

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

FILED

Apr 15 2021

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

UNITED STATES OF AMERICA,

V.

CARLOS E. KEPKE

DEFENDANT(S).

INDICTMENT

18 U.S.C. § 371 – Conspiracy to Defraud the United States;
26 U.S.C. § 7206(2) – Aiding and Assisting the Filing of a Materially False Income
Tax Return

A true bill.

/s/ Foreperson of the Grand Jury

Foreman

Filed in open court this 15th day of

April, 2021.

 Ada Means

Clerk

Bail, \$ Summons

Hon. Jacqueline Scott Corley

FILED

Apr 15 2021

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

1 STEPHANIE M. HINDS (CABN 154284)
Acting United States Attorney

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 CARLOS E. KEPKE,

15 Defendant.

Case No. 3:21-cr-00155 JD

VIOLATIONS: 18 U.S.C. § 371 –
Conspiracy to Defraud the United States;
26 U.S.C. § 7206(2) – Aiding and
Assisting in the Preparation of a
Materially False Income Tax Return

SAN FRANCISCO VENUE

16
17
18 **INDICTMENT**

19 The Grand Jury charges:

20 **Introduction**

21 At all times relevant to this Indictment:

22 1. Defendant CARLOS E. KEPKE was a United States citizen working and residing in
23 Houston, Texas.

24 2. KEPKE was employed as an attorney specializing in creating and maintaining foreign
25 trusts and companies for his clients. Beginning in or about 1999, through December 31, 2014, Robert F.
26 Smith was one of KEPKE's clients. Smith was a United States citizen residing at various times in
27 California, Switzerland, and Texas.

1 3. From in or about 2000 to the date of this Indictment, Smith was the Chairman and Chief
2 Executive Officer of Vista Equity Partners (“Vista”), a private equity firm which conducted business in
3 the Northern District of California.

4 4. Vista formed private equity fund partnerships that purchased companies for the purpose
5 of increasing their value and selling them for a profit.

6 5. Private equity funds raise money to invest from investors which are usually designated as
7 general partners or limited partners. Limited partners commit in advance to provide pre-determined
8 amounts of investment capital when the fund “calls” capital to make an investment. Limited partners
9 generally do not participate in the management of the fund or the formation of investment strategy.

10 6. General partners generally manage the fund and make investment decisions. General
11 partners are normally paid a fee for their managerial services in the form of a percentage of invested
12 capital. General partners can also be compensated in the form of “carried interest.” Carried interest
13 often consists of a percentage of the fund’s net profits. In the United States, carried interest is taxable to
14 recipients as capital gains income under Title 26, United States Code, Sections 1223 & 1061.

15 7. Vista’s first fund was Vista Equity Fund II, L.P. (“VEF II”), a private equity fund
16 partnership formed by Smith, and others, in the Cayman Islands in or about March 2000. VEF II was
17 initially called “Emerging Technologies Investment Fund, L.P.,” but its name was changed to VEF II
18 shortly after it was formed.

19 8. Smith received an 8 percent general partnership interest in VEF II, which had three
20 general partners: Combs Young, LLC; Partner 2; and Flash Holdings, LLC (“Flash Holdings”). Smith
21 held half of his 8 percent interest through Combs Young, LLC, his single-member LLC. Smith held the
22 other half of his 8 percent interest through Flash Holdings. Flash Holdings was a Nevisian limited
23 liability company created by KEPKE for Smith on or about March 9, 2000. Flash Holdings had no
24 employees, no offices, and never provided any service to Vista or any Vista fund. Flash Holdings had
25 no business purpose other than holding assets for the benefit of Smith, and its primary initial asset was a
26 4 percent general partnership interest in VEF II.

27 9. Excelsior Trust was a Belizean entity formed by KEPKE for Smith on or about March 29,
28 2000 to be the owner of Flash Holdings. Excelsior Trust had no employees, no offices, and never

1 provided any service to Vista or any Vista fund. Excelsior Trust had no business purpose other than
2 holding assets for the benefit of Smith. KEPKE and Smith caused an individual with the initials of HW
3 to be designated as the creator, or “Settlor,” of Excelsior Trust. HW was a citizen and resident of the
4 United Kingdom, and the elderly uncle of Smith’s spouse at the time. Smith was designated as the
5 “Trust Protector” of the Excelsior Trust, which gave him the power to appoint and remove the Trustee.
6 The Beneficiaries of Excelsior Trust were Smith, members of Smith’s family, and unnamed charities.

7 10. The initial Trustee of Excelsior Trust was Cititrust, International, Inc. (“Cititrust”), a
8 Belizean corporation. Cititrust was eventually replaced as the Trustee of Excelsior Trust by another
9 Belizean entity, Orion Corporate & Trust Services, Ltd (“Orion”). Both Cititrust and Orion were in the
10 business of acting as an institutional, non-custodial, trustees for trusts formed in Belize by third parties.

11 11. The Managing Director of Flash Holdings was Serco Management, Ltd (“Serco”). Serco
12 is a subsidiary of ATU General Trust (BVI), Ltd. (“ATU”), both of which were companies in the British
13 Virgin Islands (“BVI”) that provided trust management services.

14 12. As a general partner of VEF II, Flash Holdings received distributions, including carried
15 interest, during the calendar years 2010, 2011, 2012, 2013, and 2014. The distributions to Flash
16 Holdings were transferred to bank accounts in Switzerland and the BVI, and were not timely reported to
17 the United States Department of the Treasury, Internal Revenue Service (“IRS”), as income on any
18 United States income tax return.

19 COUNT ONE: (18 U.S.C. § 371 – Conspiracy – 1999-2015)

20 13. The allegations set forth in paragraphs 1 through 12 of this Indictment are re-alleged and
21 incorporated as if set forth fully herein.

22 14. From on or about December 1, 1999, to on or about October 20, 2015, in the Northern
23 District of California and elsewhere, the defendant,

24 CARLOS E. KEPKE,

25 did unlawfully, voluntarily, and willfully conspire and agree with Smith, and others known and
26 unknown to the Grand Jury, to defraud the United States by impeding, impairing, obstructing, and
27 defeating the lawful Government functions of the Internal Revenue Service of the Department of the
28 Treasury in the ascertainment, computation, assessment, and collection of the revenue: namely,

1 individual federal income taxes due and owing by Smith for the tax years 2005 through and including
2 2014.

3 **Object of the Conspiracy**

4 15. It was the object of the conspiracy for KEPKE and Smith to conceal a portion of Smith's
5 income from the IRS, thus evading the statutory assessment of the appropriate tax due and owing on this
6 income. This was accomplished using offshore entities including Excelsior Trust and Flash Holdings,
7 which were created and managed with KEPKE's direction and assistance to hold assets including a
8 portion of Smith's investments in Vista funds, and to create the appearance that income generated by
9 those investments, which was deposited into foreign bank accounts held in the name of Flash Holdings,
10 but for the benefit of Smith, was not taxable to Smith, when in reality, as KEPKE knew, Smith actually
11 earned this income, and retained full dominion and control over it.

12 **Manner & Means**

13 The manner and means by which the scheme was sought to be accomplished included, among
14 others, the following:

15 16. It was part of the conspiracy that in or about 1999, KEPKE was retained and paid by
16 Smith to create and manage offshore entities to conceal from the IRS income Smith earned as a result of
17 his investments in Vista funds through Flash Holdings.

18 17. It was further part of the conspiracy that in or about 1999, KEPKE was retained and paid
19 by Smith to create Excelsior Trust in Belize and Flash Holdings in Nevis. The purposes of forming
20 these entities included: Concealing the fact that Smith held investments in Vista funds through Flash
21 Holdings; creating and maintaining a false paper trail indicating that HW was the true Settlor of
22 Excelsior Trust; creating and maintaining a false paper trail indicating that Flash Holdings and Excelsior
23 Trust were independently managed by Cititrust, Orion, Serco, and other offshore service providers rather
24 than by Smith, directly or through KEPKE; and opening offshore bank accounts in the name of, or for
25 the benefit of, Flash Holdings, into which Smith could deposit income and assets he wished to conceal
26 from the IRS – all for the purpose of evading the payment of income taxes.

27 18. It was further part of the conspiracy that half of Smith's 8 percent general partnership
28 interest in VEF II was assigned to Flash Holdings.

1 19. It was further part of the conspiracy that KEPKE directed Smith to designate, and
2 assisted Smith in designating, an elderly, foreign relative who would never live in the United States to
3 act as Settlor of Excelsior Trust. KEPKE and Smith caused an individual with the initials of HW to fill
4 that role. In reality, HW had nothing more than a nominal role in the formation, management, or
5 maintenance of Excelsior Trust, and Smith was the true creator of Excelsior Trust.

6 20. It was further part of the conspiracy that KEPKE directed Smith to hire and pay, and
7 assisted Smith in hiring and paying, Cititrust and Orion to serve as nominal Trustees of Excelsior Trust.
8 In reality, Smith was the beneficial owner of Excelsior Trust and he retained complete dominion and
9 control over Excelsior Trust and all of its assets, either directly or through KEPKE. Neither Cititrust nor
10 Orion independently managed or controlled assets held in the names of Excelsior Trust or Flash
11 Holdings. Instead, Cititrust and Orion at all times took direction from Smith, either directly or through
12 KEPKE, with respect to assets held in the names of Excelsior Trust or Flash Holdings.

13 21. It was further part of the conspiracy that KEPKE directed Smith to hire and pay, and
14 assisted Smith in hiring and paying, Serco to serve as the nominal Managing Director of Flash Holdings.
15 In reality, Smith was the beneficial owner of Flash Holdings and he retained complete dominion and
16 control over Flash Holdings and all of its assets, either directly or through KEPKE. Serco did not
17 independently manage or control assets held in the names of Excelsior Trust or Flash Holdings. Instead,
18 Serco at all times took direction from Smith, either directly or through KEPKE, with respect to assets
19 held in the names of Excelsior Trust or Flash Holdings.

20 22. It was further part of the conspiracy that on or about November 19, 2004, KEPKE
21 directed Smith to open, and assisted Smith in opening, a bank account at a bank in the BVI, account
22 ***920, in the name of “Flash Holdings LLC” (“the BVI Account”), for the purpose of concealing from
23 the IRS income earned by Smith. The signatories on this account were individuals employed by Serco
24 who, at all times took direction from Smith, either directly or through KEPKE, with respect to the BVI
25 Account. Smith was the beneficial owner of the BVI Account.

26 23. It was further part of the conspiracy that on or about February 14, 2007, Smith opened,
27 and caused to be opened, a bank account at Banque Bonhôte in Neuchâtel, Switzerland, account ***808,
28 in the name of “[VEF II] FBO Flash Holdings, LLC” (“the Banque Bonhôte Account”) for the purpose

1 of concealing from the IRS income earned by Smith. Smith had sole signatory authority over, and was
2 the beneficial owner of, the Banque Bonhôte Account.

3 24. It was further part of the conspiracy that, over time, Flash Holdings became a partner or
4 member of many Vista funds in addition to VEF II. As a partner and member of Vista funds, Flash
5 Holdings received distributions, including carried interest, during the calendar years 2010, 2011, 2012,
6 2013, and 2014. The distributions to Flash Holdings were transferred from Vista to the BVI Account
7 and the Banque Bonhôte Account. From in or about 2005, through and including 2014, the amount of
8 carried interest and capital gain income distributed by Vista to these bank accounts was approximately
9 \$225,000,000. In reality, these funds represented income earned by Smith, but this income was not
10 timely reported on any United States income tax return.

11 25. It was further part of the conspiracy that KEPKE directed Smith to use, and assisted
12 Smith in using, assets held in the names of Excelsior Trust and Flash Holdings for his own personal
13 benefit, including to purchase and improve a home in Sonoma, California, a ranch complex in Gilpin
14 County, Colorado, and several properties in Megève France.

15 26. It was further part of the conspiracy that Smith retained a professional income tax return
16 preparation firm in the Northern District of California which prepared his 2012, 2013, and 2014 United
17 States Individual Income Tax Returns, Forms 1040. Based on KEPKE's advice, Smith did not disclose
18 to his income tax return preparers his true ownership and control of assets held in the names of Excelsior
19 Trust and Flash Holdings, or the income distributed by Vista to the BVI Account and the Banque
20 Bonhôte Account.

21 27. It was further part of the conspiracy that from in or about 2007 through and including
22 2015, Smith paid KEPKE approximately \$1,000,000 to compensate KEPKE for creating, managing, and
23 maintaining Excelsior Trust, Flash Holdings, and other related services and expenses.

24 28. It was further part of the conspiracy that, beginning no later than 2009, KEPKE charged
25 Smith an annual fee to purge, or "Securitize," his file related to Smith, Excelsior Trust, and Flash
26 Holdings by destroying records.

1 Overt Acts

2 In furtherance of the scheme, and to effect the objects thereof, the following overt acts were
3 committed within the Northern District of California, and elsewhere:

4 29. On or about December 8, 1999, KEPKE sent Cititrust a draft Trust Indenture which he
5 had drafted to be used to establish a trust in Belize for the benefit of Smith and his family, for which
6 Smith would pay Cititrust \$30,000.

7 30. On or about March 6, 2000, KEPKE informed Cititrust that HW was to be the Settlor of
8 Smith's trust, which was to be named Excelsior Trust, and instructed Cititrust to finalize the Trust
9 Indenture, and forward three copies to Smith at his personal residence in California for execution.

10 31. On or about March 9, 2000, KEPKE, and others, caused Flash Holdings to be
11 incorporated in Nevis, and caused Serco to be designated as the Managing Director of Flash Holdings.

12 32. On or about March 10, 2000, KEPKE instructed Cititrust that Smith would send Cititrust
13 a check for \$30,000 in payment of its fees for the creation of Excelsior Trust, and that \$15,000 of this
14 fee was to be wired to an account KEPKE maintained in the name of "Garfield Investments."

15 33. On or about March 13, 2000, KEPKE directed Smith to send \$7,500 worth of money
16 orders to Cititrust as the initial corpus of Excelsior Trust.

17 34. On or about March 29, 2000, KEPKE directed and caused the Excelsior Trust Indenture
18 to be executed.

19 35. On or about March 30, 2000, the Partnership Agreement for VEF II (initially called
20 "Emerging Technologies Investment Fund, L.P.,") was executed listing "Flash Holdings, LLC," as a
21 general partner in the fund with a 4 percent general partnership interest.

22 36. On or about April 8, 2000, as directed by KEPKE, Smith sent a \$30,000 personal check,
23 drawn on his account at Citibank in New York to Cititrust as payment for the creation of Excelsior Trust
24 in Belize.

25 37. On or about January 16, 2003, KEPKE requested and received from Cititrust eleven (11)
26 unsigned and unexecuted bearer shares for Flash Holdings.

27 38. On or about November 19, 2004, KEPKE advised and assisted Smith in opening, and
28 causing to be opened, the BVI Account.

1 39. On or about February 14, 2007, Smith opened, and caused to be opened, the Banque
2 Banque Bonhôte Account.

3 40. On or about February 10, 2009, KEPKE directed and caused the shares of Flash Holdings
4 to be changed from bearer shares to registered shares.

5 41. On or about May 7, 2009, KEPKE forwarded to Cititrust a document entitled “Written
6 Resolution of the Sole Member” of Flash Holdings changing the title of Serco from “Managing
7 Director” of Flash Holdings to “Sole Manager” of Flash Holdings, and instructed Cititrust to sign and
8 execute the document “on behalf of Excelsior Trust as the Sole Member” of Flash Holdings.

9 42. On or about November 25, 2009, KEPKE advised and assisted Smith in notifying
10 Cititrust in writing that he was terminating their position as Trustee of Excelsior Trust, and that Orion
11 had been designated the successor Trustee.

12 43. From in or about November 2010 through and including January 2011, KEPKE advised
13 and assisted Smith in forming Flash Property Holding, LLC, in Nevis, White Mulberry SARL in
14 Luxembourg, and SCI Thisbe and SCI Pyramus in France, for the purpose of holding title to two ski
15 condominiums and a commercial building in Mègeve, France (“Mègeve Properties”).

16 44. In or about December 2010, Smith transferred approximately €5.3 million from the
17 Banque Bonhôte Account to a third party as payment for the purchase of the Mègeve Properties.

18 45. On or about May 2, 2012, KEPKE falsely informed a third party that Smith was not a
19 beneficial owner of Flash Holdings.

20 46. From in or about 2005 through and including 2014, as advised by KEPKE, Smith
21 directed personnel and employees at Vista to distribute approximately \$225,000,000 in capital gains and
22 carried interest income to Flash Holdings, including the following:

Approximate Date	Approximate Amount	Distribution From	Distribution To
December 24, 2010	\$2,023,788	VEF II	Banque Bonhôte account ***808-1
December 14, 2011	\$1,482,875	Vista Equity Partners III, LLC	Banque Bonhôte account ***808-1
December 23, 2011	\$1,975,279	VEF II	Banque Bonhôte account ***808-1
March 2, 2012	\$2,009,710	VEF II	Banque Bonhôte account ***808-1
August 24, 2012	\$4,000,000	Vista Equity Partners Fund III, GP, LLC	The BVI Account
August 24, 2012	\$8,861,414	Vista Equity Partners Fund III, GP, LLC	Banque Bonhôte account ***808-1
November 20, 2012	\$7,664,553	Vista Equity Partners Fund III, GP, LLC	Banque Bonhôte account ***808-1
December 24, 2012	\$8,615,133	Vista Equity Partners Fund III, GP, LLC	Banque Bonhôte account ***808-1
November 7, 2013	\$16,734,975	Vista Equity Partners Fund III, GP, LLC	Banque Bonhôte account ***808-1
November 22, 2013	\$2,123,427	VEF II	Banque Bonhôte account ***808-1
November 22, 2013	\$237,149	VEF II	Banque Bonhôte account ***808-1
November 18, 2014	\$7,060,603	Vista Equity Partners Fund III, GP, LLC	Banque Bonhôte account ***808-1

47. From in or about 2007 through and including 2015, Smith directed and caused approximately \$1,000,000 to be transferred to KEPKE's bank account at Amegy Bank of Texas in Houston, Texas, in payment of KEPKE's fees and expenses, including the following:

Approximate Date	Approximate Amount	Distribution From	Distribution To
July 13, 2012	\$75,000	Banque Bonhôte account ***808-1	Amegy Bank
March 19, 2013	\$20,000	Banque Bonhôte account ***808-1	Amegy Bank
May 23, 2013	\$40,000	Banque Bonhôte account ***808-1	Amegy Bank
September 23, 2013	\$70,000	Domestic Bank Account	Amegy Bank
November 8, 2013	\$57,000	Domestic Bank Account	Amegy Bank

January 7, 2014	\$75,000	Domestic Bank Account	Amegy Bank
January 22, 2014	\$57,000	Domestic Bank Account	Amegy Bank
July 31, 2014	\$71,000	Domestic Bank Account	Amegy Bank
February 20, 2015	\$84,000	Domestic Bank Account	Amegy Bank

48. On or about October 16, 2013, in the Northern District of California, Smith directed and caused to be prepared and filed with the IRS a joint U.S. Individual Income Tax Return, Form 1040, for the tax year 2012, which he knew to be false, to wit: Based on KEPKE’s advice, Smith failed to accurately report and pay income tax on capital gains and carried interest income distributed and deposited into foreign bank accounts held in the name of, or for the benefit of, Flash Holdings.

49. On or about October 17, 2014, in the Northern District of California, Smith directed and caused to be prepared and filed with the IRS a joint U.S. Individual Income Tax Return, Form 1040, for the tax year 2013, which he knew to be false, to wit: Based on KEPKE’s advice, Smith failed to accurately report and pay income tax on capital gains and carried interest income distributed and deposited into foreign bank accounts held in the name of, or for the benefit of, Flash Holdings.

50. On or about October 20, 2015, in the Northern District of California, Smith directed and caused to be prepared and filed with the IRS a joint U.S. Individual Income Tax Return, Form 1040, for the tax year 2014, which he knew to be false, to wit: Based on KEPKE’s advice, Smith failed to accurately report and pay income tax on capital gains and carried interest income distributed and deposited into foreign bank accounts held in the name of, or for the benefit of, Flash Holdings.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO TO FOUR: (26 U.S.C. § 7206(2) – AIDING AND ASSISTING IN THE PREPARATION OF MATERIALLY FALSE TAX RETURNS)

51. The United States re-alleges the facts set forth in paragraphs 1 through 12 and 16 through 50 as if fully set forth herein.

52. From on or about December 1, 1999, through on or about October 20, 2015, in the Northern District of California and elsewhere, the defendant,

CARLOS E. KEPKE,

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

18 U.S.C. § 371 – Conspiracy Petty
26 U.S.C. § 7206(2) – Aiding and Assisting the Filing of a
Materially False Income Tax Return Minor
 Misdemeanor
 Felony

PENALTY: 18 U.S.C. § 371- 5 yrs prison, \$250k fine, 3 yrs sup. rel., \$100 special
assessment; 26 U.S.C. § 7206(2) - 3 yrs prison, \$250k fine, 1 yr sup.
rel., \$100 special assessment

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEFENDANT - U.S.

▶ CARLOS E. KEPKE

DISTRICT COURT NUMBER
3:21-cr-00155 JD

FILED

Apr 15 2021

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

INTERNAL REVENUE SERVICE

person is awaiting trial in another Federal or State Court,
give name of court

this person/proceeding is transferred from another district
per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of
charges previously dismissed
which were dismissed on motion
of: U.S. ATTORNEY DEFENSE } SHOW
DOCKET NO.

this prosecution relates to a
pending case involving this same
defendant } MAGISTRATE
CASE NO.

prior proceedings or appearance(s)
before U.S. Magistrate regarding this
defendant were recorded under }

Name and Office of Person
Furnishing Information on this form STEPHANIE M. HINDS
 U.S. Attorney Other U.S. Agency

Name of Assistant U.S.
Attorney (if assigned) Michael G. Pitman, AUSA

DEFENDANT

IS NOT IN CUSTODY

- Has not been arrested, pending outcome this proceeding.
1) If not detained give date any prior
summons was served on above charges ▶
2) Is a Fugitive
3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
5) On another conviction } Federal State
6) Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer Yes } If "Yes"
been filed? No } give date
filed

DATE OF ARREST ▶ Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY ▶ Month/Day/Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

Bail Amount: _____

* Where defendant previously apprehended on complaint, no new summons or
warrant needed, since Magistrate has scheduled arraignment

Date/Time: 4/22/21 at 10:30 am Before Judge: Jacqueline Corley

Comments: