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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA	)	No. 13-cr-00103-SLG
	)	
Plaintiff,	)	<u>COUNTS 1-7:</u>
	)	WIRE FRAUD
	)	Vio. 18 U.S.C. § 1343
vs.	)	
	)	<u>COUNTS 8-10:</u>
	)	TAX EVASION
MICHAEL D. BRANDNER,	)	Vio. 26 U.S.C. § 7201
	)	
Defendant.	)	<u>FORFEITURE</u>
	)	18 U.S.C. § 981(a)(1)(C) and
	)	28 U.S.C. § 2461(e)

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FIRST SUPERSEDING INDICTMENT

The Grand Jury Charges:

## GENERAL ALLEGATIONS

At times relevant to this indictment:

1. The defendant, MICHAEL D. BRANDNER (“BRANDNER”), is a physician specializing in plastic surgery, a resident of Anchorage, Alaska and a United States citizen.

2. J.S. are the initials of a former attorney, previously licensed in Texas.

3. Dakota Investments of CA, Inc. (“Dakota”) is an entity incorporated in the Republic of Panama, fully controlled by the defendant, BRANDNER. Dakota was formed by BRANDNER with the assistance of J.S.

4. Michael Brandner, LLC is a Colorado limited liability corporation fully controlled by defendant BRANDNER. Michael Brandner, LLC was formed with the assistance of J.S.

5. Capital Bank of Panama (“Capital Bank”) is a foreign bank located in the Republic of Panama.

6. PENSCO Trust Company (“PENSCO”) is a financial institution located in California providing services to the general public including individual retirement accounts. These include “self-directed” individual retirement accounts (IRA), where the IRA owner, or someone appointed by the IRA owner, makes all the investment choices and decisions for the IRA.

7. Evergreen Capital LLC is nominee Wyoming entity completely controlled by Defendant Brandner, used in an attempt to secretly repatriate the foreign marital Panamanian funds.

8. On or about October 2, 2007, S.B. filed for divorce from the defendant BRANDNER, in Superior Court for the State of Alaska (“State Court”). In response to this action by his wife, BRANDNER set in place the scheme described below to defraud S.B. and to hide his assets from S.B. and the State Court, which had jurisdiction over the divorce action.

#### THE SCHEME

9. Beginning on or about September 21, 2007, and continuing until on or about September 12, 2011, the exact dates being unknown, in the District of Alaska and elsewhere, the defendant, BRANDNER, aided by others known to the grand jury, devised and intended to devise a material scheme and artifice to defraud S.B. of assets and property due her as part of the divorce proceedings.

#### PURPOSE OF THE SCHEME

10. The purpose of the scheme was to hide and conceal millions of dollars of assets from S.B. and the State Court so as to preclude S.B. from obtaining money and property due her as defendant’s wife of 28 years, and to improperly retain all such concealed money and property for defendant’s personal control and use.

## MANNER AND MEANS

11. It was part of the scheme that shortly after the divorce was filed, BRANDNER left Alaska, surreptitiously without notice or contact to friends and family, or his place of business, and drove to Central America after converting assets into five cashier's checks worth over 3 million dollars. BRANDNER subsequently transferred this money to Dakota.

12. It was a further part of the scheme that BRANDNER, with the help of a person known to the grand jury, transferred over one million dollars to PENSCO, and then used that money to create a sham investment in Michael Brandner LLC, purportedly to be a self-directed IRA. The money was then transferred to Dakota in Panama in order to conceal the availability of money that would be allocated in the divorce proceedings.

13. It was further a part of the scheme that BRANDNER misled the attorney who represented him in the divorce proceedings, and the State Court, by falsely representing that the over \$3,000,000 that he had moved overseas to Panama had been loaned to Dakota in an arms-length transaction. BRANDNER represented that he had invested \$3,250,000 with an annual interest rate of 9% and that he held a promissory note making the principal and interest illiquid until January 18, 2013, and thus not available in any part to be disbursed to S.B. as part of any divorce decree. In truth and

fact, Dakota was simply an alter ego of BRANDNER and the monies were under his complete control.

14. It was further part of the scheme that BRANDNER caused additional false documents to be created with the intent of deceiving S.B. and the State Court into believing that when the payment dates for his sham investments in Panama became payable in 2013, that the sham investments in Dakota were lost. The purpose of the continued deceit was for BRANDNER to keep the money he had removed from the country for his own personal use.

15. As part of the scheme, BRANDNER removed from the United States and attempted to conceal over \$4 million dollars from his attorney and the State Court.

#### WIRE FRAUD

16. The general allegations in paragraphs 1-6 and 8-15 are incorporated as if recited herein.

17. On or about the dates set forth below, in the District of Alaska and elsewhere, the defendant, BRANDNER, for the purpose of executing the above described material scheme and artifice to defraud S.B. and to obtain money by means of materially false and fraudulent pretenses, did unlawfully and knowingly cause to be transmitted by means of wire in interstate

commerce writings, signs, signals, pictures, and sounds, described below,  
with each such wire constituting a separate and distinct count:

Count	Date	Description of Document
1	August 21, 2008	Fax of a letter from J.S. purporting to be "Federico Rodriguez," President of Dakota, faxed to BRANDNER stating that Dakota could not cancel the promissory note and refund the investment.
2	August 21, 2008	Fax of a promissory note alleging that defendant had loaned \$3,250,000 at a 9% annual interest rate to Dakota to mature on January 18, 2013.
3	October 1, 2008	Electronic mail from J.S., purporting to be "Federico Rodriguez," to BRANDNER'S divorce attorney, which falsely stated that BRANDNER had entered into a contract with Dakota, and that no principal or interest could be released by Dakota until the expiration of that contract.
4	June 4, 2008	Electronic mail from J.S., purporting to be "Federico Rodriguez," to PENSCO, seeking to confirm that the appropriate documents were in place to transfer funds from BRANDNER's PENSCO IRA account to a "single member LLC," then to Dakota.
5	June 17, 2008	Form entitled "IRA Non-Public Investment Authorization" authorizing the investment of \$1,240,000 from BRANDNER's PENSCO IRA account to "Michael Brandner LLC."
6	June 17, 2008	Form entitled "Payment and Funding Instructions" authorizing the transfer of \$1,240,000 from BRANDNER's PENSCO IRA account to "Michael Brandner LLC," via Bank of America.
7	June 24, 2008	Form entitled "Funds Transfer Request and Authorization" authorizing Bank of

		America to transfer \$1,264,500 to Dakota, via HSBC Bank of Panama and Capital Bank.
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All in violation of 18 U.S.C. § 1343.

TAX EVASION

Count #8

At times relevant to this indictment:

18. The general allegations in paragraphs 1 through 15, and 17 are incorporated as if recited herein.
19. From on or about June 2008 to on or about October 2011, in the District of Alaska and elsewhere, defendant BRANDNER, did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 2008, by engaging in the following affirmative acts, among others:
  - (1) In or about June 2008 causing false documents to be provided to PENSICO to induce the release to himself of more than \$1,250,000 that defendant BRANDNER held in a self-directed IRA.
  - (2) On or about October 18, 2009, filing with the Internal Revenue Service a false U.S. Individual Income Tax Return, Form 1040, for calendar year 2008, in which he (a) underreported his taxable income by more than \$1,250,000; (b) failed to disclose more than \$9,000 in foreign interest

income; and (c) failed to include a Schedule B disclosing the existence of foreign financial accounts over which he had signature authority, including bank accounts in Panama and Costa Rica;

(3) In or about June, August and October, 2008, making and causing false representations to be made to the State Court about true location of offshore funds and of his control over Dakota as recited in counts 1-7.

(4) On or about November 11, 2008, sending and causing a letter to be sent to Capital Bank in which defendant BRANDNER stated, in part, as follows: "I do not want any information regarding me or any account I am associated with released to anyone."

(5) On or about October 14, 2011, making false and misleading statements to two IRS special agents about his ownership and control of offshore funds that he caused to be repatriated to the United States under a nominee called Evergreen Capital LLC;

All for the purpose of concealing additional, unreported taxable income received by defendant BRANDNER during the 2008 calendar year. On that unreported taxable income, as he then and there knew, there was due and owing to the United States of America an income tax of more than \$440,000, all in violation of Title 26, United States Code, Section 7201.

Count #9

20. The general allegations in paragraphs 1 through 15 and 17 are incorporated as if recited herein.

21. From in or about October 2010 to in or about October 2011, in the District of Alaska and elsewhere, defendant BRANDNER, a resident of Anchorage, Alaska, did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 2009, by engaging in the following affirmative acts, among others:

(1) In or about October 19, 2010, filing with the Internal Revenue Service a false U.S. Individual Income Tax Return, Form 1040, for calendar year 2009, in which he (a) failed to disclose more than \$150,000 in foreign interest income; and (b) failed to include a Schedule B disclosing the existence of foreign financial accounts over which he had signature authority, including bank accounts in Panama and Costa Rica;

(2) On or about October 11, 2011, making false and misleading statements to IRS special agents about his ownership and control of offshore funds that he caused to be repatriated to the United States under a nominee called Evergreen Capital LLC;

All for the purpose of concealing additional, unreported taxable income received by defendant BRANDNER during the 2009 calendar year. On that unreported taxable income, as he then and there knew, there was due and owing to the United States of America an income tax of more than \$90,000, all in violation of Title 26, United States Code, Section 7201.

Count #10

22. The general allegations in paragraph 1 through 15 and 17 are incorporated as if recited herein.
23. From in or about April 2011 to in or about October 2011, in the District of Alaska and elsewhere, defendant BRANDNER, a resident of Anchorage, Alaska, did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 2010, by engaging in the following affirmative acts, among others:

(1) On or about April 17, 2011, filing with the Internal Revenue Service a false U.S. Individual Income Tax Return, Form 1040, for calendar year 2010, in which he (a) failed to disclose more than \$150,000 in foreign interest income; and (b) failed to include a Schedule B disclosing the existence of foreign financial accounts over which he had signature authority, including bank accounts in Panama and Costa Rica;

(2) On or about October 11, 2011, making false and misleading statements to IRS special agents about his ownership and control of offshore funds that he caused to be repatriated to the United States under a nominee called Evergreen Capital;

All for the purpose of concealing additional, unreported taxable income received by defendant BRANDNER during the 2010 calendar year. On that unreported taxable income, as he then and there knew, there was due and owing to the United States of America an income tax of more than \$80,000, all in violation of Title 26, United States Code, Section 7201.

#### FORFEITURE

24. The general allegations and the allegations contained in Counts 1 through 7 of this Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

25. Upon conviction of the offenses in violation of Title 18, United States Code, Section 1343 set forth in Counts 1 through 7 of this Superseding Indictment, the defendant, BRANDNER, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c),

any property, real or personal, which constitutes or is derived from proceeds traceable to the offense(s). The property to be forfeited includes, but is not limited to, the following:

(A) \$4,656,085.10 in bank funds seized from Bank of America account number ending in '8219 in the name of Evergreen Capital LLC.

(B) Bank account balances at Banco Nacional de Costa Rica, in Costa Rica, and at Capital Bank.

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

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be

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divided without difficulty, the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code,

Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

A TRUE BILL.

s/ Grand Jury Foreperson  
GRAND JURY FOREPERSON

s/ Bryan Schroder  
BRYAN SCHRODER  
Assistant U.S. Attorney

s/ Ignacio Perez de la Cruz  
IGNACIO PEREZ de la CRUZ  
Trial Attorney, Tax Division

s/ Karen L. Loeffler  
Karen L. Loeffler  
United States Attorney

DATE: 5/21/2014