The Defendant's REAL NAME is Ronald H. Van Den Heuvel / Ronald Hewry Van Den Heuvel. When confronted by Oneida Eye on 8/10/18 in front of U.S. Atty. Matthew Krueger about using the wrong middle initial ('D'), defense attorney Robert LeBell blamed his secretary. Yet, Atty. LeBell continued to submit court filings using the WRONG NAME for his client.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATE OF AMERICA,
Plaintiff,

v. **Case No. 17 CR 160**

RONAND D. VAN DEN HEUVEL,
Defendant.

MEMORANDUM IN SUPPORT OF DEFENDANT'S SECOND MOTION TO SUPPRESS PHYSICAL EVIDENCE / FRANKS

The defendant has moved the court for an order to suppress evidence seized from the following locations:

- 2077 Lawrence Drive, Suite A;
- 2077 Lawrence Drive, Suite B;
- 500 Fortune Avenue
- 2107 American Boulevard; and
- 2303 Lost Dauphin Road

The defendant brings this memorandum on the grounds that the search warrant affidavit contains statements that are deliberately false or that were made in reckless disregard for the truth. Thereby denying the defendant due process and equal protection of the law in violation of the rights guaranteed by the 5th, 6th, 8th, and 14th Amendments to the United States Constitution and *Franks v. Delaware*, 438 U.S. 154 (1978). A defendant must make a "substantial preliminary showing that a false statement knowing or intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit." *Franks*, 438 U.S, at 155-56; *United States v. Currie*, 739 F.3d 960, 963 (7th Cir. 2014). A substantial preliminary showing does not require "clear proof." *United State v. Williams*, 477 F.3d 554, 558 (8th Cir. 2017). The defendant must then show the false statement was essential to the establishment of probable cause. *Franks*, 438 U.S. at 155-56.

Evidence must be suppressed if the defendant can show by a preponderance of the evidence that (1) the affidavit contained materially false statements or omissions; (2) these false statements and omissions were made with deliberate or reckless disregard for the truth; and (3) these false statements or omissions were necessary to the finding of probable cause. *United States v. Mullins*, 803 F.3d 858. 861-62 (7th Cir. 2016); *United State v. Williams*, 718 F.3d 644, 649 (7th Cir. 2013)

After a *Franks* hearing, suppression should result if, after excising the false statements from the warrant, probable cause is lacking. *Franks,* 438 U.S. at 171-72.

Therefore, the Defendant requests an evidentiary hearing and asks the court to suppress the search warrant and all derivative evidence.

On July 5, 2015 Sergeant Mary Schartner signed an Affidavit in Support of Search Warrant. That Search Warrant sought voluminous items over five different locations. The Affidavit was recently submitted to the court as part of Defendant's Motion to Suppress Physical Evidence.

Perini Building

In paragraph 12c. of the Affidavit it states, "You affiant is aware that the Perini Building was never for sale". That is materially false. Below will be a series of exhibits. Many of them contain confidential information and are being filed under seal. Exhibit A is a real estate listing for the property from Sara Investment Real Estate. This six-page listing is very detailed and clearly meant for public marketing to entice a potential buyer. It includes the price, building features, site plan, office layout diagram, interior photos, and reginal maps

Exhibit B shows a Commercial Offer to Purchase and Counter Offer for the Perini Building for the property. It is signed by both sides of the transaction. It also shows an Electronic Real Estate Transfer Return filed with the Wisconsin Department of Revenue, a UCC Search, and a Title Search as part of the proposed sale. There was a clear intent to purchase the

building by Green Box and a clear intent to sell the building. These are all documents prepared for a closing of a sale.

Exhibit C shows detailed correspondence involving Mr. Van Den Heuvel's legal counsel about the real estate transaction, correspondence from the sellers and their real estate company about a lease back provision, and correspondence about drafting the deed. Obviously not only was the building for sale but both sides were deep into finalizing the deal. Both sides had outside legal counsel involved in the deal. The seller not only signed the offer to purchase but gave notice that it would exercise a leaseback provision in that offer. The deed was being drafted. That is an indication that the Perini Building owners expected the deal to close.

Exhibit D shows two checks for earnest money that was paid as part of the transaction. So not only does the real estate documents show an intent to purchase but money was also sent to further show the intent.

There is marketing material for the listing for sale of the building through a real estate company. There is an offer to purchase signed by both sides. To state that the building was never for sale is materially false. The building was clearly for sale, marketed by a commercial real estate company, and in the process of being sold. Clearly Mr. Van Den Heuvel had access to the building by the people selling the building so that he could give tours and talk about his plans.

Ultimately Mr. Van Den Heuvel acknowledges that the sale fell though very late in the deal. However, the search warrant claims that the building was never for sale which is clearly false. The building was very much publicly for sale. The sale fell though at the goal line. Both sides were acting as if the sale would close so it's reasonable for Green Box to be showing the facility to potential investors. It was not a "prop" as the affiant claims.

The affidavit states, "your affiant is aware that the Perini Building was never for sale" but does not indicate how they became "aware". It is assumed that the affiant did not speak with the building owner, their real estate representatives, the title search company, or their legal counsel

as those parties were involved in this near sale; or at the very least could have indicated that the building had been publicly marketed for sale. Either the affiant received incorrect information that was clearly reckless or the affiant received no information at all which is a materially false statement.

Green Box Process

Paragraph 16 states, "Thames has witnessed Ronald H. Van Den Heuvel give tours to potential investors, and Van Den Heuvel would make statements which are false, including stating the Green Box process is a fully functional process." This is not accurate. The process has been deemed by industry experts to be technologically sound. The affidavit does not contain a specific statement that the process is not viable, however the affidavit is drafted for a magistrate to make that conclusion.

This fact is central to the government's theory to obtain the warrant: that this whole thing was a made-up fraud. The affidavit paints a picture that this proposed business is based on fictitious science and technology. Clearly, if a business model is impossible to execute that would provide strength to the government's argument. However, if the process is possible and potentially very lucrative for investors, that would substantially hurt the government's case and their basis to obtain a warrant.

The Affidavit discusses some contracts, loans, or agreements that did not pan out to demonstrate that this business was just made up out of thin air. In reality this process has a lot of feasibility and accredited backing. Not every single part of a start up business goes as planned; if a few things fall though that does not mean that the entire business is a fraud. The Affidavit picked out things that did not pan out, but did not paint a balanced picture for the magistrate to properly consider.

Exhibit E is an appraisal from Sanli Pastore & Hill. Sanli Pastore & Hill is an internal company that does business valuations. It values the Intellectual Property owned by Green Box NA Green Bay, LLC at $109,000,000. That is obviously a massive number. Even if the Government believes that is inflated, even a fraction of that would still be tens of millions of

dollars in value. This independent appraisal demonstrates that this technology is real and was investable.

Exhibit F is an e-mail from Ronald Thiry, Vice President, General Manager for Little Rapids Corporation. According to their website, "Little Rapids Corporation is a leading manufacturer of products for the healthcare and beauty markets… We manufacture MG, tissue, and wet crepe paper for a variety of end-use markets." It is a company in a similar line of work to Green Box. The e-mail indicates Little Rapids is pleased with their process regarding Ecofibre pulp over the past year. Ecofibre pulp is part of the Green Box process as well. This would indicate that Little Rapids Corporation has had success with part of the process for which Green Box was looking to execute.

Exhibit G is correspondence between Mr. Van Den Heuvel employees from Proctor and Gamble ("P&G"). They discuss working together and scaling in up the process. They go back and forth on a number of logistical, financial, and technological topics. The exhibit also includes a signed Bilaterial Confidential Disclosure Agreement. P&G is an international company with over $60,000,000,000 in revenue. They are undoubtedly sophisticated and have a signed agreement to work with Mr. Van den Heuvel on this process in an attempt to scale it up to an industrial level.

Exhibit H are two letters from the FDA in 2010. They indicate their opinion regarding suitability of secondary recycling process to produce post-consumer recycled pulp fiber. It discusses some technical and legal aspects and concludes that the process is sufficient to comply with federal standards. Mr. Van Den Heuvel then takes it a step further and asks for some additional clarification which is provided in the second FDA letter. This shows real steps being taken to create a workable process.

Exhibit I is a letter from Environmental Resources Management regarding environmental permits for the process in 2015. It demonstrates that Green Box is taking steps to evaluate what permits, if any, are needed to execute the business plan.

Exhibit J is an engagement letter from Raymond James as a project advisor for the debt. This is a very large part of the project but this is not mentioned in the Affidavit nor is there an indication that the affiant spoke to Raymond James. But, Green Box had a signed contract, in 2014, to have Raymond James as a project advisor and book running senior manager of senior debt.

Exhibit K is a Plastic-Poly Waste Supply Agreement with Great Lakes Tissue Company from April 30, 2014. It provides materials for the Green Box process.

Exhibit L is a Green Box Plastic Supply Agreement with Industrial Waste Control of North America executed on October 30, 2014. This is another contract regarding materials to be used for the Green Box process.

Exhibit M is a contract to supply scrap tires with Royco Recycling Company executed on September 6, 2014. Yet another contract regarding materials to be used for the Green Box process.

These exhibits come from an international consumer goods company, an international finance company, an international valuation company, the US Government, and local companies in the same industry. They are all experts in their respective fields and they each demonstrate feasibility to this business. Do one or all of them combined show that the Green Box process is a 100% sure fire home run? No. But that is the case will all startups. These demonstrate that the pieces to the puzzle were coming into place. Green Box is then taking the pieces and putting them on a grand scale. To not include them is a reckless disregard for the truth. These sophisticated parties all signed contracts. These are not contracts with potential investors to try and get cash, these are contracts to execute the Green Box business.

All of these exhibits predate the search warrant affidavit. Most are from large companies or government agencies who would keep records. They are part of the Green Box marketing materials. These were not secret within Green Box or it's investors. There were marketing materials from April, 2015 out to EB5 investors which contained some of the exhibits. Many

materials were presented in some form to WEDC, Simon Ahn who arranged for the EB5 investors, Marco Araujo who provided documents and statements to the affiant as noted in paragraph 12 of the affidavit, and Clifton Equities who was another investor referenced in paragraph 12.

The Affiant states that she reviewed materials sent by Araujo, the WEDC, and Guy LoCascio amongst others in making the affidavit. Additionally, in paragraph 13 the affiant states that she is aware that the defendants received foreign investor money though a federal EB5 program. The investments made though that program are the subject of the Indictment. EB5 investors participated in a federally sponsored program which is subject to public review and which could easily have been investigated prior to the construction of the application. The EB5 application by the defendant would have noted that funding for the Green Box project would have in part come from Michigan tax exempt bonds. The application would have contained some or all of the materials in this motion. The tax-exempt bond application was yet another ready source of information which would have defeated the assertion that the Green Box process was a sham. The EB5 investment program required the submission of business plans by the applicant which included supporting documentation in varying forms. The application for Green Box predated by years the search warrant in this case. Similarly, there were a host of iterations of Mr. Van Den Heuvels application for EB5 approval. Those subsequent applications would have contained some of the same supporting materials.

One of the claimed victims of the Green Box fraud as proposed by the Government is an entity known as Clifton Equities. In the Indictment it is asserted that Clifton Equities invested several million dollars in association with the Green Box process. These investments would have occurred on June 18, 2014 per the affidavit, well before the search warrant. Had the affiant bothered to contact the principals of Clifton Equities, consistent with its acknowledged information in paragraph 12, she would have discovered that similar promotional materials and supporting documents as listed in the exhibits herein would have been provided to Clifton Equities.

Just as with the bond application the WEDC application had supporting documentation consistent with the exhibits delineated herein. The materials mentioned above should have all been part of those reviewed documents, yet the affiant chose not to mentioned them in the affidavit. They would have been available as part of Green Box's application for bonds in Michigan. All of these items predate the search warrant affidavit, some by several years. They were available and probably in the hands of the affiant at the time of the search warrant affidavit.

The Affiant also failed to talk with Lee Reisinger who was the CEO of E.A.R.T.H and the technology point person for Green Box. E.A.R.T.H is the parent company for Green Box. Lee Reisinger is a mechanical engineer. He is a former Director of Engineering at P&G and is the owner of ReiTech. He specializes in project management in the sanitary tissue and towel industry and alternative energies. He was deposed on two occasions after the search warrant was executed. While the transcript was not available, had the affiant bothered to contact Reisinger he would have likely stated that the process was legitimate. Mr. Reisinger mentions in a deposition to the Securities and Exchange Commission, "I think the process works". He was part of tours given to potential customers and investors. Mr. Reisinger could have shed a lot of light on the affiant regarding the statement this is not a fully functional process. Mr. Reisinger was the listed CEO for the parent company for which the search warrant was seeking information, so he was clearly known and available. The affiant claims that Mr. Van Den Heuvel's statements on tours that the process is fully functional is false; which would appear to be a contradiction to the person who may have the most expertise knowledge about the process.

The whole affidavit is designed to convince the magistrate that Mr. Van Den Heuvel may have bad finances, but the real thrust was that this process was a sham and scheme to get money out of nothing; that is a material misrepresentation. Disregarding the steps taken to make the business a success is a material misrepresentation. If she would have exercised due diligence it would have been presented that this process was supported by numerous other businesses and technologies. The physical plant, equipment, and technology was coming together. This was not nothing. This was a feasible, investable, start up business.

Dated at Milwaukee, Wisconsin this 17th day of August, 2018.

Respectfully Submitted

/s/ *Robert G. Lebell*

_____

Robert G. LeBell, SBN 01015710
Attorney for Defendant
1223 N Prospect Avenue
Milwaukee, WI 53202
414-276-1233
Fax: 414-239-8565
dorbell@ldm-law.com