

AO 91 (Rev. 8/85) Criminal Complaint

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
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United States District Court
Northern District of Texas
Lubbock Division

2012 JUL 17 AM 10: 53

DEPUTY CLERK 

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

v.

JEFFREY DAVID GUNSELMAN

CASE NO.

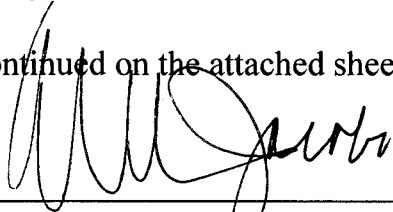
5 - 12 MJ00089

I, MICHAEL J. FIVEASH, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief. From on or about January 2010 to on or about October 2011, in the Lubbock Division of the Northern District of Texas, defendant JEFFREY DAVID GUNSELMAN AND EACH CORPORATE DEFENDANT controlled by him, did intentionally and knowingly devise a scheme or artifice to defraud for obtaining money by means of false and fraudulent pretenses, representations, or promises, transmit by means of wire communications in interstate commerce for the purpose of executing such scheme or artifice to defraud, to wit: falsely represented that he and each corporate defendant were in the business of producing bio-diesel fuel, when he did not have a facility capable of producing bio-diesel fuel. Instead, his business operation consisted solely of generating false RINs on his computer and marketing them to brokers and oil companies, and transmitted by wire in interstate commerce.

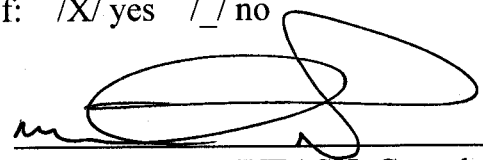
In violation of Title 18, United States Code, Section 1343.

I further state that I am a Special Agent with the United States Secret Service and that this Complaint is based on the following facts: **See Attached Affidavit**

Continued on the attached sheet and made a part hereof: /X/ yes /_/ no



Approved: Paulina M. Jacobo



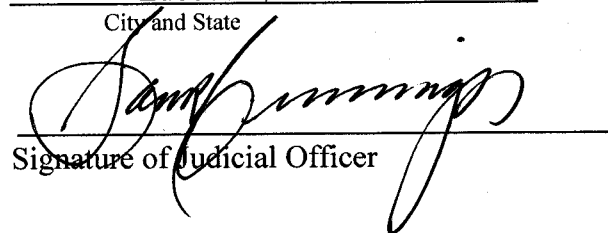
MICHAEL J. FIVEASH, Complainant

Sworn to before me and subscribed in my presence,

Date July 17, 2012

at Lubbock, Texas
City and State

Sam R. Cummings
United States District Judge
Name & Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF COMPLAINT

I, Michael J. Fiveash, being duly sworn, depose and state the following:

1. I am a Special Agent (S/A) with the Department of Homeland Security (DHS), United States Secret Service (USSS), currently assigned to the Lubbock Resident Office. I have been employed as a federal criminal investigator since January 5, 2009, and have an additional twelve (12) years experience in municipal government. In my official capacity, I have participated in a variety of investigations ranging from simple, single-party investigations to complex conspiracies. I have provided instruction to universities, banks, and municipalities regarding financial crimes, identity theft, and related fraud schemes. In addition to my first-hand law enforcement experience, I have attended DHS/USSS schools where I received training in detecting methods and techniques utilized by individuals to defraud victims using various schemes.

Additionally, I am currently tasked as the Asset Forfeiture Coordinator for the USSS, Lubbock Resident Office.

2. I have participated in criminal fraud investigations of violations of the laws of the United States on many occasions. I am familiar with and have participated in all the normal methods of investigation, including, but not limited to, electronic surveillance; visual surveillance; general questioning of witnesses; use of search warrants; use of grand jury subpoenas; use of confidential informants; and also cooperating and coordinating with other federal, state, and local law enforcement officials.

3. This Affidavit is being submitted for the purpose of establishing probable cause for a Complaint; therefore, it does not include all the facts that I have learned during the course of this investigation. Where the contents of conversations of others are reported herein, they are reported in substance and part.

4. Title 18, United States Code, Section 1343, makes it a federal crime for any person to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmit by means of wire communication in interstate commerce for the purpose of executing such scheme or artifice.

5. I am currently investigating alleged criminal violations of the laws of the United States by Absolute Fuels, LLC (AF); AF owner/CEO Jeffrey David Gunselman; other business entities associated with AF; and others known and unknown at this time, for their actions in fraudulently creating and selling credits for renewable fuels that were never produced. The Lubbock Resident Office of the USSS and the Dallas Office of the Environmental Protection Agency (EPA), Criminal Investigation Division, have jointly been investigating AF and Gunselman since May 2011, for criminal violations of 18 U.S.C. § 1343, Wire Fraud, and of the environmental statutes administered by EPA, including the Clean Air Act (42 U.S.C. § 7401 et seq.).

6. Based on the investigation in this case, including information provided by and through a variety of sources, there is probable cause to believe that from in or about January 2010, to in or about October 2011, in the Lubbock Division of the Northern

District of Texas, and elsewhere, in a matter within the jurisdiction of agencies of the United States, the Environmental Protection Agency (EPA) and the United States Secret Service (USSS), defendant, Jeffrey David Gunselman d/b/a Absolute Fuels, LLC.

(Gunselman), and Absolute Fuels, LLC; Absolute Commercial Realty, LLC; Absolute Insulation, LLC; Absolute Milling, LLC; Ellipse Energy, LLC; Gunner Holdings, LLC; Lubbock Wireless Communications, LLC; 21 Investments, LLC; Uneeda Wash, LLC; and YGOG Holdings, LLC (collectively referred to as “each corporate defendant”),

knowingly and willfully devised and intended to devise a scheme and artifice to defraud and obtain money and property from an agency of the United States, the Environmental Protection Agency (EPA), various brokers, energy companies, and others known and unknown to the United States Attorney by means of materially false and fraudulent pretenses, representations and promises, and did transmit and cause to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, and sounds for the purpose of executing such scheme or artifice to defraud, well knowing at the time that the pretenses, representations, and promises were false when made, which scheme and artifice to defraud so devised and intended to be devised, was, in substance, as more fully described below:

- a. Gunselman falsely represented that he and each corporate defendant were in the business of producing bio-diesel fuel.
- b. Gunselman and each corporate defendant did not produce any bio-diesel fuel that met the bio-diesel fuel standard tests, or that was

accepted by a purchaser.

- c. Gunselman did not have a facility capable of producing bio-diesel fuel. Instead, his business operation consisted solely of generating false RINs on his computer and marketing them to brokers and oil companies.
- d. Gunselman, each corporate defendant, and others known and unknown at this time fraudulently created and sold credits for renewable fuels that were never produced, thus violating the false statement provision of the Clean Air Act (42 U.S.C. § 7413 (c)(2)(A)), and defrauding the United States, as well as the purchasers of the credits.
- e. Gunselman, each corporate defendant, and others known and unknown at this time, having devised a scheme or artifice to defraud, and to obtain money or property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire communication in interstate commerce, certain writings and signals for the purpose of executing such scheme or artifice, in violation of 18 U.S.C. § 1343 and 42 U.S.C. § 7413 (c)(2)(A).

7. Based on the investigation in this case, including information provided by and through a variety of sources, there is probable cause to believe that from in or about

January 2010, to in or about October 2011, Gunselman and each corporate defendant, for the purpose of executing the scheme and artifice to defraud, knowing transmitted and caused to be transmitted by means of wire communications in interstate commerce the following:

- a. On October 14, 2010, at 2:10 p.m., an employee of Progressive Fuels Limited, Estero, Florida, transmitted an electronic mail message to Gunselman at GoDaddy email account, Jeff@absolutelubbock.com, stating, "Attached is your trade confirmation for Deal 01483. Attached to the message was a "PDF" copy of a Progressive Fuels Limited (PFL) Broker Trade Confirmation for 1,000,000 RINs sold to Sunoco, Philadelphia, PA, for \$0.570 per RIN.
- b. On October 15, 2010, at 1:07 p.m., a Sunoco Contract Analyst, transmitted an electronic mail message to Gunselman, bearing an attached agreement ("Absolute Fuels RP49.doc") for signature and return.
- c. On October 15, 2010, at 1:52 p.m., Gunselman transmitted an electronic mail message from IP address 69.6.168.108 to the Sunoco Contract Analyst stating, "Please find the attached copy of contract." Two ".jpg" images of the signed Sunoco contract pages were attached.

- d. On October 18, 2010, at 12:48 p.m., a Sunoco Contract Analyst transmitted an electronic mail message to Gunselman, stating, "For your files the fully executed agreement." File "M0280474102916389600.pdf" was attached to the message.
- e. On October 19, 2010, Gunselman accessed the EPA Moderated Transaction System, and entered false and fictitious information, claiming that Absolute Fuels, LLC had produced 768,560 gallons of Biodiesel on October 19, 2010, identified as Batch Number 83139, thereby generating 1,152,840 RINs.
- f. On October 22, 2010, at 3:45 p.m., Gunselman transmitted an electronic mail message from IP address 69.6.168.108 to a Sunoco Trader, reporting the transfer initiation of 1,000,000 RINs via EMTS, and inquired who should receive the Product Transfer Document (PTD) and invoice.
- g. On October 25, 2010, at 8:11 a.m., a Sunoco Biofuels Compliance Coordinator replied to Gunselman message; she identified herself as the Sunoco RINs contact, and stated that the invoice and PTD should be directed to Rins@sunocoinc.com.
- h. On October 25, 2010, at 11:11 a.m., Gunselman transmitted an electronic mail message from IP address 69.6.168.108 to Sunoco Biofuels Compliance Coordinator stating, "Please find attached the

PTD and invoice [sic] for said transaction.” A Product Transfer Document, dated 10/22/2010, (PTD RINS 10222010[sunoco].doc) and Absolute Fuels Invoice 1029 (RIN sale invoice Sunoco 10222010.doc) were attached.

- i. On October 25, 2010, at 11:37 a.m., the Sunoco Biofuels Compliance Coordinator transmitted an electronic mail message to Gunselman, stating that the EMTS transmission went to Sunoco Logistics (EPA #9864) instead of the correct trading partner, Sunoco Inc. (EPA #5105).
- j. On October 25, 2010, at 12:57:03 p.m. (EDT), Gunselman accessed the EMTS through the CDX account of Absolute Fuels, LLC, and initiated the transfer of 1,000,000 Biomass-Based Diesel RINs to Sunoco, Inc, EPA #5105.
- k. On October 25, 2010, at 11:59 a.m., Gunselman transmitted an electronic mail message from IP address 69.6.168.108 to the Sunoco Biofuels Compliance Coordinator, stating, “You are correct, I fixed [sic] issue and resent [sic] RINS to your EPA number. I have also edited the PTD and attached to this email [sic].” A Product Transfer Document was attached, dated 10/25/2010.
- l. On November 1, 2010, at 7:29 a.m., a Sunoco Accounting Analyst transmitted an electronic mail message reply to Gunselman,

informing Gunselman that payment could not be released until Gunselman provided a tax identification number. Absolute Fuels, LLC invoice 1029 was attached.

- m. On November 3, 2010, at 1:55 p.m., Gunselman transmitted an electronic mail message from IP address 69.6.168.108 to the Sunoco Compliance Coordinator asking about payment.
- n. On November 3, 2010, at 2:23 p.m., the Sunoco Accounting Analyst transmitted an electronic mail message to Gunselman, stating, "This invoice was paid on November 2, 2010."
- o. On November 3, 2010, at 2:43 p.m., Gunselman transmitted an electronic mail message reply from IP address 69.6.168.108 to the Sunoco Accounting Analyst stating there was no pending wire payment for his account.
- p. On November 3, 2010, at 2:57 p.m., the Sunoco Accounting Analyst transmitted an electronic mail message to Gunselman, replying that there was no wire information in the "remit to" information, so payment apparently went out by check to the invoice address.
- q. On November 3, 2010, at 3:03 p.m., Gunselman transmitted an electronic mail message from IP address 69.6.168.108 to the Sunoco Accounting Analyst stating he would wait for the check to arrive, and requested the Accounting Analyst to verify that the "remit to"

address was 2517 74th Street, Lubbock, TX.

- r. On November 8, 2010, Sunoco check number 6002714343, dated 11-02-2010, in the amount \$570,000.00, payable to Absolute Fuels LLC, 2517 74th St., Lubbock, TX 79423, was deposited to account xx3134 at Aim Bank, Lubbock, Texas. The check was endorsed, and included the deposit notation, "For deposit only, #xx3134.
- s. On October 17, 2011, the offices of Absolute Fuels, LLC were searched pursuant to a federal search warrant. A Sunoco check memo, consistent in all respects with the aforementioned Sunoco check, was seized from the bottom right drawer of the desk located in Gunselman's upstairs office. The check memo was found in a folder marked "RINs-October Transfers '10."
- t. On October 17, 2011, the offices of Absolute Fuels, LLC were searched pursuant to a federal search warrant. A copy of the "PFL Trade Confirmation for Deal 1483", as described in Paragraph 7 A, was seized from the bottom right drawer of the desk located in Gunselman's upstairs office. The Trade Confirmation was found in a folder marked "RINs-October Transfers '10." The document bears multiple handwritten notations, including: "RP49," "mailed check on 11/2," and "<ck #6002714343>."
- u. On October 17, 2011, a 2010 Mercedes S65 AMG four-door sedan,

black in color, Texas license plate CD8-J088, was searched pursuant to a federal search warrant. This vehicle was confirmed to be owned and controlled by Gunselman. A Compaq Presario laptop computer was seized and searched pursuant to the warrant. The PTD and invoice, as described in Paragraph 7 f, were found in the laptop computer documents folder.

- v. On October 17, 2011, Special Agents of the USSS and EPA interviewed Johnny Porras, an employee of Absolute Fuels LLC. Porras identified himself as the Absolute Fuels Bio-diesel Production Manager and advised that he had been so employed since the formation of Absolute Fuels LLC. Porras further advised “no bio-diesel has ever been produced at Absolute Fuels’ Littlefield-Anton plant that has passed quality testing and been accepted by a customer.” Porras stated that in June or July, 2011, he received a performance evaluation from Gunselman which commented that Porras had not made “a single drop” of bio-diesel which could be sold.
- w. On May 14, 2012, AMA TechTel Communications confirmed subscriber information for IP address 69.6.168.108, and confirmed that the registrant was Absolute Fuels, 2517 74th St, Lubbock, TX, with a contact name of Jeff Gunselman.

8. Based on the investigation in this case, including information provided by and through a variety of sources, there is probable cause to believe that from in or about January 2010, to in or about October 2011, it was further part of the scheme and artifice to defraud that Gunselman prepared approximately 56 invoices for the 58 RIN sale transactions, and billed the respective purchasers in excess of \$50,000,000.00.

9. Based on the investigation in this case, including information provided by and through a variety of sources, there is probable cause to believe that from in or about January 2010, to in or about October 2011, Gunselman, and each corporate defendant, falsely generated and sold enough RINs to defrauded in excess of \$50,000,000.00.

10. From on or about January 2010, to the present, AF, Gunselman, other business entities associated with AF, and others known and unknown at this time, obtained money through the wire fraud scheme and used it to purchase real and personal luxury property and commodities in excess of \$30,000,000.00.

Conclusion

11. Based on my personal investigation of this case, on information and belief, and on information provided by and through a variety of sources and conversations, there is probable cause to believe that Gunselman and each corporate defendant have violated the laws of the United States, specifically, but not limited to a violation of 18 U.S.C. § 1343, Wire Fraud.

12. Based on the information set forth in this Affidavit, your Affiant respectfully requests that a Complaint be issued against Jeffrey David Gunselman, and

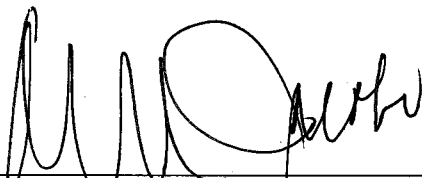
that an arrest warrant be issued authorizing the arrest of Jeffrey David Gunselman for this offense.



MICHAEL J. FIVEASH
Special Agent
United States Secret Service

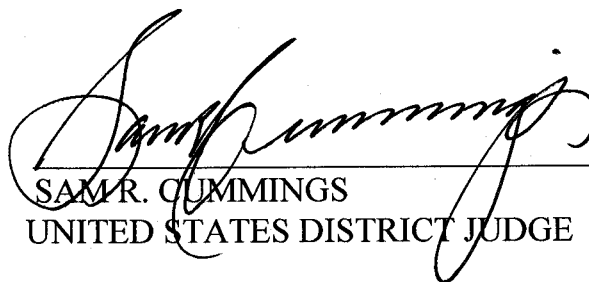
Reviewed and Approved:

SARAH R. SALDAÑA
UNITED STATES ATTORNEY



PAULINA M. JACOBO
Assistant United States Attorney

Subscribed to and sworn to before me this 17th day of July, 2012.



SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE