UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	**Civil Action No. 08-1345 (RMC)**
	)	**ECF**
v.	)	
	)	
8 GILCREASE LANE, QUINCY FLORIDA 32351, *ET AL.*,	)	
	)	
Defendants.	)	
	)	

PLAINTIFF'S OPPOSITION TO THOMAS A. BOWDOIN, JR.'S "RENEWED MOTION TO RESCIND RELEASE OF CLAIMS"

Plaintiff, the United States of America, by its undersigned attorneys, respectfully submits this Opposition to Thomas A. Bowdoin, Jr.'s "Renewed Motion to Rescind Release of Claims" (Document #131). Bowdoin fails to establish any good cause for the relief he requests. Indeed, Bowdoin's latest affidavit makes clear that the criminal defense attorney he hired before engaging his current counsel made no misrepresentations whatsoever, before Bowdoin agreed, in January 2009, to cooperate with the government in an effort to reduce his criminal exposure for having operated Ad Surf Daily, Inc.

In the release he filed, Bowdoin acknowledged he knew that by withdrawing the claims, he was consenting to a forfeiture judgment in the government's favor. In his affidavit, Bowdoin acknowledges that, as part of his cooperation, he agreed to withdraw the claims he filed in this case. Clearly, Bowdoin now has decided he no longer wants to cooperate to resolve this matter or his potential criminal liability. Bowdoin can certainly change his mind – but he cannot change facts. Bowdoin's new attorney spends almost seventeen pages asking the Court not to enforce a supposed settlement agreement that Bowdoin acknowledges did not exist and which, not

surprisingly, the government does not seek to enforce. Bowdoin's new attorney insinuates that Bowdoin was "hoodwinked" or misinformed (presumably by either his prior counsel, or the government, or both). But Bowdoin's own affidavit proves otherwise. Moreover, most notable is the fact that, nowhere does Bowdoin's new attorney demonstrate that Bowdoin has even a remote possibility of prevailing against the government in this civil forfeiture case were he permitted to reassert a challenge.

The Court should reject these claims and permit the remaining assets in this case to proceed to forfeiture. This will allow the government to begin the process of remitting forfeited property to victims of Bowdoin's fraud scheme.

1. BACKGROUND

The government filed this civil forfeiture case on August 6, 2008. On August 15, 2008, the Court docketed a pleading that styled itself as containing verified claims by: (1) Bowdoin/Harris Enterprises, Inc.; (2) Adsurf Daily, Inc.; and (3) Mr. Thomas A. Bowdoin, Jr. The same counsel filed the pleading attaching all three claims.[1] See Document #6.

On August 18, 2008, Bowdoin/Harris Enterprises, Inc.; Adsurf Daily, Inc.; and Mr. Thomas A. Bowdoin, Jr., as claimants, filed an "Emergency Motion For Return Of Seized Funds . . . And Motion To Dismiss" by which claimants asked the Court to release (at least some of) the funds agents seized from Bowdoin's accounts at the Bank of America because, his attorneys alleged, without "emergency relief[,] the company will soon collapse completely. Its member

[1]Bowdoin Harris Enterprises, Inc. was an entity that Bowdoin and his wife (Harris) used to acquire beneficial ownership of several real properties with ASD funds. But, now, according to Bowdoin, all of the funds were his because he "was the President and sole proprietor of AdSurfDaily, an internet advertising company. I am the lawful owner of the real property and AdSurf Daily Bank of America accounts that are subject to forfeiture" in this case.

base, its most important asset, will disappear, and its employees will be out of work." See Document #7 at 1.

The Court accommodated claimants' request for two days of testimony. The hearing commenced on September 30, and ended on October 1, 2008. Prior to the hearing, however, Bowdoin's first set of attorneys indicated that neither claimant Bowdoin, nor ASD's Chief Executive Officer Juan Fernandez, would testify at the hearing. Instead, both men, through their counsel, invoked their right under the Constitution's fifth amendment not to incriminate themselves.

At the evidentiary hearing, claimants offered testimony from (1) Robert Grayson, an ASD member, (2) Gerald P. Nehra, an attorney hired by claimants' counsel to challenge some of the government's allegations, (3) Chuck Osmin, a customer service representative employed by ASD, and (4) Philip Schwartz, an attorney employed with the law firm representing claimants at the hearing. The government offered cross-examination. Additionally, claimants and the government submitted several exhibits.

Even without testimony from Bowdoin, who now says that he operated ASD as a sole proprietorship (see Document 131-1 and 132 ¶1), hearing testimony and the government's unchallenged exhibits revealed how numerous lies had allowed ASD's insiders to prosper through Bowdoin's fraud. Robert Grayson testified that as an early member of ASD he had put about $35,000 of his own money into the program, that he had received about $25,000 back before it stopped operating, as well as a check for another $8,000 that he was unable to cash before the government seized ASD funds. He explained that he was almost at the point where all of his out of pocket expenditure (his initial investment) had been returned. See Document #31.

Mr. Grayson further explained that, based on his having reinvested some payouts into new ad packages, he had an ad package balance worth approximately $200,000 from which he was expecting to receive about $2,000 per day (or a 1% return) from ASD (provided he merely surfed several websites for fifteen seconds each day). In short, he explained, the compounding of the returns ASD provided to him (and to other members) allowed members to receive much more back on their out of pocket funds than even the promised 125%.

Sustaining such payouts to existing members, as Mr. Bowdoin well knew, required a significant influx of new member money. Indeed, Mr. Bowdoin said as much on ASD's website in July 2008, while he was continuing to operate the program over the Internet. On the site Bowdoin controlled, he represented: "Ad purchasers will continue to be paid rebates until they receive 100% of their ad purchases. To earn an additional 25% rebate on their ad purchase, an ad purchaser must have a minimum group sales volume of $15 per month or their sales volume must average $15 per month while the ad package is still active. This helps us maintain a constant growth so everyone can reap their profits." (Underscore added.)

Although Mr. Grayson testified that he did not believe ASD was promoted as an investment or a security, in an email he wrote to ASD's attorneys, which they provided to the Court as part of an exhibit to the Emergency Motion they filed, Mr. Grayson explained ASD's operation as follows: "ASD has chosen to utilize a combination of compensation components to reward it's [sic] members and allow them to a) recover their out of pocket advertising costs, b) earn a 25% premium above and beyond these costs, c) compound the recovery of those expenses, and d) earn commissions on 2 generations of the referral of new members who also make advertising purchases." Document 7-6, page 29 of 57. Mr. Grayson likened ASD's

compounding of rebates to how "a securities investor can reinvest his or her dividend in order to purchase additional shares of stock and increase the size of the next dividend[.]" Id. "Last but not least" Mr. Grayson offered, "let's not forget this is an advertising program and the purpose of advertising is to generate profitable sales of a product or service[.]" Id. According to Mr. Grayson, "[k]nowing that my cost for page views with ASD is FREE - any sale I make is by definition profitable[,] especially when compared to the enormous costs of search engines and the software manipulation they go through to take my money." Id. at 30. In paying money to ASD, Mr. Grayson testified that he relied on ASD's representation that its operation was legal.

Also testifying at the hearing that ASD had requested was Chuck Osmin, who had been employed with ASD as a customer service representative. Mr. Osmin indicated that the return on his out of pocket investment into ASD had been about 700%. Mr. Osmin said that ASD had paid many people the 125% returns it offered and that he was only aware of one revenue source other than what ASD received from its new members to pay the returns to existing members.

Philip Schwartz, an attorney who expressed expertise with federal securities laws operating out of the Akerman Senterfitt law firm representing Bowdoin at the hearing also testified there. According to Mr. Schwartz, Mr. Bowdoin only contacted him a few weeks before the seizure, after ASD had been operating over the Internet in its various iterations for at least 20 months, from October 2006 to July, 2008. Mr. Schwartz urged the Court to release several million dollars of seized funds to his law firm so that the firm could investigate ASD's operations and provide consulting services to it that, he surmised, would ensure ASD's legal operation on a going-forward basis. In short, Bowdoin, through his first attorneys, was now asking a Court for permission to spend some of the money he took in from ASD's members, to

whom it had promised above-market returns, so that Bowdoin could pay them to figure out how Bowdoin could run a legal business.

The Court rejected Bowdoin's request. See Document #35. On November 19, 2008, it issued an order denying several of Bowdoin's motions, including his Emergency Motion for return of Seized Funds. See Document #36.

Meanwhile, according to Bowdoin, on the recommendation of his attorneys at Ackerman Senterfitt, Bowdoin "retained Steven Dobson of Dobson and Smith as [his] criminal attorney . . . . After retaining Dobson and Smith, Dobson arranged a meeting with William Cowden, an attorney with the Department of Justice [and] between November and December 2008, Dobson met with Cowden on two separate occasions in Washington, D.C." See Document #131-2 ¶4, 5, 6; #132 ¶5, 6.

Again, according to Bowdoin: "In December 2008 and January 2009, Dobson and I met with Cowden and other government officials in Tallahassee, Florida to discuss matters concerning the issues of criminal liability and the civil *in rem* forfeiture proceeding. . . . Dobson represented to me that I could possibly avoid prison or get a reduced sentence if I agreed to cooperate and release the assets. I also signed a document stating that I would release my claims in the . . . civil in rem forfeiture proceeding, again thinking that necessary for a possible avoidance of a prison term. I did all of this on the understanding that by cooperating I could possibly avoid a prison sentence." See Document #131-2 and 132 ¶7, 8.

On January 13, 2009, Akerman Senterfitt attorneys representing Thomas A. Bowdoin, Jr., AdSurfDaily, Inc. and Bowdoin Harris Enterprises, Inc. in this matter filed a motion to withdraw all of the claims filed on behalf of these claimants in this case. In that motion, the attorneys for

these three claimants wrote:

> Claimants, AdSurfDaily, Inc., Thomas A. Bowdoin, Jr. and Bowdoin & Harris Enterprises, Inc. (hereinafter "Claimants"), by undersigned counsel, hereby request leave of the Court to withdraw and release claims previously filed, consent to forfeiture, as follows: 1. Claimants withdraw and release with prejudice the verified claims they filed in this civil forfeiture action. 2. Claimants consent to the forfeiture of the properties for which they have asserted claims (i.e., the real property at 8 Gilcrease Lane and the bank account balances at the Bank of America in the names of Thomas. A. Bowdoin Jr., sole proprietor, d/b/a AdSurfDaily) and expressly announce their intention to not contest the Government's forfeiture efforts against the properties for which they have asserted claims.

See Motion for Leave to Withdraw Claims Release of Claims to Seized Property and Consent to Forfeiture, Document #39 at 2 (filed January 13, 2009).

On January 22, 2009, the Court granted the Motion. See Document #41. In effect, the claims that AdSurfDaily, Inc., Thomas A. Bowdoin, Jr. and Bowdoin & Harris Enterprises, Inc. filed on August 15, 2008 were stricken and the case was now postured for a default judgment and decree of forfeiture.

Apparently, in February 2009 Bowdoin decided that he would no longer cooperate with the government. Starting on about February 27, 2009, Bowdoin began to file, *pro se*, a series of motions by which he demonstrated an intent no longer to cooperate with the government in resolving this case and his criminal exposure. See Documents #47, 48, 49, 50, 55.) In a document he styled his "Notice of Rescission and Withdrawal of Release of Claims to Seized Property and Consent to Forfeiture," which the Court docketed as filed on February 27, 2009 (see Documents #47, 55), Bowdoin wrote that he should be permitted to reenter this case – in essence to be permitted to re-claim, presumably, to challenge some of the forfeitures of the defendant properties. Bowdoin asserted, as his basis for asking the Court to reinstate his claim, that: (1)

"[t]he procedures used to search and seize [the] property in the forfeiture were nonexistent"; (2) the claimants "were greatly influenced by legal counsel that was ineffective"; (3) the claimants were illegally intimidated, threatened and coerced by government agents and attorneys concerning potential prosecutions and sanctions against them"; (4) the claimants acted under severe duress and true feeling of protest"; (5) "government agents used fraud, trickery and deceit to . . . convince the claimants that the withdrawal and release of claims was their only option"; (6) "government agents and prosecutors acted in bad faith in deciding to use a civil investigation and forfeiture to gain information and evidence for a criminal indictment and conviction" and (7) "government agents and prosecutors have willfully and intentionally used an illegal forfeiture to destroy the business enterprise that has affected thousands of innocent purchasers with de minimus or non-existent harm to the public to punish the claimants."

The Court ordered the attorneys of record for Bowdoin, Ad Surf Daily and Bowdoin Harris Enterprises (of the Akerman Senterfitt law firm) to explain the status of their representation to the Court, and to explain to Bowdoin that corporations could not proceed *pro se*. See Document #53. In a motion the Akerman Senterfitt attorneys filed seeking to withdraw from this case, they said they did that. See Document #54. After a new attorney, Charles A. Murray, entered an appearance on behalf of Bowdoin, AdSurfDaily and Bowdoin Harris Enterprises (on April 9, 2009), the Court granted Akerman Senterfitt's motion to withdraw (by Minute Order dated April 15, 2009).

Thereafter, in this case the government turned to Bowdoin's (still *pro se*) submission. On April 24, 2009, the government filed an Opposition to Bowdoin's request to be permitted to reinsert a claim into this case. See Document #64. His new attorney, Mr. Murray, did not file a

"reply" to the government's opposition; instead, on May 7, 2009, Mr. Murray filed what he called "Thomas A. Bowdoin, Jr., et al. Claimants' Motion for Leave to Withdraw 'Notice of Rescission and Withdrawal of Release of Claims to Seized Property and Consent to Forfeiture' Without Prejudice to Resubmission." In short, Mr. Murray wrote that "[g]ood cause exists for permitting Mr. Bowdoin . . . to withdraw the pro se pleading and refile it upon consultation with counsel [who] requires time to evaluate the facts and circumstances germane to the legal issues associated with Mr. Bowdoin[.]" Mr. Murray asked the Court to withdraw the *pro se* motion that Mr. Bowdoin filed on February 27, explicitly conceding that "[t]he pro se submission of Mr. Bowdoin . . . failed to apprise the court of all germane facts and arguments and, thus, should not form the basis of a decision to avoid the risk of an erroneous decision." Id. at p. 3. The government did not disagree with Mr. Murray's assertions that Mr. Bowdoin's "Notice of Rescission" lacked substance and should be deemed withdrawn and, like the Court, waited for the promised germane facts and arguments to appear.

Mr. Murray suggested that he would do a better job of explaining the legal and factual bases supporting Mr. Bowdoin's forthcoming request, and he promised to file something on or before May 15, 2009.[2] But the new attorney's promised better effort failed to materialize. Eventually, on July 24, 2009, the Court ordered Mr. Bowdoin to show cause why the Court should not allow this matter to proceed consistent with the prior release of all claims. See Document #79.

After requesting several extensions, Bowdoin finally responded to the Court's Order to

[2]Mr. Murray indicated that he "intend[ed] to submit this Motion to Rescind on or before May 15, 2009." See Document #67 at 1.

Show Cause with a "Renewed Motion to Rescind Release of Claims" that Mr. Murray signed, and two (generally similar) Affidavits that Bowdoin signed. See Documents #131, 132. As explained herein, Bowdoin still offers no valid basis for this Court to permit relief from a final order striking his claim that he knowingly and voluntarily requested while represented by two sets of attorneys. The record makes clear that Bowdoin knew that he would be dismissing his claims and thus his right to challenge the forfeitures the government was requested (see Document #57), and Bowdoin's new affidavits in no way support the confused argument Mr. Murray, his new counsel, now offers as supposed "good cause."

2. ANALYSIS

In its forfeiture complaint, the government alleges that the defendant properties, including funds and real properties, are forfeitable under applicable federal laws because the properties constitute or are traceable to proceeds of a large-scale wire fraud scheme that Bowdoin and others operated over the Internet. In particular, the government asserts that Bowdoin convinced numerous individuals to invest funds with Bowdoin by falsely representing to them that he had created a novel and sustainable advertising business capable of paying his so-called customers ("we don't call them investors") a 25% return on each dollar paid to Bowdoin, supposedly to purchase "free" advertising. Bowdoin represented to prospective customers of his "income opportunity" that ASD was a profitable advertising company capable of returning to its so-called "members" more money than they paid to ASD, at a rate of return approximating 1% per day, provided that "members" agreed to surf for a few minutes each day on the website he operated. The government asserts that Bowdoin paid returns to "members" not from revenues ASD derived that were independent of what its "members" paid, or from any profits earned on

ASD's investments, but rather from existing members' deposits (paid back slowly over time) and from money paid by new "members". Meanwhile, Bowdoin rewarded his friends and family by using investors' funds to employ them, to purchase luxury items for them, to paying mortgages for them, and otherwise to spend lavishly on himself – despite his inability to make good on a liability he accepted with each dollar he secured.

Bowdoin did not tell his investors that he had a criminal record; in fact, after he discovered that a background check someone performed on Bowdoin failed to pick up Bowdoin's prior fraud convictions, Bowdoin asked that person to become ASD's compliance officer and encouraged that individual to promote Bowdoin's spotless record to the public.

Bowdoin does not, in his latest affidavits, indicate that any of the government's allegations are untrue. In fact, he confirms that in discussions with prosecutors (and agents) he "revealed significant information against [his] interest."

According to Bowdoin, after his attorneys at Ackerman Senterfitt informed him that he "could face criminal liability in addition to the forfeiture proceedings[,]" he hired Steven Dobson of the law firm Dobson and Smith in Tallahassee, Florida to represent him with respect to those matters. According to Bowdoin:

> 8. Before meeting with Cowden, Dobson asked that I sign an agreement expressing my intent to cooperate with the Department of Justice and releasing the assets. I did that. Dobson represented to me that I could possibly avoid prison or get a reduced sentence if I agreed to disclose details concerning ASD and releasing the assets. I agreed to cooperate and release the assets. I also signed a document stating that I would release my claims in the above-captioned civil in rem forfeiture proceeding, again thinking that necessary for a possible avoidance of a prison term. I did all of this on the understanding that by cooperating I could possibly avoid a prison sentence.
>
> 11. Dobson led me to believe that if I cooperated there was a possibility

that I would not be incarcerated or imprisoned.

See Documents #131-2, 132 ¶8, 11. Frankly, according to Bowdoin, Dobson provided sound legal advice. Bowdoin says that he agreed to cooperate because Dobson told him that he could "possibly avoid prison or get a reduced sentence." Like most other cooperating criminals, Bowdoin hoped to curry favor with the government (and presumably with a sentencing court). Bowdoin plainly understood, from Dobson and from the government, that while the government had made no promises except to inform a sentencing court about the details of Bowdoin's cooperation, Bowdoin's cooperation might lessen his criminal exposure.

Bowdoin finally explains why he has decided to breach what he says was an agreement he made to cooperate in early 2009. According to Bowdoin, during meetings with government officials in Tallahassee, Florida, "after I had already revealed significant information against my interest, I came to understand that I faced incarceration following a criminal action." See Documents #131-2, 132 ¶15. According to Bowdoin, "Cowden explained that I would be subject to the maximum penalty under the statute, but that he would inform the judge that I cooperated. [M]y agreement to cooperate provided me no benefit in the criminal matter except the possibility of a reduced sentence if the judge desired which would still be a life sentence." See Documents #131-2, 132 ¶16. Bowdoin says that the possibility of any incarceration is "against my wishes[.]" Id. In other words, Bowdoin elected to stop cooperating because he now wants the government to offer, in exchange for his cooperation, not just a promise to inform the sentencing judge about the nature of his cooperation, but also a no-jail deal. Only if the government promises not to seek a term of incarceration will Bowdoin agree to give up the money and promise to behave in the future.

What becomes clear, from Bowdoin's current motion, is that Bowdoin believes that if he gets back into this case he can try to negotiate a better deal. He wants to trade his right to challenge the forfeiture for the get-out-of-jail-free card that, Bowdoin himself acknowledges, the government has never been willing to offer. To achieve that end, Bowdoin makes a series of remarkable misrepresentations and insidious accusations, primarily against Mr. Dobson, in an apparent effort to have this Court reject a settlement agreement that everyone agrees never existed. Mr. Murray's new accusations are, in any event, utterly inconsistent with Bowdoin's own affidavit testimony. The accusations are also irrelevant to the relief Bowdoin here requests: to reappear into a lawsuit against which he cannot mount a successful defense, solely to leverage a better deal in resolving criminal charges. But, this is not an exercise in horse-trading.

The difference between what Bowdoin says happened, and what Mr. Murray suggests happened, is disturbing. In the "Renewed Motion to Rescind Release of Claims," Mr. Murray sometimes reports, consistent with statements Bowdoin makes in his affidavits, that "Bowdoin understood from Dobson that to possibly avoid prison time he had to release claims in the civil forfeiture proceeding and disclose facts concerning the operation of ASD to Government counsel." Document #131 at 4 (underscore added) (citing Bowdoin affidavit ¶8). Likewise, reports Mr. Murray: "Bowdoin understood from Dobson that he was obligated to dismiss claims in the civil *in rem* forfeiture action if he was to receive leniency from the government." Document #131 at 4 (citing Bowdoin Affidavit ¶10.) In other words, Bowdoin understood from his attorney, before he started cooperating, that he could help himself if he did cooperate. Sounds like a smart lawyer's good advice. Bowdoin acknowledges that he started cooperating, voluntarily dismissed his claims in this case as part of his effort to demonstrate his sincerity, and (as he

himself acknowledges to this Court) began to provide information about his operation to federal law enforcement authorities.

But, almost mysteriously, Mr. Murray's motion transforms from statements like those quoted above into: "Dobson represented that Bowdoin's cooperation would preclude the possibility of imprisonment following criminal charges." Mr. Murray also writes: "Bowdoin agreed to release his claims in the civil forfeiture matter believing first that such action would avoid the possibility of imprisonment." Document #131 at 4. Through these subtle but significant revisions, Mr. Murray suggests, and hopes to convince this Court, that even though Bowdoin was told by his several different prior attorneys that his conduct was criminal, and even though he retained criminal counsel to assist him, and even though Bowdoin says he was told that cooperation might lessen the prison exposure Bowdoin was facing for his criminal conduct, Bowdoin really thought he had resolved the criminal matter in a way that would guarantee him no jail time (as if this were merely a regulatory matter) when Bowdoin released his challenge to the seized money. *This fantasy even Mr. Bowdoin fails to support*. The affidavit Mr. Murray likely drafted for Bowdoin says that Bowdoin agreed to release his claims in this case as part of an effort to cooperate, understanding that "if I cooperated there was a possibility that I would not be incarcerated or imprisoned [and that] "my cooperation would still result in a criminal sentence that could possibly not include imprisonment or incarceration." Documents #131-2, 132 at ¶11, 12. Bowdoin explains that he released his claims to demonstrate his then-present intent to cooperate, not because he was told (let alone reasonably believed), that quitting this case would earn him home detention.

Mr. Murray suggests that the Court's order dismissing Bowdoin's claims "is akin to

enforcing an invalid contract." But not even Bowdoin suggests that a settlement agreement existed. Urging this Court not to enforce a contract that did not exist is pointless.

In its initial opposition to Bowdoin's initial, *pro se* effort to re-insert himself into this litigation, the government pointed out that a district court's decision to deny a Rule 60(b) motion is ordinarily reviewable for abuse of discretion. See United States v. Haynes, 158 F.3d 1327, 1331 (D.C. Cir. 1998) (citing Browder v. Director, Department of Corrections, 434 U.S. 257, 263 n.7 (1978)). The government also explained that in the context of this case and its posture, to get relief from the Court's order, Rule 60 requires Bowdoin to demonstrate either: (1) mistake, inadvertence, surprise, or excusable neglect; (2) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; or (3) any other reason that justifies relief.." Fed. R. Civ. P. 60(b). Lastly, the government pointed to case law indicating that

> [M]otions for relief under Rule 60(b) are not to be granted unless the movant can demonstrate a meritorious claim or defense; we cannot escape the fact that the complaint and the proposed opposition were insufficient as a matter of law to defeat the motion on the statute of limitations ground. Under these circumstances, we cannot say that the District Court abused its discretion in denying relief from judgment.

Lepkowski v. United State Dep't of Treasury, 804 F.2d 1310, 1314 (D.C. Cir. 1986) (footnote omitted) (emphasis added); accord Norman v. United States, 377 F. Supp.2d 96, 98 (D.D.C. 2005) ("Because the Court is persuaded that reinstatement would ultimately be futile" plaintiff's motion under Rule 60(b) was denied).

As shown above, Mr. Murray's apparent suggestion that Bowdoin made a mistake because he was "hoodwinked" by his prior defense counsel is belied by Bowdoin's own affidavits. Bowdoin says (using more words) that he dismissed his claims in mid-January 2009 because he

had decided to cooperate in either late December 2008 or early January 2009, after his attorney met with the government. Bowdoin explains that he understood that he was sitting down with agents in January 2009 in an effort to help himself, that he decided to withdraw his claims in this case as part of that effort, and that he eventually changed his mind. Mr. Murray's manufactured effort to fault Bowdoin's prior counsel for Bowdoin's decision to cooperate and his revised decision to profess "my belief in my innocence" is laughable. Bowdoin knew he should expect no leniency unless he stopped pretending that he honestly earned the millions of dollars that the government recovered from his bank accounts in 2008. See Document #132 ¶8. Momentarily, on January 13, 2009, he did just that. Bowdoin's true reasons for changing his mind some six weeks later when he started to file his series of nonsensical *pro se* motions remains speculation.[3]

Moreover, nowhere does Mr. Murray begin to suggest, let alone establish, that if Bowdoin were permitted to re-claim, he could mount a successful defense to the government's forfeiture

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[3]Maybe Bowdoin mistakenly thought that he could con the government into believing that he was just a harmless, foolish old man. Ironically, after telling thousands of investors that he intended to build the world's preeminent advertising company for them, in order to make them 100,000 millionaires, Bowdoin tries to con this Court, telling it that because he's 74 and has a heart condition, any incarceration amounts to a death sentence. See Document #132 ¶8. Was he lying then, or now? Or, it may be the case that Bowdoin never intended to plead guilty when he agreed to debrief, and was just buying time while searching for a different exit strategy that failed to materialize. Maybe Bowdoin thought that before the government brought its charges he (like some of his family members) could move to another country and profit from a knock-off autosurf program that Bowdoin funded and helped to start. Or, maybe other attorneys Bowdoin employed, or ASD's other promoters, convinced Bowdoin that if he paid some of the fraud proceeds the government had missed to them (the money laundering as Mr. Murray reports), they could help to circle the wagons or otherwise do a better job than Akerman Senterfitt did when it tried to prove that free advertising was a true profitable sale and not a poorly disguised, and unsustainable, investment opportunity. But what is clear from Bowdoin, himself, is that neither the government, nor Bowdoin's experienced criminal defense counsel, ever told Bowdoin that it was reasonable for a defendant convicted of operating a $100 million wire fraud scheme to expect probation.

allegations. Although Bowdoin acknowledges that before he changed his mind about continuing to cooperate he "revealed significant information against [his] interest[,]" his new attorney requests a hearing "to prove up the factual basis for rescinding the release of claims." Either Murray plans to call Bowdoin (whose affidavits disproving Mr. Murray's theory for rescission we already have) or Bowdoin's prior criminal defense attorneys who reviewed some of the government's evidence and advised Bowdoin to cooperate (according to Bowdoin) before they sat through Bowdoin's explanations to government agents of how clever promoters of autosurf programs manage to get rich quick defrauding others.

CONCLUSION

For the reasons set forth above, Thomas A. Bowdoin, Jr.'s Renewed Motion to Rescind Release of Claims (Document #131) and his Motion for Evidentiary Hearing (Document #141) should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Opposition to be served by means of the Court's ECF system on this 24th day of September 2009 upon all counsel of record.

_/s/_____
William R. Cowden