

STEVEN A. WUTHRICH (6055)
 HEATHER WAITE GROVER (10991)
 Assistant Attorney General
 SEAN D. REYES (7969)
 Utah Attorney General
 5272 S College Dr. Suite 200
 Murray, Utah 84123
 Telephone: (801) 281-1200
 E-mail: swuthrich@agutah.gov
 heathergrover@agutah.gov

Attorneys for Plaintiff

| | |
|--|--|
| <p>3RD DISTRICT COURT SALT LAKE COUNTY, STATE OF UTAH</p> | |
| <p>STATE OF UTAH, <div style="text-align: right;">Plaintiff,</div> v. RYAN NATHAN MCCLAIN DOB: 03/16/1976 15238 S. TALL WOODS DRIVE DRAPER, UT 84020 <div style="text-align: right;">Defendant.</div></p> | <p>INFORMATION (Summons) (Notice of forfeiture) Case No. 231910199 Judge: Teresa Welch</p> |

The undersigned, Special Agent C. Butler of the Utah Attorney General’s Office, states on information and belief that **RYAN NATHAN MCCLAIN**, either directly or as a party to the offenses, committed the following crimes:

COUNT 1: PATTERN OF UNLAWFUL ACTIVITY, a Second Degree Felony, in violation of U.C.A. §§ 76-10-1603, 1602, (1), (2), (4)(kk), 76-10-1603.5(1), On or about and between October 6, 2022 and August 1, 2023, in the County of Salt Lake, State of Utah, the defendant, RYAN NATHAN MCCLAIN (hereinafter “Defendant”), did: (1) receive proceeds derived, whether directly or indirectly, from a pattern of unlawful activity in which the person has participated as a principal, to use or invest, directly or indirectly, any part of that income, or the proceeds of the income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or the establishment or operation of, any enterprise; and/or (2) through a pattern of unlawful activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, to wit: Red Rock Restore a “doing business as” (d/b/a) name

registered with the Utah Division of Corporations; and/or (3) become employed by or associated with said enterprise to conduct or participate, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity, and/or (4) conspired with co-defendant Tiffany Mercer McClain to violate any provision of Subsection (1), (2), or (3).

COUNT 2: COMMUNICATIONS FRAUD, a Second Degree Felony, in violation of U.C.A. §§76-10-1801(1) (d), (2), On or about and between October 6, 2022 and August 1, 2023, in the County of Salt Lake, State of Utah, the defendant intentionally or knowingly devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and who communicates directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice where the total value of all property, money, or things obtained or sought to be obtained by the scheme exceeds \$5,000.00.

COUNT 3: MONEY LAUNDERING, a Second Degree Felony, in violation of U.C.A. §§ 76-10-1903, 1904(1), On or about and between October 6, 2022 and August 1, 2023, in the County of Salt Lake, State of Utah, the defendant intentionally, knowingly or recklessly did transport, receive, or acquire the property which is in fact proceeds of the specified unlawful activity, knowing that the property involved represents the proceeds of some form of unlawful activity; did make proceeds of unlawful activity available to another by transaction, transportation, or other means, knowing that the proceeds are intended to be used for the purpose of continuing or furthering the commission of specified unlawful activity; or did conduct a transaction knowing the property involved in the transaction represents the proceeds of some form of unlawful activity with the intent to promote the unlawful activity, to conceal or disguise the nature, location, source, ownership, or control of the property, or to avoid a transaction reporting requirement under this chapter or under federal law.

COUNT 4: OBSTRUCTION OF JUSTICE IN A CRIMINAL INVESTIGATION, a Third-Degree Felony, in violation of U.C.A. §§ 76-8-306 (1) (c), (2)(a) (i), (b) (iv), (3) (b) (i). On or about August 1, 2023, in Salt Lake County, State of Utah, the defendant, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense, to wit Pattern of Unlawful Activity, U.C.A. § 76-10-1602 *et seq*, by altering, destroying, concealing or removing any item or thing when in response to a directive to surrender his phone Defendant “swiped” or caused to be deleted an email to or from the supplier of the counterfeit DVDs.

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES: S.A. C. Butler, S.A. A. Draney, S.A. M. Johnson, S.S.A. J. Russell, Inspector Dimick, Zach Hayes, and Christian Hardman, Representatives from the Motion Picture Association as necessary.

DECLARATION OF PROBABLE CAUSE:

1. I, Special Agent C. Butler, am a certified Police Officer in the State of Utah and have received training and certification through the Utah Peace Officer's Standards and Training Academy. I have over 4 years of experience as a certified Law Enforcement Officer. I am currently assigned as a Detective with the West Jordan Police Department Street Crimes Unit and tasked with investigating crimes involving drug-related offenses, fraud, theft, gambling, and burglary. I am also assigned to the Utah Attorney General's Office Crimes Against Statewide Economy (C.A.S.E.) Task Force with the responsibility of investigating economic crimes in the State of Utah.

2. Agents with the C.A.S.E. Task Force received information from eBay referencing an eBay account under the username "aspewolfmnt" that was selling presumably counterfeit DVDs. I spoke with eBay investigator Christian Hardman who provided registration information for the account. The account was registered by Defendant with the company name "Red Rock Restore."

3. Red Rock Restore was registered as a DBA in the State of Utah by Defendant on 06/04/2018, which was one day before the aspenwolfmnt account was registered by Defendant (06/05/2018).

4. An individual who registers for an account with eBay must agree to their terms and conditions before registering which includes a prohibition against selling counterfeit items on their website.

5. I was able to locate a previous police report taken by former Special Agent Pepper with the Utah Attorney General's Office. This police report was documented under case AG18-402. According to this report, Defendant and his wife, Tiffany Mercer McClain, were suspected of selling counterfeit DVDs using several different eBay accounts: t.g.shop, housenobel, and maddashtreasure. Account t.g.shop was registered by T. Mercer, housenobel was registered by T. McClain, and maddashtreasure was registered by F.E. with contact information for Defendant. eBay had previously sent Defendant a notice that they believed his DVDs were counterfeit and requested proof of purchase. Defendant responded with an invoice that Special Agent Pepper described as "fraudulent." The accounts were nonetheless suspended by eBay forcing the case to be closed out. Thus, at that time, Special Agent Pepper was unable to verify if the DVDs were counterfeit.

6. eBay investigators provided me with lifetime sales data for all the eBay accounts associated with Defendant, which included over 100,000 sales collectively. The total revenue for all the accounts at the time of analysis totaled approximately \$1,484,952.45 in sales.

7. On 12/13/2022, I placed an online order from the aspenwolfmnt eBay account purchasing two random DVDs: *Ford v. Ferrari* and *Top Gun Maverick*. Both DVDs are major motion pictures. I then contacted Michael Radziewicz, who is employed by the Content

Protection Operations of the Motion Picture Association, Inc. Mr. Radziewicz was already beginning an investigation into the aspenwolfmnt account after receiving information indicating the account was suspicious.

8. On 01/12/2023, I shipped both DVDs via USPS Certified Mail to Mr. Radziewicz, which were received on 01/19/2023. On 02/22/2023, I received a declaration from Mr. Radziewicz indicating both DVDs were counterfeit. Mr. Radziewicz verified each disc was counterfeit by running each through a program known as “Disc Investigator.”

9. I received information from Inspector Dimick, who is employed by the United States Postal Inspection Services, that Defendant was dropping off large quantities of media mail at the USPS post office in Draper, Utah. On 05/18/2023, Inspector Dimick observed Defendant arrive at the Draper Post Office and drop off “over 100 DVD shipments.”

10. Inspector Dimick was able to photograph a package that Defendant dropped off with a shipping label that was different from packages Defendant previously dropped off. Inspector Dimick believed it may be from a different eBay account than Defendant had previously used. I sent the tracking information to eBay investigator Zach Hayes who reported the package was from an account under the name of “cosmiccollectionco.” I placed a request for registration information for this account and received information back a short time later. The account was registered by Defendant’s wife, Tiffany Mercer.

11. I authored several search warrants for Defendant’s and his wife’s bank account history. An analysis of their bank accounts (J.P. Morgan Chase, Zions Bank, America First Credit Union) indicated they only received regular income from PayPal or eBay deposits. I know from training and experience that PayPal used to be eBay’s primary payment system until it was replaced by direct payments from eBay to the seller. These accounts showed numerous expenses being paid from the accounts for the DVD sales operation, including shipping, packaging, and purchasing of covers.

12. On 08/01/2023, I served a residential search warrant #2694851 on Defendant’s residence located in Draper, Utah. Officers seized approximately 2,836 DVDs pre-packaged for sale, multiple shipping packages, and invoices from Chinese distributors such as DHGate and DVDFreedom.com.

13. I spoke with the Defendant and issued him a Miranda warning. Defendant elected to waive his Miranda rights and speak with me. During the interview, Defendant claimed ownership of the aspenwolfmnt account from which the counterfeit DVDs had been purchased. Defendant claimed he did not know for sure but acknowledged at least a 50/50 chance that the DVDs he was selling were counterfeit.

14. Defendant described his sellers as “probably from China” based on their broken English in email correspondence. Mr. Radziewicz indicated that China is the only source for counterfeit DVDs.

15. Defendant admittedly was receiving proceeds from the eBay sales and described the amount as just enough to get by or pay utilities.

16. A review of Defendant's bank account information reflects no outside source payments except from the DVD sales and that operational expenses such as shipping containers, shipping and associated materials were paid from these accounts.

17. Warrants were served for the account balances and monies received will be placed in a segregated interest-bearing account maintained by the Utah Attorney General's Office for forfeiture funds.

18. A notice of intent to forfeit was sent via certified mail on August 29, 2023, to Defendant and his wife.

19. On August 1, 2023, Defendant and his wife were served with a search warrant for the premises in Draper Utah. Included in the scope of the warrant were cell phones belonging to Defendant and his wife. When asked to surrender the phones, Tiffany Mercer McClain handed over her phone to SA D. Draney. Defendant, however, reached in his pocket and placed his thumb on the phone screen and swiped it to the left, which is a technique used to delete information on a smart phone. When confronted, Defendant initially denied deleting anything then ultimately changed his story to "there are things on here you don't need to see" Defendant further instructed his wife not to provide the agent with her phone passcode. Upon review of the Defendant's phone contents, after obtaining a warrant for same, I discovered a communication thread to the counterfeit DVD distributor in Defendant's recently deleted files.

20. Forty-six of the seized DVDs were sent to the Motion Picture Association for review. One disk was cracked and untestable, forty-five DVDs were counterfeit.

NOTICE OF INTENT TO SEEK ADDITIONAL REMEDIES. Upon conviction under U.C.A. § 76-10-1603, the State will seek additional remedies pursuant to U.C.A. § 76-10-1603.5, including but not limited to, requiring the defendant to notify each and every victim or customer who purchased and received DVDs from him between August 6, 2021, to August 1, 2023, and, additionally, to provide the Court with information that would enable said victims to seek restitution in this matter.

NOTICE OF FORFEITURE. Pursuant to U.C.A. §77-11b-101 *et seq.*, notice is hereby given that the State intends to forfeit the bank account proceeds in the accounts set forth below as the proceeds of illegal activity and specifically as proceeds of selling counterfeit materials in violation of U.C.A. § 76-6-518: Funds Frozen at JP Morgan Chase approximately \$33,671.25; Funds Frozen at America First Credit Union of approximately \$1,034.27; Funds Frozen at Zions Bank of \$11.15; and all the seized DVDs will be retained and disposed of as contraband.

Pursuant to Utah Code Ann. § 78B-18a-106 (2018), I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Executed: September 27, 2023.

/s/ C. Butler

S.A. C. Butler

Declarant

Electronically signed with permission from C. Butler on September 27, 2023, at 4:04 pm.

Authorized for presentment and filing:

SEAN D. REYES,
Utah Attorney General

/s/ Steven A. Wuthrich
STEVEN A. WUTHRICH
Assistant Attorney General
DATED: September 28, 2023.