

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 16-
 :
 : 18 U.S.C. § 371,
 v. : 26 U.S.C. § 7206(1)
 :
 RICHARD T. PEPE :

SUPERSEDING INFORMATION

The defendant having waived in open court prosecution by indictment, and any objection based upon the statute of limitations and/or venue, the United States Attorney for the District of New Jersey charges:

COUNT ONE

(Conspiracy)

Background

1. At all times relevant to this Superseding Information:
 - a. Chevrolet 73, Inc. ("Chevy 73") was an automobile dealership located in Berlin, New Jersey. Chevy 73 maintained an operating account at Commerce Bank located in New Jersey with an account number ending in 1026 ("the operating account").
 - b. M&T Bank, headquartered in Buffalo, New York, was engaged in the business of personal and commercial banking and lending and provided a full range of financial services to automobile dealerships, including floor plan financing. M&T Bank was a "financial institution," as defined by Title 18,

United States Code, Section 20, as M&T Bank was a member bank of the Federal Reserve System.

c. Floor plan financing was a type of asset-based financing commonly used in the automotive sales industry. In a common floor plan agreement, a lender extended a revolving line of credit to an auto dealer, which the auto dealer used to purchase vehicles for inventory. The lender then took a security interest in the purchased vehicles. When the auto dealer sold a vehicle, the dealer was required immediately to repay the lender the amount loaned to purchase that particular vehicle. The floor plan agreement could also include provisions for payment of interest.

d. Dealer Access System (“DAS”) was a service that allowed automobile dealers Internet-based access to their wholesale finance portfolio and allowed automobile dealers to submit floor plan financing requests, post equity account deposits, withdrawals, and transfers, and remit payments to the lender.

e. Chevy 73 obtained a multi-million dollar floor plan financing deal from M&T Bank in or about November 2004. Chevy 73’s floor plan financing with M&T Bank increased substantially from 2004 to 2008. In 2004, M&T Bank extended a financing agreement to Chevy 73 for approximately \$14 million in floor plan financing. In 2008, the floor plan financing increased to over \$20 million. In order to maintain financing, as part of a revolving line of credit, Chevy 73 submitted monthly financial statements to M&T Bank via Federal Express that detailed Chevy 73’s inventory, liabilities, and profits. M&T

Bank relied upon the accuracy of the monthly financial statements submitted by Chevy 73 to determine whether to maintain and/or increase the floor plan financing.

The Defendant and Other Individuals and Entities

2. At all times relevant to this Superseding Information:

a. Defendant RICHARD T. PEPE resided in Vineland, New Jersey and was employed as the General Manager of Chevy 73.

b. V.I.P., a co-conspirator who is not named as a defendant herein, resided in Vineland, New Jersey and was the owner of VIP Homes, a defunct company that maintained a bank account at Newfield National Bank with account number ending in 9516.

c. C.P.S., a co-conspirator who is not named as a defendant herein, resided in Vineland, New Jersey and maintained a bank account at Newfield National Bank with account number ending in 1403.

d. R.J., a co-conspirator who is not named as a defendant herein, resided in Little Egg Harbor, New Jersey and was employed as the Controller of Chevy 73.

e. J.B. resided in Pennsylvania and Florida and was the owner of Chevy 73.

The Conspiracy

3. From in or about 2004, through in or about October 2008, at Berlin, in Camden County, in the District of New Jersey, and elsewhere, defendant

RICHARD T. PEPE

did knowingly conspire and agree with others to execute a scheme and artifice to defraud M&T Bank, a financial institution, or to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of M&T Bank, by means of false or fraudulent pretenses, representations, or promises, contrary to Title 18, United States Code, Section 1344.

Object of the Conspiracy

4. The object of the conspiracy was for defendant RICHARD T. PEPE, and others acting on PEPE's behalf, to fraudulently obtain money from M&T Bank, intended as floor plan financing for Chevy 73, by providing and causing others to provide false information to M&T Bank. RICHARD T. PEPE then converted that money to his own use to pay for personal expenses for himself and his family members.

Manner and Means of the Defendant's Conspiracy

5. It was part of the conspiracy that defendant RICHARD T. PEPE, as the General Manager of Chevy 73, had access and control over Chevy 73's operating account, including floor plan financing received into the account from M&T Bank.

6. It was further part of the conspiracy that defendant RICHARD T. PEPE concealed the true financial condition of Chevy 73 from M&T Bank by concealing from M&T Bank that he was using money from the operating account

for his personal expenses and personal expenses of his family members.

7. It was further part of the conspiracy that R.J., at the direction of defendant RICHARD T. PEPE, falsified the liabilities and profits reflected on Chevy 73's monthly financial statements submitted to M&T Bank in order to induce M&T Bank to approve continued floor plan financing.

8. It was further part of the conspiracy that defendant RICHARD T. PEPE used company credit card accounts under Chevy 73, and allowed others to utilize company credit card accounts under Chevy 73, to pay for personal expenses for himself, family members, and others.

9. It was further part of the conspiracy that defendant RICHARD T. PEPE directed R.J. to make substantial payments in the form of checks and wire transfers from Chevy 73's operating account to pay company credit cards issued in defendant RICHARD T. PEPE's name, including, but not limited to payments for the following transactions:

Year	Acct. Holder Acct. No.	Transaction Date	Point of Purchase	Amount
2005	American Express; 61007	01/13/2005	Boyd's Philadelphia, PA	\$3,048.00
2005	American Express; 61007	02/03/2005	Boyd's Philadelphia, PA	\$4,430.00
2005	American Express; 61007	03/17/2005	Jack Kellmer, Philadelphia, PA	\$9,350.00
2005	American Express; 61007	04/22/2005	Paradise Art, Ft. Lauderdale, FL	\$15,000.00
2005	American Express; 61007	06/26/2005	Paradise Art, Ft. Lauderdale, FL	\$10,000.00

2005	American Express; 61007	06/30/2005	Born Yesterday, Philadelphia, PA	\$785.71
2005	American Express; 61007	07/09/2005	Neiman Marcus, Ft. Lauderdale, Florida	\$1,743.70
2005	American Express; 61007	08/11/2005	Govberg Jewelers, Philadelphia, PA	\$8,070.00
2005	American Express; 61007	11/10/2005	Boyd's Philadelphia, PA	\$13,530.00
2005	American Express; 61007	12/01/2005	Boyd's Philadelphia, PA	\$18,000.00
2006	American Express; 61007	01/07/2006	Brewster Fine Wines, Vineland, NJ	\$3,093.73
2006	American Express; 61007	02/23/2006	Govberg Jewelers, Philadelphia, PA	\$13,750.00
2006	American Express; 61007	03/17/2006	Jr Dunn, Pompano Beach, FL	\$10,541.00
2006	American Express; 61007	04/14/2006	Govberg Jewelers, Philadelphia, PA	\$6,000.00
2006	American Express; 61007	05/11/2006	Boyd's, Philadelphia, PA	\$17,428.50
2006	American Express; 61007	06/01/2006	Jack Kellmer Co., Philadelphia, PA	\$6,720.00
2006	American Express; 61007	09/22/2006	Govberg Jewelers, Philadelphia, PA	\$8,282.50
2006	American Express; 61007	10/19/2006	Govberg Jewelers, Philadelphia, PA	\$15,000.00
2006	American	11/02/2006	Boyd's,	\$12,780.70

	Express; 61007		Philadelphia, PA	
2006	American Express; 61007	12/20/2006	Govberg Jewelers, Philadelphia, PA	\$12,000.00
2007	American Express; 61007	01/31/2007	Govberg Jewelers, Philadelphia, PA	\$15,156.00
2007	American Express; 61007	03/12/2007	Four Seasons Hotels, Philadelphia, PA	\$1,515.53
2007	American Express; 61007	03/25/2007	Z Bag, Voorhees, NJ	\$2,064.75
2007	American Express; 61007	05/31/2007	Boyd's, Philadelphia, PA	\$11,352.00
2007	American Express; 61007	10/05/2007	Ermenegildo Zegna, Boston, MA	\$994.00
2007	American Express; 61007	10/05/2007	Giorgio-Armani, Boston, MA	\$1,630.00
2007	American Express; 61007	10/20/2007	Jackson's Steakhouse, Ft. Lauderdale, FL	\$1,027.08
2007	American Express; 61007	12/08/2007	Brian's Famous Furs East, Vineland, NJ	\$1,500.00
2007	American Express; 61007	12/13/2007	Boyd's, Philadelphia, PA	\$13,384.00
2007	American Express; 61007	12/21/2007	Jack Kellmer Co, Cherry Hill, NJ	\$5,200.00
2008	American Express; 61007	01/24/2008	Amanda's Ladies Apparel, Millville, NJ	\$692.50
2008	American	01/31/2008	Govberg Jewelers,	\$7,269.00

	Express; 61007		Philadelphia, PA	
2008	American Express; 61007	02/08/2008	Cellars Wine & Spirit, Ft. Lauderdale, FL	\$1,543.80
2008	American Express; 61007	02/10/2008	Tommy Bahama #5, Ft. Lauderdale, FL	\$2,049.51
2008	American Express; 61007	03/07/2008	Govberg Jewelers, Philadelphia, PA	\$10,300.00
2008	American Express; 61007	03/14/2008	Baldinni, Rome, Italy	\$3,274.86
2008	American Express; 61007	03/15/2008	Brioni, Rome, Italy	\$1,129.26
2008	American Express; 61007	03/18/2008	Hotel Eden, Rome, Italy	\$791.81
2008	American Express; 61007	04/21/2008	Bernie Robbins Jewelry, Marlton, NJ	\$15,000.00
2008	American Express; 61007	10/03/2008	Govberg Jewelers, Philadelphia, PA	\$15,000.00

10. It was further part of the conspiracy that defendant RICHARD T. PEPE concealed the true nature of the payments from the operating account for the above credit card transactions from M&T Bank in order to (1) hide from M&T Bank that he was using substantial sums of the floor plan financing for personal expenses and (2) hide the true financial condition of Chevy 73 from M&T Bank to insure continued financing.

11. It was further part of the conspiracy that defendant RICHARD T.

PEPE directed R.J. to issue approximately \$319,253.18 in check payments from Chevy 73's operating account to an account at Newfield National Bank, Account ending in 9516, which was controlled by V.I.P. and defendant RICHARD T. PEPE ("V.I.P. account").

12. It was further part of the conspiracy that defendant RICHARD T. PEPE concealed the true nature of the payments from the operating account to the V.I.P. account in order to (1) hide from M&T Bank that he was using substantial sums of the floor plan financing for personal expenses and (2) hide the true financial condition of Chevy 73 from M&T Bank to ensure continued financing.

13. It was further part of the conspiracy that defendant RICHARD T. PEPE directed R.J. to issue approximately \$79,998.74 in check payments from Chevy 73's operating account to an account at Newfield National Bank, Account ending in 1403, which was controlled by C.P.S. ("C.P.S. account").

14. It was further part of the conspiracy that defendant RICHARD T. PEPE concealed the true nature of the payments from the operating account to the C.P.S. account in order to (1) hide from M&T Bank that he was using substantial sums of the floor plan financing for personal expenses and (2) hide the true financial condition of Chevy 73 from M&T Bank to ensure continued financing.

15. It was further part of the conspiracy that defendant RICHARD T. PEPE directed R.J. to issue check payments from Chevy 73's operating account

to an account at Washington Mutual as payment for a residence located in Florida that defendant RICHARD T. PEPE agreed to purchase from J.B.

16. It was further part of the conspiracy that defendant RICHARD T. PEPE concealed the true nature of the payments to Washington Mutual from Chevy 73's operating account in order to (1) hide from M&T Bank that he was using substantial sums of the floor plan financing for personal expenses and (2) hide the true financial condition of Chevy 73 from M&T Bank to ensure continued financing.

17. It was further part of the conspiracy that defendant RICHARD T. PEPE directed R.J. and/or others to remove cash from the custody of Chevy 73 and deliver it to PEPE.

18. It was further part of the conspiracy that defendant RICHARD T. PEPE concealed the removal of cash from Chevy 73's operating account from M&T Bank in order to (1) hide from M&T Bank that he was using substantial sums of the floor plan financing for personal expenses and (2) hide the true financial condition of Chevy 73 from M&T Bank to ensure continued financing.

19. It was further part of the conspiracy that defendant RICHARD T. PEPE directed others to submit false information through the DAS system, including false Vehicle Identification Numbers in order to induce M&T Bank to disburse funds as part of the revolving line of credit.

20. It was further part of the conspiracy that defendant RICHARD T. PEPE directed R.J. to provide false information to M&T Bank auditors regarding

vehicles that appeared on the floor of Chevy 73 in an effort to delay payment to M&T Bank, contrary to Title 18, United States Code, Section 1344.

Overt Acts

21. In furtherance of the conspiracy and to effect its unlawful object, defendant RICHARD T. PEPE committed and caused to be committed, the following overt acts in the District of New Jersey and elsewhere:

- a. Between 2004 and in or about August 2008, defendant RICHARD T. PEPE caused a General Motors Dealer Operating Report to be submitted to M&T Bank on a monthly basis. That report reflected the assets and liabilities of Chevy 73, as well as the profits or loss for the dealership.
- b. In or about December 2004, defendant RICHARD T. PEPE caused a General Motors Dealer Operating Report to be submitted to M&T Bank that falsely claimed a profit for the month of December 2004 in the amount of \$45,292.00. The report further claimed a false profit for 2004 in the amount of \$1,014,219.00.
- c. In or about December 2005, defendant RICHARD T. PEPE caused a General Motors Dealer Operating Report to be submitted to M&T Bank that falsely claimed a profit for the month of December 2005 in the amount of \$99,678.00. The report further claimed a false profit for 2005 in the amount of \$1,172,808.00.
- d. In or about December 2006, defendant RICHARD T. PEPE caused a General Motors Dealer Operating Report to be submitted to M&T Bank that

falsely claimed a profit for the month of December 2006 in the amount of \$90,470.00. The report further claimed a false profit for 2006 in the amount of \$714,362.00.

e. In or about December 2007, defendant RICHARD T. PEPE caused a General Motors Dealer Operating Report to be submitted to M&T Bank that falsely claimed a profit for the month of December 2007 in the amount of \$37,135.00. The report further claimed a false profit for 2007 in the amount of \$388,542.00.

f. In or about August 2008, defendant RICHARD T. PEPE caused a General Motors Dealer Operating Report to be submitted to M&T Bank that falsely claimed a profit for the month of August 2008 in the amount of \$20,432.00.

COUNT TWO

(Fraud and false statements)

1. Paragraphs 1 through 2, and 4 through 21 of Count 1 of this Superseding Information are hereby re-alleged and incorporated as if set forth in full herein.

2. The Internal Revenue Service of the Department of the Treasury (hereinafter, "IRS") was an agency of the United States government responsible for the collection of federal income taxes.

3. Pursuant to the Internal Revenue Code and its attendant regulations, every individual taxpayer of the United States who received gross income in excess of the minimum filing amount established by law for a particular tax year was required annually to report his or her income and any attendant tax obligations on a Form 1040 or similar form to be filed with the IRS.

4. At all times relevant to Count Two of this Superseding Information, defendant RICHARD T. PEPE engaged the services of a public accounting firm for the purpose of preparing his U.S. Individual Income Tax Returns filed jointly with his spouse.

5. In an effort to disguise his true income from the IRS, defendant RICHARD T. PEPE relied solely on the W-2 earnings statements he provided to his tax preparer which did not reflect his true earnings. The W-2 earnings statements did not include, for example, deposits from the operating account of Chevy 73 into bank accounts held by PEPE's family members.

6. On or about October 13, 2009, defendant RICHARD T. PEPE signed a 2008 joint United States Individual Income Tax Return, Form 1040.

7. The tax return was signed by defendant RICHARD T. PEPE and contained a written declaration that it was signed under the penalties of perjury.

8. The tax return was not true and correct as to every material matter in that the tax return, which was filed with the IRS, reported a total income of \$36,628, whereas he then and there well knew and believed his total income to be in excess of that amount.

9. On or about October 13, 2009, in the District of New Jersey, and elsewhere, defendant

RICHARD T. PEPE

knowingly and willfully did make and sign a 2008 joint United States Individual Income Tax Return, Form 1040, which he did not believe to be true and correct as to every material matter, as described in paragraph 5.

In violation of Title 26, United States Code, Section 7206(1).

FORFEITURE ALLEGATION

1. The allegations contained in this Superseding Information, for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 982, are hereby re-alleged and incorporated by reference.

2. As a result of committing the conspiracy to commit bank fraud, in violation of 18 U.S.C. §371, alleged in Count One of this Superseding Information,

RICHARD T. PEPE

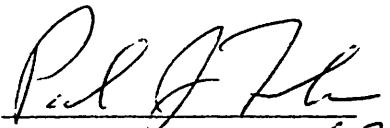
shall forfeit to the United States a sum of money equal to \$2,950,270.57 in United States currency, consisting of \$2,950,270.57 in United States currency constituting or derived from, proceeds that defendant RICHARD T. PEPE obtained directly or indirectly, as a result of the conspiracy to commit bank fraud, in violation of 18 U.S.C. §371, alleged in Count One of the Superseding Information, and subject to forfeiture pursuant to 18 U.S.C. §982(a)(2)(A).

3. If any of the above-described forfeitable property, as a result of any act or omission of the defendant RICHARD T. PEPE:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of this Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. §853(p), to seek forfeiture of any other property of the defendant RICHARD T. PEPE up to the value of the above forfeitable property.

In violation of Title 18, United States Code, Section 982.


PAUL J. FISHMAN *af*
United States Attorney