UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	**INDICTMENT**
	)	
v.	)	18 U.S.C. § 1343
	)	18 U.S.C. § 2
RYAN RANDALL GILBERTSON,	)	
DOUGLAS VAUGHN HOSKINS, and	)	
NICHOLAS HARRIS SHERMETA,	)	
	)	
Defendants.	)	

THE UNITED STATES GRAND JURY CHARGES:

Introduction

1. At times relevant to the Indictment:

a. Dakota Plains, Inc., formerly known as Dakota Plains Transport, Inc., was a privately held Minnesota corporation that owned and operated a crude oil transloading facility in New Town, North Dakota, for loading crude oil onto railroad cars for transport to oil refineries.

b. MCT Holding Corporation was a Nevada corporation that owned a defunct tanning salon in Salt Lake City, Utah. MCT Holding Corporation was a public company that traded under the symbol MTHL.

c. Dakota Plains Holdings, Inc. was a publicly traded Nevada corporation formed through the reverse merger of Dakota Plains, Inc. and MCT Holding Corporation (collectively along with Dakota Plains, Inc. and Dakota Plains

Transport, Inc., "Dakota Plains"). Dakota Plains Holdings, Inc. was headquartered in Wayzata, Minnesota.

d. Defendant RYAN GILBERTSON and Individual A were the founders of Dakota Plains Transport, Inc. and the controlling shareholders of Dakota Plains Holdings, Inc. Defendant GILBERTSON and Individual A were also the founders, CEO, and President of a publicly traded oil company based in Wayzata, Minnesota.

e. Defendant GILBERTSON had previously served as director of equity derivative trading and strategy at a Minneapolis-based investment bank.

f. Defendant NICHOLAS SHERMETA was a stockbroker at a Minneapolis-based securities brokerage firm. Defendant GILBERTSON had a brokerage account with defendant SHERMETA. Defendant SHERMETA also owned Napa Properties, LLC, a Minnesota limited liability company.

g. Wildcat Polo, LLC was a Minnesota limited liability company that operated a polo team. Defendant GILBERTSON was the founder of Wildcat Polo, LLC.

h. Defendant DOUGLAS HOSKINS was a licensed real estate agent in Minnesota and a player-manager for defendant GILBERTSON's polo team, Wildcat Polo, LLC.

i. Total Depth Foundation was a Minnesota nonprofit corporation controlled by defendant GILBERTSON.

Counts 1-13
(Wire Fraud)

2. Beginning no later than November 2008, and continuing through at least in or about 2013, in the State and District of Minnesota, and elsewhere, the defendants,

RYAN RANDALL GILBERTSON,
DOUGLAS VAUGHN HOSKINS, and
NICHOLAS HARRIS SHERMETA,

each aiding and abetting one another, and being aided and abetted by one another and by others known and unknown to the Grand Jury, knowingly devised and participated in a scheme and artifice to defraud and to obtain and retain money by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts, as further described below.

Defendant GILBERTSON and Individual A Formed Dakota Plains

3. It was part of the scheme that in or about November 2008, defendant GILBERTSON and Individual A caused Dakota Plains to be incorporated. In order to conceal their involvement in the company, defendant GILBERTSON and Individual A installed their fathers as CEO and President of Dakota Plains and as the company's two-person board of directors. However, despite not having any formal positions at the company, defendant GILBERTSON and Individual A retained control over Dakota Plains and made all material decisions for the company.

4. It was further part of the scheme that in or about January 2011, defendant GILBERTSON and Individual A caused Dakota Plains to issue a $1.9 million cash dividend to Dakota Plains shareholders. Defendant GILBERTSON and

his ex-wife received nearly $450,000 in dividend payments from Dakota Plains. That same month, defendant GILBERTSON and Individual A caused Dakota Plains to issue $3.5 million in promissory notes at 12% interest (the "Senior Notes"). Defendant GILBERTSON purchased a $1 million Senior Note for himself and another $100,000 Senior Note in the name of Total Depth Foundation, the nonprofit corporation controlled by defendant GILBERTSON.

Defendant GILBERTSON Caused Dakota Plains to Agree to Pay Him a Bonus Based on the Average Trading Price of Dakota Plains Stock During the First 20 Days of Public Trading

5. It was further part of the scheme that in or about April 2011, defendant GILBERTSON and Individual A caused Dakota Plains to issue $5.5 million in promissory notes at 12% interest (the "Junior Notes"). Defendant GILBERTSON directed Dakota Plains to include an "additional payment" provision in the Junior Notes. This "additional payment" provision provided that the noteholders would receive bonus payments based on the price of Dakota Plains's stock at the time of an initial public offering ("IPO"). Defendant GILBERTSON purchased a $2 million Junior Note for himself and another $250,000 Junior Note on behalf of his nonprofit corporation, Total Depth Foundation.

6. In or about November 2011, defendant GILBERTSON caused Dakota Plains to consolidate the Senior Notes and Junior Notes into a series of consolidated promissory notes (the "Consolidated Notes"). Defendant GILBERTSON directed Dakota Plains to alter the "additional payment" provision from the Junior Notes in several ways. First, the new "additional payment" provision applied to the total value

of the Consolidated Notes, not just to the amount lent under the Junior Notes. Second, defendant GILBERTSON caused the new "additional payment" provision to apply not only in the event of an IPO, but also if Dakota Plains became public via a reverse merger with a public shell company. This additional payment provision operated as an "embedded derivative" in which the value of the bonus payment would be based on the average price of Dakota Plains stock during a set period of time. Specifically, the "additional payment" provision provided that the noteholders would receive bonus payments based on the average price of Dakota Plains stock during the first 20 days of public trading. The noteholders would receive bonus payments if the average price exceeded $2.50 per share, with the amount of the bonus payments increasing as the average stock price increased.

7. It was further part of the scheme that defendant GILBERTSON caused Dakota Plains to enter into a series of consulting agreements with a shell company formed by defendant SHERMETA, including an agreement dated October 2011. This October 2011 consulting agreement called for defendant SHERMETA's shell company, Napa Properties, LLC, to "provide consulting services . . . with respect to [Dakota Plains's] business." The consulting agreement further provided that defendant SHERMETA would receive $75,000 in exchange for these "consulting services." Defendant SHERMETA did not provide any consulting services to Dakota Plains. Nevertheless, defendant SHERMETA received a $75,000 check from Dakota Plains on or about December 29, 2011.

8. Defendant SHERMETA had also entered into consulting agreements between his shell company, Napa Properties, LLC, and other companies controlled by defendant GILBERTSON. Defendant SHERMETA did not disclose his financial relationship with Dakota Plains and these other companies to the brokerage firm where he worked or to his customers.

Defendant GILBERTSON Arranged a Reverse Merger Between Dakota Plains and a Publicly Traded Shell Company that Owned a Defunct Tanning Salon in Salt Lake City, Utah

9. In or about late 2011 and early 2012, defendant GILBERTSON arranged for Dakota Plains to enter into a "reverse merger" agreement with MCT Holding Corporation. In a "reverse merger," a privately held company becomes publicly traded by merging into an existing company with publicly traded shares. Defendant GILBERTSON arranged for Dakota Plains to merge into MCT Holding Corporation, a public shell company that owned a single defunct tanning salon in Salt Lake City, Utah. Defendant GILBERTSON located the public shell company and coordinated the reverse merger with the assistance of several people in Utah who were in the business of setting up public shell companies for use in reverse merger transactions and whom defendant GILBERTSON knew from a prior reverse merger transaction.

10. Prior to the merger with Dakota Plains, MCT Holding Corporation had approximately 640,200 shares of stock outstanding. Due to SEC regulations, the vast majority of these shares were restricted and could not be traded until six months after the completion of the reverse merger. Accordingly, as defendant GILBERTSON was

aware, MCT Holding Corporation had only approximately 92,400 shares of freely trading stock at the time of the reverse merger with Dakota Plains.

Defendant HOSKINS Accumulated 50,000 Shares of Freely Trading Stock In Order to Conceal Defendant GILBERTSON's Control of the Shares

11. Defendant GILBERTSON made it a condition of the merger with MCT Holding Corporation that 50,000 of these freely trading shares of MCT stock be sold to his friend, defendant HOSKINS, prior to the closing of the reverse merger. At the time, defendant GILBERTSON knew defendant HOSKINS through their involvement in the sport of polo. Acting at defendant GILBERTSON's direction, representatives of MCT Holding Corporation located six MCT shareholders willing to sell a total of 50,000 shares of freely trading MCT stock to defendant HOSKINS.

12. Defendant GILBERTSON did not disclose his demand that 50,000 shares of freely trading MCT stock be sold to defendant HOSKINS to either the CEO or CFO of Dakota Plains, or to the outside law firm that represented Dakota Plains in the reverse merger transaction.

13. On or about March 7, 2012, defendant GILBERTSON wired $30,000 to defendant HOSKINS for use in purchasing this MCT stock. Defendant HOSKINS used this money to purchase 50,000 freely trading shares of MCT stock for $0.50 per share on or about March 22, 2012—one day before the closing of the reverse merger. Defendant HOSKINS purchased these shares in his own name using defendant GILBERTSON's money in order to conceal defendant GILBERTSON's control over the shares.

14. At defendant GILBERTSON's direction, defendant HOSKINS opened a trading account with a broker in Salt Lake City, Utah (the "Salt Lake City broker") in order to sell the freely trading MCT shares after the company merged with Dakota Plains. On or about March 9, 2012, defendant HOSKINS submitted to the Salt Lake City broker an account opening application and a signed "Attestation of Sophisticated Investor" in which defendant HOSKINS falsely declared that he was a sophisticated investor "aware of the high risks involved in the buying and selling of 'Penny Stocks.'" In reality, as both defendants GILBERTSON and HOSKINS well knew, defendant HOSKINS had little or no prior investing experience or assets and a significant amount of debt.

15. On or about March 23, 2012, Dakota Plains, Inc. merged with MCT Holding Corporation and became a publicly traded company. Prior to the merger, MCT Holding Corporation stock traded at approximately $0.30 per share. Following the merger, MCT Holding Corporation changed its name to Dakota Plains Holdings, Inc. The company traded under the existing MTHL symbol for approximately three days, after which the company traded under the symbol DAKP.

Defendants GILBERTSON, HOSKINS, and SHERMETA Manipulated the Price of Dakota Plains Stock During the First 20 Days of Public Trading

16. Defendant GILBERTSON, aided and abetted by defendants HOSKINS and SHERMETA, manipulated the price of the stock during the first 20 days of trading following the reverse merger in order to increase the stock's trading price. This had the effect of increasing the bonus payment to defendant GILBERTSON and the other noteholders under the "additional payment" provision in the Consolidated

Notes and causing unwitting investors to purchase Dakota Plains stock at artificially high prices.

17. Beginning on March 23, 2012—the first day of public trading—defendant HOSKINS began offering to sell his newly acquired shares for approximately $12 per share—a price well above the $0.50 per share price at which he had purchased them using defendant GILBERTSON's money on March 22, 2012. At defendant GILBERTSON's direction, defendant HOSKINS continued to sell his shares at inflated prices throughout the first 20 days of trading following the reverse merger.

18. On the first day of public trading, at defendant GILBERTSON's direction, defendant SHERMETA began purchasing shares of Dakota Plains stock on behalf of both himself and his clients at these inflated prices. Defendant SHERMETA made these purchases despite knowing the price of the stock was inflated. Defendant SHERMETA made these purchases without disclosing to his clients that he had a series of consulting agreements with Dakota Plains through which he had been paid approximately $145,000 and received more than 124,000 shares of Dakota Plains stock.

19. On the second day of public trading following the reverse merger, March 26, 2012, defendant SHERMETA instructed a trader at his brokerage firm to purchase 50,000 shares of Dakota Plains stock—the same number of shares owned by defendant HOSKINS. Defendant SHERMETA's instructions were to purchase the stock at prices up to $12.00 per share.

20. Defendant GILBERTSON coordinated the sale of defendant HOSKINS's stock throughout the 20-day period. On or about April 4, 2012, for example, defendant HOSKINS sent an email to the Salt Lake City broker inquiring about his trading volume. In the email, defendant HOSKINS stated, "Thinking this through a little wondering why I only have 25pct of the volume." At approximately the same time, defendant GILBERTSON sent a text message to an MCT representative who was an associate of the Salt Lake City broker in which he stated: "Hoskins should be getting more than 25pct of the volume—unless you know of anyone else who is generating volume." Later that day, defendant GILBERTSON sent another text message to this associate of the Salt Lake City broker. In the text message, defendant GILBERTSON stated, "they would be participating on sales at 7 bucks not 12 were it not for my involvement."

21. On the same day, April 4, 2012, defendant SHERMETA purchased 1,000 shares of Dakota Plains stock for $12.00 per share on behalf of his client, Individual KC. Defendant SHERMETA made this purchase without consulting Individual KC. Defendant SHERMETA purchased these shares on Individual KC's behalf despite knowing that Individual KC already owned 224,000 shares of Dakota Plains stock at an average purchase price of approximately $0.27 per share.

22. On or about April 10, 2012, defendant SHERMETA himself purchased 1,000 shares of Dakota Plains stock for $12.00 per share. Defendant SHERMETA bought these shares despite already owning approximately 124,000 shares of Dakota

Plains stock that he had received at no cost pursuant to the consulting agreements he had entered into with Dakota Plains.

23. During the first 20 days of trading following the reverse merger, approximately 14,450 shares of Dakota Plains stock were traded. Defendant HOSKINS sold approximately 5,800 of these shares at an average price of approximately $11.89 per share, for a total price of $69,000. Defendant SHERMETA purchased approximately 9,500 of these shares on behalf of himself and his clients—approximately two-thirds of the total shares purchased during this 20-day period. Defendant SHERMETA purchased these shares at an average price of approximately $11.55 per share.

24. As a result of the defendants' manipulation of the price of Dakota Plains's stock, the average stock price during the first 20 days of trading following the reverse merger was approximately $11.30 per share. This average trading price was well above the $2.50 per share strike price set forth in the additional payment provision in the Consolidated Notes. This triggered a bonus payment of approximately $32,851,800 to defendant GILBERTSON and the other holders of the Consolidated Notes. The terms of the notes allowed the noteholders to elect to take their bonus payment in the form of cash to be paid within 12 months or additional equity in the company. Defendant GILBERTSON controlled approximately 40 percent of these notes. In May 2012, defendant GILBERTSON elected to receive his bonus in the form of a $10,950,600 promissory note to be paid by Dakota Plains within 12 months. Defendant GILBERTSON also elected to receive a bonus payment of

$1,642,590 on behalf of his non-profit foundation, Total Depth Foundation, and a bonus payment of $182,510 on behalf of his minor son.

25. On or about May 15, 2012, Dakota Plains filed a Form 10-Q with the Securities and Exchange Commission that publicly announced the bonus payments. In the Form 10-Q, Dakota Plains disclosed that there was "uncertainty relating to our ability to continue as a going concern," in large part because "[a]s a result of the payments due under our outstanding promissory notes, we expect to have significant cash requirements in the next twelve months."

26. After defendant GILBERTSON elected to receive his bonus payment in the form of a $10,950,600 promissory note, representatives of Dakota Plains asked defendant GILBERTSON to forego or reduce his payment for the benefit of the company. Defendant GILBERTSON refused to do so. Defendant GILBERTSON instead instructed the CEO of Dakota Plains to raise money to pay the full amount of his additional payment. The company's fundraising efforts were hampered by the large debt owed to defendant GILBERTSON and the other noteholders.

27. In the fall of 2012, a Dakota Plains shareholder threatened legal action against Dakota Plains and defendant GILBERTSON related to the additional payment. In the wake of this threat, on or about November 2, 2012, defendant GILBERTSON agreed to receive a reduced bonus payment consisting of a $5 million promissory note and 332,800 shares of Dakota Plains stock. During these negotiations, defendant GILBERTSON insisted that Dakota Plains indemnify him

against any legal action arising out of his conduct in connection with the Consolidated Notes and the additional payment.

28. In or about December 2013, defendant GILBERTSON agreed to a second restructuring in which his additional payment was largely converted to shares of Dakota Plains stock. Prior to this final restructuring, defendant GILBERTSON had received more than $900,000 in interest payments on the promissory notes he had received as a bonus payment.

29. On or about the dates set forth below, in the State and District of Minnesota, and elsewhere, the defendants, as set forth below, each aiding and abetting one another, and being aided and abetted by one another and by others known and unknown to the Grand Jury, for the purpose of executing the scheme described above, knowingly caused to be transmitted by means of a wire communication in interstate commerce, certain writings, signs, signals, and sounds, as follows:

Count	Defendant(s)	Date of Wire (on or about)	Nature of Wire
1	GILBERTSON, HOSKINS	March 23, 2012	An email sent by defendant GILBERTSON to Individual TH forwarding signed copies of Share Purchase Agreements for defendant HOSKINS's purchase of freely trading shares of MCT Holding Company stock
2	GILBERTSON, HOSKINS	March 23, 2012	A wire communication sent and caused to be sent by Individual CP consisting of defendant HOSKINS's offer to sell shares of MCT Holding Corporation Stock for $12.50 per share
3	GILBERTSON, HOSKINS	March 29, 2012	A wire communication sent and caused to be sent by Individual CP consisting of defendant HOSKINS's sale of 500

			shares of MCT Holding Corporation Stock for $12.00 per share
4	GILBERTSON, SHERMETA	March 29, 2012	A wire communication sent and caused to be sent by defendant SHERMETA consisting of defendant SHERMETA's order to purchase 1,000 shares of Dakota Plains stock for $12.00
5	GILBERTSON, SHERMETA	March 29, 2012	An email sent by defendant SHERMETA in the State of Colorado to his sales assistant, Individual JM, in the State of Minnesota regarding defendant SHERMETA's purchase of 1,000 shares of Dakota Plains stock for $12.00 per share that stated "Bill the DAKP to [Individual BW] w/ $200 comm"
6	GILBERTSON, HOSKINS	April 4, 2012	An email sent by defendant HOSKINS in the State of Florida to Individual CP in the State of Utah that stated, "Thinking this through a little wondering why I only have 25pct of the volume"
7	GILBERTSON, HOSKINS	April 4, 2012	A text message sent by defendant GILBERTSON in the State of Florida to Individual TH in the State of Utah that stated, "Hoskins should be getting more than 25pct of the volume—unless you know of anyone else who is generating volume"
8	GILBERTSON, HOSKINS	April 4, 2012	A text message sent by defendant GILBERTSON in the State of Florida to Individual TH in the State of Utah that stated, "they would be participating on sales at 7 bucks not 12 were it not for my involvement"
9	GILBERTSON, SHERMETA	April 4, 2012	A wire communication sent and caused to be sent by defendant SHERMETA consisting of defendant SHERMETA's order to purchase 1,000 shares of Dakota Plains stock for $12.00 per share on behalf of Individual KC
10	GILBERTSON, SHERMETA	April 5, 2012	An email sent by defendant SHERMETA in the State of Minnesota to Individual DT in the State of

			Colorado recommending that Individual DT purchase Dakota Plains stock
11	GILBERTSON, SHERMETA	April 10, 2012	A wire communication sent and caused to be sent by defendant SHERMETA consisting of defendant SHERMETA's order to purchase 1,000 shares of Dakota Plains stock for $12.00 per share for his own account
12	GILBERTSON, HOSKINS	April 27, 2012	A wire transfer of approximately $45,000 from an account at KeyBank held by a stock brokerage in Salt Lake City, Utah, to an account controlled by defendant HOSKINS at Topline Federal Credit Union
13	GILBERTSON	May 2, 2012	An email sent by defendant GILBERTSON to Individual SH in which defendant GILBERTSON elected to receive "all cash for the additional payment"

All in violation of Title 18 United States Code, Sections 1343 and 2.

Forfeiture Allegations

30. Counts 1 through 13 of this Indictment are hereby realleged and incorporated as if fully set forth herein by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

31. As the result of the offenses alleged in Counts 1 through 13 of this Indictment, the defendants shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) in conjunction with Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived

from proceeds traceable to the violations alleged in Counts 1 through 13 of the Indictment.

32. If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL

_____ _____

ACTING UNITED STATES ATTORNEY FOREPERSON