

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 10-20242-CR-ALTONAGA(s)

18 U.S.C. § 1341

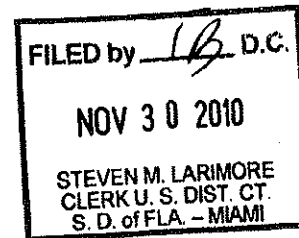
18 U.S.C. § 2

UNITED STATES OF AMERICA

vs.

JOHN J. UTSICK,

Defendant.



SUPERSEDING INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Superseding Indictment:

1. Defendant **JOHN P. UTSICK** was a resident of Miami Beach, Florida and was engaged in various business ventures devoted to the promotion and production of concerts, musical acts, theatrical events and other stage performances, as well as a wide range of additional activities commonly associated with the entertainment industry.

2. Commencing in mid-1994, **JOHN P. UTSICK** conducted his entertainment business through The Entertainment Group Fund, Inc. ("TEGFI"), a Florida corporation which was originally operated from Jupiter, Florida, and later Miami Beach, Florida. TEGFI was solely owned by **UTSICK**. Through TEGFI, **UTSICK** promoted and produced concerts and other stage productions, frequently using the trade name "Jack Utsick Presents." These entertainment events were usually conducted in connection with multi-city tours by notable entertainers who would perform on multiple occasions over a defined period of time in accordance with predetermined touring

A handwritten signature in black ink, appearing to be "S. Larimore".

schedules.

3. In 2003, **JOHN P. UTSICK** created another solely owned corporation by the name of Worldwide Entertainment, Inc. ("Worldwide"). Worldwide, which was incorporated in the State of Delaware and operated from offices in Miami Beach, Florida, soon supplanted TEGFI as the principal entity through which **UTSICK** conducted most of his entertainment business. As was the case with TEGFI, Worldwide continued **UTSICK's** business of promoting and producing tour-related concerts and stage productions, as well as engaging in various other types of entertainment ventures (hereinafter collectively referred to as "entertainment projects").

4. The entertainment projects promoted and produced by **JOHN P. UTSICK** through TEGFI, and later through Worldwide, were conducted by each of these two companies in a singular fashion or, at times, in conjunction with one of a number of other commercial entities which had been established by **UTSICK** as wholly-owned subsidiaries or affiliates of TEGFI or Worldwide.

5. In order to acquire the funds necessary to meet the significant up-front costs, expenses, and contractual payment obligations that would arise from **JOHN P. UTSICK's** entertainment projects, both TEGFI and Worldwide, through the actions of **UTSICK** and his associates, solicited potential and existing investors to provide funds to TEGFI or Worldwide for each such entertainment project. This form of financing was accomplished in connection with promissory note investments, which would mature upon a date usually coinciding with the date in which the underlying entertainment project was scheduled to conclude, and which promised to pay investors fixed rates of return.

6. Commencing in approximately 2003, **JOHN P. UTSICK** and certain of his associates utilized an additional method through which to acquire investment funds whereby investors were

solicited to invest in individual limited liability companies (“LLC’s”), each of which was structured to coincide with one of UTSICK’s planned entertainment projects. These LLC-related investments involved either a promissory note evidencing an investor’s loan to the LLC or an equity investment in the LLC by the investor through his or her purchase of certain equity investment units in the LLC. It was the exclusive business of each LLC to then loan the bulk of its investor-supplied funds to TEGFI or Worldwide through a so-called “Business Loan Agreement” for the purpose of financing the specific entertainment project(s) addressed by the particular LLC. Moreover, in a fashion similar to the previously described direct promissory note investments in TEGFI or Worldwide, each LLC-related investment would also mature upon a future date associated with the underlying entertainment project’s date of conclusion, and would pay fixed rates of return.

COUNTS 1-9
Mail Fraud
(18 U.S.C. § 1341)

1. Paragraphs 1 through 6 of the General Allegations section of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around at least as early as January 1996, to in or around January 2006, in the Southern District of Florida, and elsewhere, the defendant,

JOHN P. UTSICK,

did knowingly, and with intent to defraud, devise, and intend to devise, a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations and promises were false and fraudulent when made, and attempting so to do, did knowingly cause to be delivered certain mail matter by the United States Postal Service and a private and commercial interstate carrier, according

to the directions thereon.

THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for **JOHN P. UTSICK** to defraud both potential investors and existing investors (hereinafter collectively referred to as "investors") and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, in connection with investments in entertainment projects conducted and planned for TEGFI and Worldwide by: (a) soliciting and causing others to solicit millions of dollars of funds from said investors under false pretenses consisting of materially false statements and omissions of material facts; (b) intentionally failing to utilize investors' funds in the manner which had been promised; (c) misappropriating and converting investors' funds to **UTSICK's** own benefit and the benefit of others without the knowledge or authorization of the investors; and (d) engaging in other activities designed to fraudulently conceal such conduct.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE

The manner and means by which the defendant sought to accomplish the purpose of the scheme and artifice to defraud included, among others, the following:

4. In order to induce individuals to invest, **JOHN P. UTSICK** falsely represented, and caused others to represent, within various written materials provided to investors, including promissory notes, private placement memoranda, Business Loan Agreements, assorted additional offering and investment-related documents, and periodic newsletters and other types of investor communications (hereinafter collectively referred to as "offering materials"), that the funds which investors were being solicited to supply would be used by TEGFI or Worldwide for purposes consistent with the funding of the specifically described entertainment projects which were the

subjects of the investments being offered. **UTSICK** and his associates also falsely stated that investors would eventually be paid applicable interest in amounts ranging from 15% to 25% and/or certain promised profit percentages, all from supposed revenues generated by the entertainment project(s) which each LLC-related investment or direct promissory note investment was alleged to fund.

5. As part of the scheme and artifice, **JOHN P. UTSICK** supplied investors, and caused investors to be supplied, with the aforementioned offering materials containing materially false statements and omissions through deliveries which **UTSICK** caused to be made by both the United States Postal Service and private and commercial interstate carriers, as well as through interstate wire communications conducted and caused to be conducted by **UTSICK** through such wire communication methods as telephone fax transmissions and internet e-mails.

6. As part of the scheme and artifice, **JOHN P. UTSICK** eventually succeeded in inducing investors, and causing the inducement of investors, through the previously described fraudulent means, to supply new funds and/or to "roll over" previously invested funds, to TEGFI or Worldwide for the purpose of investing in one or more of **UTSICK's** planned entertainment projects. Thereafter, as part of the scheme and artifice, **UTSICK** eventually obtained the funds which he fraudulently sought from investors through interstate wire transfers from financial institutions located outside the State of Florida to TEGFI or Worldwide bank accounts controlled by **UTSICK** in the Southern District of Florida, as well as through mailings and deliveries by the United States Postal Service and private and commercial interstate carriers which contained checks from investors which eventually were delivered to **UTSICK's** companies' offices in the Southern District of Florida.

7. Contrary to the representations which **JOHN P. UTSICK** made and caused to be made to investors, and as part of the scheme and artifice, **UTSICK** intentionally failed to use significant portions of the above-described investor funds for the stated purpose of financing applicable entertainment projects, nor for any entertainment project whatsoever. Rather, from the outset of the scheme, and continuing throughout its operation, **UTSICK** routinely misappropriated investor-supplied funds by frequently and repeatedly disbursing and causing the disbursement of such funds from his companies' bank accounts by means of interstate wire transfers which **UTSICK** initiated, as well as through checks drawn on said bank accounts which **UTSICK** issued, signed, caused to be signed, and subsequently supplied, and caused to be supplied, to third parties.

8. As part of the scheme and artifice, **JOHN P. UTSICK** repeatedly and fraudulently used funds acquired from recent investors whom he had successfully solicited and caused to be solicited, in order to satisfy earlier investors' "redemptions" (referring to the process of returning funds to an investor who, at the time of maturity, elects not to "roll over" the funds which he/she invested into another entertainment project) and/or their interest and profit sharing payments. This fraudulent and unauthorized use of more current investors' funds, which had nothing whatsoever to do with the project(s) in which these investors had invested, constituted a material fact which was never contemplated or disclosed to any investor in any of the offering materials or disclosed at any other time in any fashion whatsoever.

9. As part of the scheme and artifice, **JOHN P. UTSICK** made and caused to be made materially false statements to earlier investors by means of individual investor account statements and other writings which **UTSICK** caused to be delivered, by the United States Postal Service and

private and commercial interstate carriers, and through other means of communication, including interstate telephone fax transmissions and internet emails. These statements and writings falsely represented to earlier investors that the values of their total investments with TEGFI and/or Worldwide had increased due to purported accumulated interest earnings and profit distributions, all the while never informing these investors that the reported appreciated values of their investments were not caused by the success of the project(s) in which they had invested but, rather, were largely fictitious or had appreciated merely as a result of **UTSICK's** fraudulent utilization of investment funds supplied by more current investors. Thus, **UTSICK** falsely represented to potential investors, as well as existing investors who were being fraudulently induced to "roll over" their investment funds, that the business ventures in which they had invested were profitable when, in fact, most such projects operated at significant loss and could only meet their obligations to investors by **UTSICK's** misappropriation and fraudulent utilization of other investors' funds in this fraudulent manner.

10. As part of the scheme and artifice, **JOHN P. UTSICK** also converted investor-supplied funds which he had misappropriated to his own personal use and to the use of third parties with whom he had relationships, and used these funds for purposes which had no connection whatsoever to any entertainment project or entertainment-related activity, including, but not limited to, alimony and child support payments supplied to **UTSICK's** ex-wife, artwork for **UTSICK's** personal residence, leasing, repairs, and accessories for four collector cars owned by **UTSICK**, payment of credit card and other expenditures for personal items obtained at department stores, lingerie stores, clothing stores and appliance stores, payments made to a college fund established for a relative of **UTSICK's** girlfriend, as well as payments in connection with camps, tutors and private schools for the relative of **UTSICK's** girlfriend, insurance policy premium payments, **UTSICK's**

personal medical expenses, legal fees advanced to at least one attorney whom **UTSICK** retained to represent him in connection with a purely personal matter, mortgage and maintenance payments concerning a Miami Beach condominium in which **UTSICK** resided, the purchase of a yacht, travel expenses incurred by **UTSICK**'s girlfriend and family members, flowers, and grocery bills, which fraudulent and unauthorized uses of investor funds constituted a material fact which was never contemplated or disclosed to investors in any of the previously described offering materials or at any other time in any fashion whatsoever.

11. As a part of the scheme and artifice, significant additional portions of investor-supplied funds which were misappropriated and made the subject of the above-described wire transfers and check issuances by **JOHN P. UTSICK**, were eventually deposited by **UTSICK**, and caused by **UTSICK** to be deposited, into certain other bank accounts, each of which were maintained by certain broker-dealers or, in certain instances, their clearing agents in connection with one or more brokerage accounts established at each of these same broker-dealers by **UTSICK** and over which **UTSICK** had sole control.

12. As a part of the scheme and artifice, **JOHN P. UTSICK** used the portion of the investor funds which he had misappropriated in the above-described manner to purchase and aggressively trade various securities and highly speculative stock options through the various brokerage accounts which he had established, which use of investor funds constituted a material fact which fact was never contemplated or disclosed to investors in any of the previously described writings, nor disclosed in any other fashion whatsoever to investors. In addition, the vast majority of the funds misappropriated in this manner were eventually lost as a result of **UTSICK**'s aggressive trading, another material fact which was never disclosed in any fashion to investors.

USE OF THE MAILS

13. On or about the dates specified as to each count, the defendant, **JOHN P. UTSICK** for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service and a private and commercial interstate carrier, according to the directions thereon, the items identified below in each count:

COUNT	APPROX. DATE	DESCRIPTION OF MAILING
1	April 13, 2005 - April 14, 2005	Check in the amount of \$5,000,000.00 sent via Federal Express from JOHN P. UTSICK in Miami Beach, Florida to GunnAllen Financial at 7837 4 th Avenue South, St. Petersburg, FL 33707
2	December 2, 2005	Check in the amount of \$100,000.00 and loan agreement sent via the United States Postal Service by investor J.W. in Georgia to The Entertainment Group Fund in Miami Beach, FL
3	December 5, 2005 - December 6, 2005	Check for \$880,000.00 and loan agreement sent via UPS by investor M.B. in Richardson, Texas to Worldwide Entertainment Jack Utsick 300 S. Pointe Dr. #3503 Miami Beach, FL 33139-7350
4	December 8, 2005	Checks in the amounts of \$45,000.00 and \$55,000.00 sent together via the United States Postal Service by investor M.N. in Fort Worth, Texas to The Entertainment Group Fund, Inc. 300 S. Pointe Dr., Miami Beach, FL
5	December 12, 2005- December 14, 2005	Check in the amount of \$100,000.00 sent via the United States Postal Service by investor M.P. in Orlando, Florida to The Entertainment Group Fund, Inc. 300 S. Pointe Dr., Miami Beach, FL
6	December 15, 2005	Check in the amount of \$50,000.00 sent via the United States Postal Service by investor M.F. in Dallas, Texas to The Entertainment Group Fund, Inc. 300 S. Pointe Dr., Miami Beach, FL

COUNT	APPROX. DATE	DESCRIPTION OF MAILING
7	December 19, 2005	Check for \$540,000.00 sent via the United States Postal Service by investor T.H. in Massachusetts to The Entertainment Group Fund, Inc. 300 S. Pointe Dr. Miami Beach, FL
8	December 19, 2005	Check for \$1,900,000.00 sent via DHL by Pershing in New Jersey to Entertainment Group Fund, Inc. 300 S. Pointe Dr. #3503 Miami Beach, FL
9	January 18, 2006	Check for \$1,325,472.96 sent via DHL by Pershing in New Jersey to Entertainment Group Fund, Inc. 300 S. Pointe Dr. #3503 Miami Beach, FL

In violation of Title 18, United States Code, Sections 1341 and 2.

A TRUE BILL

~~FOREPERSON~~

WAF
W. Ferrer, Chief, CRM Div.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

P. Outerbridge

PETER B. OUTERBRIDGE
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. 10-20242-CR-ALTONAGA(s)

vs.

CERTIFICATE OF TRIAL ATTORNEY*

JOHN P. UTSICK,

Defendant.

Superseding Case Information:

Court Division: (Select One)

X Miami Key West
 FTL WPB FTP

New Defendant(s) Yes No X
Number of New Defendants
Total number of counts

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect

4. This case will take 20 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<u> </u>	Petty	<u> </u>
II	6 to 10 days	<u> </u>	Minor	<u> </u>
III	11 to 20 days	<u>X</u>	Misdem.	<u> </u>
IV	21 to 60 days	<u> </u>	Felony	<u>X</u>
V	61 days and over	<u> </u>		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge: Case No.

(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No

If yes:

Magistrate Case No.

Related Miscellaneous numbers:

Defendant(s) in federal custody as of

Defendant(s) in state custody as of

Rule 20 from the District of

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes X No

PETER B. OUTERBRIDGE
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. 0289914

*Penalty Sheet(s) attached

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PENALTY SHEET

Defendant's Name: JOHN P. UTSICK

Case No: 10-20242-CR-ALTONAGA(s)

Counts #: 1-9

Mail Fraud

Title 18, United States Code, Section 1341

*** Max. Penalty:** (20) years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**