segal expressly agreed in the Settlement Stipulation to release "any and all claims to any and all remaining real or personal property, proceeds from the sale of any properties, real or personal, and corporate assets, identified on Exhibit A." (R. 2065-2, Settlement Stip. ¶ 10.) He further agreed that as to the property listed in Exhibit A, upon entry of a final order of forfeiture "all right, title, and ownership interest" would "vest in the United States and no one, including defendant Michael Segal, shall have any further claim to the property." (*Id.* ¶ 12.) These provisions clearly foreclose his current effort to obtain a portion of the proceeds from the sale of assets awarded to the government as part of the parties' agreement. The Court finds no basis to allow Segal to repudiate these plainly worded provisions, which he and his team of capable attorneys agreed to more than four years ago.

[5] Notably, Segal argued in his one of his appeals that the government wrongfully withheld information he needed to determine the value of certain insurance policies he was entitled to purchase under the Settlement Stipulation, and the Seventh Circuit found no merit to this argument. *See Segal*, 811 F.3d at 260.

In short, it would be entirely improper and unfair for the Court to "modify" a 2013 settlement agreement that reasonably resolved the many complex issues surrounding the forfeiture of Segal's assets. The Court finds nothing remotely approaching unconscionability in either the negotiation process or the ultimate terms the parties agreed upon. To the contrary, it is apparent from the record that Segal reached an arms-length deal with the government after hard-fought negotiations in which he was an active—indeed, aggressive—participant. *See Segal*, 811 F.3d at 259. The fact that after four years of reflection he now believes he could have made a better deal does not permit the Court to modify the parties' agreement. For all these reasons, Segal's motion is denied.

II. Ownership of the Rush Oak Stock

As for the remaining matter of the Rush Oak stock, Segal argues that he is entitled to immediate turnover of this asset under the terms of the "unambiguous written Settlement Stipulation" without the need for an evidentiary hearing. (R. 2064, Reply at 16.) Segal's position directly contravenes the Seventh Circuit's remand order, which this Court is required to follow. *Segal*, 811 F.3d at 264 (remanding "with directions . . . to conduct an evidentiary hearing of the government's appeal regarding Rush Oak"); *United States v. Polland*, 56 F.3d 776, 777 (7th Cir. 1995) ("The mandate rule requires a lower court to adhere to the commands of a higher court on remand."). Nothing in Segal's voluminous filings convinces the Court that it should disregard the clear instructions of the Seventh Circuit.[6]

[6] Segal argues in part that there is no need for a hearing because the government has already received more than $15 million as a result of the Settlement Stipulation. (R. 2019, Br. at 7-8; R. 2064, Reply at 1-2.) This appears to be simply a reformulation of his argument that the Settlement Stipulation is unconscionable as drafted and should be modified. The Court rejects that argument for the reasons already stated. To the extent Segal is asking that he be allowed to litigate at the hearing whether the government received more than $15 million from its disposition of his assets, that request is denied for the same reasons.

Indeed, the record shows that there is a clear factual dispute over the ownership of the stock. Segal attests in an affidavit that he never intended to relinquish the Rush Oak stock to the government. (R. 2019, Segal Aff. ¶ 9.) He also points to an entry in Exhibit B listing his interest in "Oak Bank," which in his view encompassed the Rush Oak stock. (R. 2019, Br. at 8.) On the other hand, prosecutor William Hogan stated in open court that during the course of negotiations, he, the government's financial investigator Thomas Moriarty, and defense counsel Marc Martin had a specific discussion about the Rush Oak stock (in the context of a discussion about Segal's interest in Oak Bank), and all of them understood the stock was being forfeited to the government. (R. 2051, Tr. at 36.) Hogan attests to the same facts in his affidavit, as does Moriarty. (*Id.*, Hogan Aff. ¶¶ 20-23; *id.*, Moriarty Aff. ¶¶ 15-18.) The government has also submitted evidence showing that the Rush Oak stock was included in an earlier draft of Exhibit A and that the parties treated Segal's interest in Oak Bank and the Rush Oak stock separately throughout their negotiations. (R. 2051, Moriarty Aff. ¶ 20; *id.*, Docs. at 147, 158.)

If in fact the parties made a mutual mistake in omitting the Rush Oak stock from Exhibit A—or if Segal and/or his attorneys noticed that this asset was inadvertently omitted and purposely failed to alert the government in order to capitalize on the error—the Court would be permitted to amend the Settlement Stipulation to conform to the parties' understanding. *Lukas*, 476 N.E.2d at 2-3. But the Court must hear and evaluate the testimony of the relevant witnesses, including Martin, who, according to Hogan, was the only defense attorney in the room during critical discussions on this issue. (R. 2051, Hogan Aff. ¶¶ 19-22.) To date, Martin (who no longer represents Segal) has not provided his version of events. The Seventh Circuit expressly held that requiring Martin to testify on this issue was appropriate and would not invade attorney-client communications. *Segal*, 811 F.3d at 264. For these reasons, the Court intends to conduct

an evidentiary hearing to resolve the matter of the Rush Oak stock in accordance with the Seventh Circuit's instructions. Segal's request for immediate turnover of this asset is denied.

CONCLUSION

For these reasons, Michael Segal's motion to modify the forfeiture order (R. 2065) is DENIED. The parties are ordered to appear for a status hearing on August 2, 2017, at 9:45 a.m. to schedule an evidentiary hearing to resolve the ownership of the Rush Oak stock.

ENTERED:

Chief Judge Rubén Castillo
United States District Court

Dated: July 12, 2017

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.1.1.2
Eastern Division

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No.: 1:02−cr−00112
Honorable Ruben Castillo

LECG, LLC, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, August 16, 2017:

MINUTE entry before the Honorable Ruben Castillo: as to Michael Segal: Motion hearing held on 8/16/2017. Defendant's motion to amend the July 12, 2017 Order [2106] is denied for the reasons stated in open court.Mailed notice (rao,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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ORIGINAL

UNITED STATES TAX COURT

MICHAEL SEGAL,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 3908-08
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent.	)	

DECISION

Pursuant to the agreement of the parties in this case, it is

ORDERED AND DECIDED:

That there are no deficiencies in income tax due from the petitioner for the years 1999, 2000 and 2001; and

That petitioner is not liable for the fraud penalty under I.R.C. Section 6663 for the years 1999, 2000 and 2001.

(Signed) Kathleen Kerrigan
Judge

Entered: FEB 18 2014

SERVED FEB 18 2014

Docket No. 3908-08

* * * * *

It is hereby stipulated that the Court may enter the foregoing decision in this case.

WILLIAM J. WILKINS
Chief Counsel
Internal Revenue Service

MICHAEL SEGAL
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OF COUNSEL:
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(Small Business/Self-Employed)
JOSEPH T. FERRICK
Acting Area Counsel
(Small Business/Self-Employed:Area 4)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 02 CR 112
	)	Honorable Ruben Castillo
MICHAEL SEGAL and NEAR NORTH INSURANCE BROKERAGE, INC.	)	

STIPULATION TO SETTLE CERTAIN FORFEITURE CLAIMS AND TO MODIFY THE FORFEITURE ORDER RELATING TO DEFENDANT SEGAL

The United States of America, by its attorney, Gary S. Shapiro, United States Attorney for the Northern District of Illinois, and defendant Michael Segal ("the parties"), through their attorneys, hereby stipulate and agree as follows:

1. On June 21, 2004, the jury in this case returned a guilty verdict on Count Fifteen of the Fourth Superseding Indictment convicting defendant Segal of operating the Near North Insurance Enterprise ("Near North") through a pattern of racketeering activity.

2. On June 22, 2004, one day after the return of the verdict, the jury returned a forfeiture verdict that Segal must forfeit $30 million in proceeds and interests acquired by virtue of the racketeering activity described in Count Fifteen, pursuant to 18 U.S.C. § 1963(a)(1) and (3). The jury further found that defendant Segal's interest in Near North was subject to forfeiture pursuant to the provisions of 18 U.S.C. § 1963(a)(2).

3. On July 2, 2004, the Court entered a Preliminary Order of Forfeiture relating to defendant Segal's interest in Near North and subsequently appointed a trustee on July 6, 2004 to preserve and protect interests in Near North for forfeiture.

4. On November 30, 2005, defendant Segal was sentenced to a period of 121 months incarceration. As part of the sentence, a forfeiture judgment was entered against Segal's interest in the racketeering enterprise, and against Segal personally in the amount of $30 million. The Seventh Circuit Court of Appeals affirmed the defendant's conviction and the district court's finding that Segal must forfeit 100% of his interest in the racketeering enterprise. The opinion also affirmed the finding that $30 million was the net proceeds of the racketeering offense that Segal was required to forfeit but the Court vacated and remanded to the district court for determination as to what portion of the $30 million was not reinvested in the enterprise but went to benefit Segal personally. *United States v. Segal*, 495 F.3d 826 (7th Cir. 2007).

5. On remand, this Court determined that defendant Segal personally received at least $15 million in proceeds from the racketeering enterprise. *United States v. Segal* (Mem. Op. August 31, 2009 pp. 6-9). An amended judgment was entered on September 21, 2009, and both the government and defendant appealed. On May 3, 2011, the Seventh Circuit affirmed the amended judgment finding that Segal personally owes the United States $15 million.

6. To facilitate satisfaction of the outstanding judgments, this Court scheduled a hearing to begin on February 4, 2013, to resolve ownership claims of certain restrained assets of defendant Michael Segal and defendant Near North Insurance Brokerage.

7. The parties do hereby agree to settle and enter into this Settlement Stipulation to compromise certain claims under the terms and conditions set forth in this agreement.

8. It is agreed that pursuant to various orders entered by this Court, property, including proceeds from the sale of assets, stocks, funds, insurance policies, partnership interests, and distributions are either in the custody of the United States Marshal or the court-appointed trustee or restrained by the property custodians. The property is identified and described more fully on Exhibit A attached to this stipulation under seal and made a part hereof.

9. It is agreed by the parties that upon entry of an order by this Court approving the terms of the Settlement Stipulation, the following items shall be released by the United States Marshal or the property custodians with the agreement of the United States Attorney of the Northern District of Illinois to defendant Michael Segal to be his sole and separate property. The property to be released, which is described more fully on Exhibit B attached hereto under seal, and made a part of this Stipulation, consists of:

(a) All right, title, and ownership interest in funds in the amount of $2,150,000 million dollars financed from the contents of the financial accounts;

(b) All right, title, and ownership interest in the stock of Oak Bank Trust and Savings (Oak Bank) held in the name of defendant Michael Segal;

(c) All right, title, and ownership interest in the 1028 N. Rush Street Corporation held in the name of Michael Segal;

(d) All right, title, and ownership interest in Lakeshore Entertainment Corporation and any successor entity including Lakeshore Entertainment Group LLC held in the name of Michael Segal;

(e) All right, title, and ownership interest in the following two insurance policies: the Guardian Life Insurance Policy No. XXX8790 and Connecticut Mutual Insurance Policy XXXX0680, currently serviced by Massachusetts Mutual. Defendant Michael Segal has a right to exercise an option to purchase all remaining insurance policies held by Near North Insurance Brokerage as listed on Exhibit A at the cash surrender value computed when, and if, the option is exercised. The option to purchase these insurance policies must be exercised no later than six months from the date the Settlement Stipulation is approved by this Court. Segal shall exercise this option by sending a letter to the United States Attorney for the Northern District of Illinois, to the attention of the undersigned Assistant United States Attorney, which identifies the policy or policies he intends to purchase. Within thirty days of receipt of the letter, the cash surrender values of the policy or policies shall be provided to Michael Segal. Fifteen days after receipt of the cash surrender information, defendant Segal shall pay good funds for the purchase of the policy or policies. If the option is not exercised or the

funds are not received as required, the government shall liquidate the policy or policies.

(f) One-half of the ownership interest in the Chicago Bulls Limited Partnership, BSV Limited Partnership, and Chicago Bulls Media. The remaining one-half interest in the Chicago Bulls Limited Partnership, BSV Limited Partnership, and Chicago Bulls Media shall be retained by the United States and marketed for sale. Defendant Michael Segal shall retain the right of first refusal on a commercially reasonable, responsible cash offer made to the United States for the purchase of the government's ownership interest within six months of the approval of the Settlement Stipulation. Within seven days of receipt of an acceptable offer, the United States shall notify Michael Segal of the offer. To exercise his right of first refusal to purchase the interest of the United States, Michael Segal must notify the United States Attorney for the Northern District of Illinois, within seven days of receiving said notice from the United States of his intent to purchase the government's interest in the partnership at the cash offer received, and within ten days of serving notice shall provide good funds in that amount for the purchase of the government's interest. If no acceptable offer is received by the United States within six months from the date the Settlement Stipulation is approved by this Court, defendant Segal shall have the option to purchase the government's partnership interests with good funds at the appraised

value set forth on Exhibit A within thirty days after the expiration of the six month period. No later than seven days prior to the expiration of the six month option period, defendant Segal shall notify the government of his intention to purchase the partnership interest, and shall provide good funds for the purchase of the government's interest in the partnership interest within ten days of the date of the notification;

(g) All right, title, and ownership interest in River Road Associates held in the name of Michael Segal;

(h) All right, title and ownership interest of East Bank Venture;

10. It is further agreed that defendant Michael Segal shall release any and all claims to any and all remaining real or personal property, proceeds from the sale of any properties, real or personal, and corporate assets, identified on Exhibit A and not listed on Exhibit B attached to the Settlement Stipulation.

11. Defendant Michael Segal warrants that he has the exclusive rights to control the transfer of his ownership interests in the property identified in Exhibit A. Further, he understands that pursuant to the Settlement Stipulation, the United States shall seek forfeiture of any and all property identified in Exhibit A and not listed on Exhibit B so that it may be applied to satisfy the forfeiture judgment and disposed of according to law pursuant to Title 18, United States Code, Section 1963. To the extent that any of this property identified in Exhibit A, and not listed on Exhibit B, is not available to satisfy the forfeiture judgment because it has been otherwise transferred, encumbered or alienated, indirectly or directly by defendant Segal, he

shall owe the United States the appraised value of the asset as set forth on Exhibit A. Further, to the extent that the government identifies any property or assets not listed in Exhibit A that is property of the Near North Enterprise, the government shall seek forfeiture of such property and defendant Segal acknowledges that his claim of ownership to any corporate property is extinguished by the Settlement Stipulation.

12. All parties agree that upon approval of the Settlement Stipulation by the Court, the personal judgment in the amount of $15 million entered against defendant Segal shall be satisfied and the United States shall have no further claim against defendant Segal relating to the entry of the forfeiture judgment against him personally. Upon entry of a final order of forfeiture against the remaining property identified on Exhibit A, but not listed on Exhibit B, all right, title, and ownership interest in that remaining property shall vest in the United States and no one, including defendant Michael Segal, shall have any further claim to the property.

13. Upon entry of an order approving the Settlement Stipulation, the parties agree that the property in the custody of the United States Marshal and identified in Paragraph 9 above shall be returned or released to defendant Michael Segal through his counsel.

14. The parties agree that nothing in the terms or conditions of the Settlement Stipulation shall be affected by any other agreement or stipulation relating to the property subject to the Settlement Stipulation and not approved by this Court. The government is aware that there is an outstanding marital property agreement entered in the Circuit Court of Cook County that purports to apportion between Joy Segal and

Michael Segal certain property that is subject to forfeiture in this matter. Upon approval of the terms of the Settlement Stipulation by the Court, defendant Michael Segal represents, agrees and acknowledges that any property rights released, claimed by, or awarded to him under the Segals' marital settlement agreement that are inconsistent with the terms of this agreement are, in any action involving the United States or for the purpose of enforcing the forfeiture judgment in this matter, no longer in force and are hereby waived.

15. Defendant Michael Segal acknowledges and agrees that he has conducted his own analysis with respect to the condition, value, and status of title of all items of property to be released to him and that his decision to enter into the Settlement Stipulation is not made based on representations with respect to either the condition or value of, or title to, any such property by representatives of the United States. Further, it is understood and agreed that the property is being released "as is and where is" to defendant Michael Segal.

16. Upon entry of an order approving the Settlement Stipulation and notice, defendant Michael Segal shall disclaim any right, title, or ownership interest that he may have had in any of the remaining property so that the property can be forfeit and disposed of according to law. Further, defendant Segal represents and avers that he is unaware of any third party who has a claim cognizable under Title 18, United States Code, Section 1963 to the remaining property subject to forfeiture.

17. Defendant Michael Segal, individually as well as on behalf of his agents and assigns, for the limited purpose of the Settlement Stipulation, agrees to release

and hold harmless the United States and any agents and employees of the United States in both their individual and official capacities, the court-appointed trustee and any professionals employed by him pursuant to Court order, in both their individual and official capacities, and any state or local law enforcement agents acting in their individual or official capacity, from any and all claims, demands, and causes of action which currently exist or which may arise as a result of the United States' investigation and seizure of, institution of forfeiture proceedings against, retention, forfeiture, and disposition of the property in this forfeiture proceeding, including the release of property pursuant to the terms of the Settlement Stipulation.

18. It is agreed that the persons signing the Settlement Stipulation warrant and represent that they possess full authority to bind the persons on whose behalf they are signing this agreement. Further, all parties understand that this agreement is not final or binding until approved by the Court.

19. It is also agreed, by and among the parties, that all parties will bear their own costs, fees, and expenses, and that any attorneys fees owed will be paid out of the settlement amount received by defendant Segal and not in addition thereto. Further, the parties agree to cooperate in the implementation of the terms and conditions of the Settlement Stipulation, including the execution of any documents reasonably necessary to transfer or dispose of the property subject to release pursuant to the terms of this agreement. Also, defendant Michael Segal is required to accurately file and pay all relevant federal and state income taxes, if any, arising under law as a result of this agreement. The United States Attorney's Office agrees to cooperate with defendant

Segal regarding the provision of information necessary to the preparation, filing, or payment of any taxes. Nothing in the Settlement Stipulation shall affect any obligation to file and pay federal or state income tax returns that existed prior to the execution of the Settlement Stipulation.

20. This agreement may be executed in counter parts, each of which constitutes an original and all of which constitute one and the same agreement.

21. Further, the parties signing this agreement hereby state that they have read this agreement and understand its terms and conditions and that they intend to be legally bound by its promises.

22. The parties agree that the court shall retain jurisdiction over this action in order to implement and enforce the settlement, according to the terms of the Settlement Stipulation.

GARY S. SHAPIRO
United States Attorney

By: _____ Date: 2-10-13
WILLIAM R. HOGAN, Jr.
Assistant United States Attorney

_____ Date: 2/11/13
MARSHA A. McCLELLAN
Assistant United States Attorney

EDWARD T. JOYCE
Attorney for Defendant

Date: 2/11/13

JENNIFER DOHERTY
Attorney for Defendant

Date: 2/11/13

MARC W. MARTIN
Attorney for Defendant

Date: 2/11/13

MICHAEL SEGAL

Date: 2/11/13

EXHIBIT A

Funds Received	Amount
Near North National Group (NNNG) Bank Balance	$9,195,164.00
405 N. Sheridan Road Highland Park Illinois	$6,009,541.07
Distributions from NNNG and Segal Partnerships held by the US Marshal Service	$7,953,529.72
Partnership	**Amount**
Lakeshore Entertainment LLC	$1,600,000.00
Chicago Bulls (including Bulls Media)and BSV Limited Partnership - United Center	$4,175,000.00
Oak Bank and Trust	Unknown
1028 N. Rush Street. Corporation	$195,000.00
River Road Associates	$5,000.00
East Bank Club Venture LP	$345,000.00
Lincoln Place Associates	$2,500,000.00
Chicago White Sox (including Chicago Metro Television Associates)	$2,200,000.00
Sheridan Road Lifestyles	$25,000.00
Nathan's Equity Group	$1,000.00
Seven Course Deal LLC (Lettuce Entertain You)	$15,000.00
Watertown Square Associates	$191,750.00
Sheridan House Associates	$750,000.00
Peterson Plaza Development	$185,000.00
Peterson Plaza Associates	$5,000.00
Palatine Properties, LTD	$30,000.00
Asbury Plaza Venture LP	$25,000.00
Elm Street Plaza LP	$25,000.00
Huron Plaza Venture LP	$100,000.00
Joe's Stone Crab of Chicago, LLC	$34,000.00
Berkeley Place Restaurant LP	$60,000.00
Drai's On the Strip	Unknown
Chestnut Place Associates	$225,000.00

Financial Institution	Account Number		Amount
Merrill Lynch	7DQ10829-1		$2,100,564.00
Near North Savings Plan - administered by Principal Life Insurance Company	Incentive Savings Plan		$401,152.47
Merrill Lynch	5F5-37M51		$681,595.58
Merrill Lynch	5F5-37J61		$280,534.43
Merrill Lynch	637-93451		$351,517.00
Merrill Lynch	637-93450		$555,465.65
MidAmerican Bank FSB Mid Town Bank	200250818		$104,153.00
MidAmerican Bank FSB Mid Town Bank	200250814		$174,996.00
Northern Trust Bank	2022176		$3,327.00
National Financial Services/ABN AMRO	TNE-002020 BOA Account number 163732		$218,793.00
National Financial Services/ABN AMRO	TNE 031070 BOA account LSL 165794		$26,311.00
Oppenheimer	G38-1654990		$50,782.00
LaSalle Bank/Bank of America	530071100-8		$28,036.00
LaSalle Bank/Bank of America	530071101-6		$18,853.00
LaSalle Bank/Bank of America	TNE 002020		$201,800.00
Oak Trust and Savings	1032003		$108,731.00
Insurance Company	**Account Number**	**Policy Amount**	**Cash Surrender Value**
Connecticut Mutual-now Mass Mutual	70550680	$250,000.00	$181,089.00
Guardian Life Insurance Company	3098790	$4,000,000.00	$1,862,691.00
Connecticut Mutual-now Mass Mutual	11053183	$2,500,000.00	$189,668.00
Connecticut Mutual-now Mass Mutual	70550670	$750,000.00	$203,015.00
Connecticut Mutual-now Mass Mutual	7968794	$10,000,000.00	$42,010.00
Connecticut Mutual-now Mass Mutual	11036681	$15,000,000.00	$558,212.00
Hartford Life Insurance	0E1456038U	$4,000,000.00	$1,133,002.00
Hartford Life Insurance	LL6006752	$1,500,000.00	$28,265.00

EXHIBIT B

Partnership	Amount	Segal's Share	Note:
Lakeshore Entertainment LLC	$1,600,000.00	$1,600,000.00	Segal's share is 100%
Chicago Bulls Limited Partnership (including Bulls Media) and BSV Limited Partnership - United Center	$4,175,000.00	$2,087,500.00	Segal's share is 50%
Oak Bank and Trust	Unknown	Unknown	Segal's Share is 100%
1028 N. Rush Street. Corporation	$195,000.00	$195,000.00	Segal's Share is 100%
River Road Associates	$5,000.00	$5,000.00	Segal's Share is 100%
East Bank Club Venture LP	$345,000.00	$345,000.00	Segal's Share is 100%
		$4,232,500.00	
Merrill Lynch 7DQ10829-1	$2,100,564.00	$1,750,564.00	Balance of this account to be remitted to USMS Seized Asset Account.
Near North Savings Plan- Incentive Savings Plan administered by Principal Life Insurance Company	$401,152.47	$401,152.47	Segal's Share is 100%
		$2,151,716.47	

Insurance Company	Policy Amount	Cash Surrender Value of Policy	
Guardian Life Insurance - Policy number 3098790	$4,000,000.00	$1,862,691.00	Segal's Share is 100%
Connecticut Mutual-now Mass Mutual Policy number 70550680	$250,000.00	$181,089.00	Segal's Share is 100%
	$4,250,000.00	**$2,043,780.00**	

Partnerships	**$4,232,500.00**
Financial Accounts	**$2,151,716.47**
Insurance Policies	**$2,043,780.00**
Total to Segal	**$8,427,996.47**

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

UNITED STATES OF AMERICA, Plaintiff, -vs- MICHAEL SEGAL, Defendant.	Case No. 02 CR 112 Chicago, Illinois August 16, 2017 9:57 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CHIEF JUDGE RUBEN CASTILLO

APPEARANCES:

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(Proceedings heard in open court:)

THE CLERK: 02 CR 112, United States versus Segal.

MR. HOGAN: Good morning, your Honor. William Hogan on behalf of the United States.

09:57:00 MS. DOHERTY: Good morning, your Honor. Jenn Doherty for Mike Segal.

THE COURT: Okay. I've careful ready the motion. What's the government's position?

MR. HOGAN: It's just a rehash of everything that 09:57:09 they've filed in their most recent efforts to overturn the settlement agreement. There's nothing new in it whatsoever except for the fact that they finally do get around to acknowledging that what they were trying to do is overturn the settlement agreement when their first motion a year ago was 09:57:25 couched as an effort to modify the forfeiture agreement, for which, of course, there's no jurisdiction as the government pointed out.

You know, I have question as to whether or not, although Ms. Doherty and Mr. Joyce's names appear on this 09:57:38 brief, whether they wrote it because it shows quite unfamiliarity with the facts, although it does make out a good case of malfeasance and malpractice by them on Mr. Segal's behalf, but this is just a waste of time.

THE COURT: Okay. I agree with a lot of what you 09:58:01 said, Mr. Hogan. I don't see any need to have further

briefing. I think at this point what is needed is another court to review the situation, but I've never had a more sophisticated litigant before me than Mr. Segal, so to not hold him accountable for resolving this case and abiding by
09:58:28 the settlement stipulation, I think our prior order speaks for itself and there's no reason to shed any more paper in writing another opinion disposing of this motion.

So for the reasons set forth in the Court's prior opinion, we're going to deny this motion to amend the
09:58:50 July 12th, 2017 order. At an appropriate point, you can seek appellate court review.

MR. HOGAN: Well, actually, I'm going to say, for the record, I don't think that they can, but, you know, I'm sure they'll take a shot at it, but I don't think there's any
09:59:07 jurisdiction.

THE COURT: I'm sure they will.

Okay. Thank you.

MR. HOGAN: Thank you.

(Which were all the proceedings heard.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Kathleen M. Fennell *September 13, 2017*

Kathleen M. Fennell Official Court Reporter — Date