ORIGINAL

FILED IN CHAMBERS
U.S.D.C. Atlanta
OCT 13 2009
JAMES N. HATTEN, Clerk
By: L. Wade-Chief
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL INDICTMENT
IAN JAY EVANS,	:	
Defendant.	:	NO. 1:09-CR-449

THE GRAND JURY CHARGES THAT:

COUNT ONE
(18 U.S.C. § 1349)
Conspiracy to violate 18 U.S.C. §§ 1341 and 1343

At all times relevant to this Indictment:

1. Beginning on or about at least as early as June 2002 and continuing thereafter until on or about May 2005, the exact dates being unknown to the Grand Jury, in the Northern District of Georgia and elsewhere, the defendant, IAN JAY EVANS (hereinafter referred to as "Defendant EVANS"), Ronald Douglass Matheny II (hereinafter referred to as "Matheny"), and other co-conspirators did willfully and knowingly conspire, combine, confederate, and

agree, in violation of Title 18, United States Code, Section 1349, to commit offenses, namely, to violate Title 18, United States Code, Sections 1341 and 1343, by having devised and intending to devise a scheme and artifice to defraud The Home Depot, Inc. and its wholly-owned subsidiary, Home Depot U.S.A., Inc. (The Home Depot, Inc. and its wholly-owned subsidiary, Home Depot U.S.A., Inc., are hereinafter referred to as "Home Depot") and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and executed the aforesaid scheme and artifice by causing certain items to be sent, delivered, and moved by the United States Postal Service and by commercial interstate carrier, and through the use of certain writings, signs, sounds, and signals transmitted in interstate wire communications.

BACKGROUND

2. At all times relevant to this Indictment, Home Depot was a publicly-traded corporation with its business centered on the operation of Home Depot retail stores located throughout the United States, Puerto Rico, Canada, and Mexico. Those Home Depot retail stores sold a wide variety of building materials, home improvement products, and lawn and garden items. Home Depot had its corporate headquarters located at 2455 Paces Ferry Road, N.W., Atlanta, Georgia, within the Northern District of Georgia. Sometime in 2001,

Home Depot centralized its purchasing functions to an Atlanta Store Support Center, also headquartered at 2455 Paces Ferry Road, N.W., Atlanta, Georgia.

3. Defendant EVANS was employed by Home Depot from approximately November, 1996 until February, 2001, with his last position being a Product Merchant for Home Depot Department 23 (Flooring). In February, 2002, Defendant EVANS caused Vendor Efficiencies, LLC (hereinafter referred to as "Vendor Efficiencies") to be organized. Vendor Efficiencies is a corporation organized and existing under the laws of the State of Georgia. In January, 2003, Defendant EVANS caused JDJ Distributing, LLC (hereinafter referred to as "JDJ") to be organized. JDJ is also a corporation organized and existing under the laws of the State of Georgia.

4. After leaving Home Depot's employ, Defendant EVANS provided sales and related representational assistance to certain suppliers who sought to and did do business with Home Depot during the period covered by this Indictment. In so doing, Defendant EVANS used Vendor Efficiencies and JDJ, the companies which he had caused to be organized. Defendant EVANS obtained compensation from said suppliers for providing them with such assistance.

5. Home Depot also selected Defendant EVANS, Vendor Efficiencies, and JDJ to provide assistance to Home Depot and to certain suppliers in assembling and causing to be delivered certain merchandise to Home Depot stores in what became known as a "consolidation" project. In the consolidation project, various suppliers' merchandise which had been approved by Home Depot for use, display and sale in Home Depot stores was consolidated together by Defendant EVANS, Vendor Efficiencies, and JDJ and caused to be delivered to a large number of individual Home Depot retail stores. Home Depot selected the suppliers to participate in the consolidation and the products permitted to be displayed and sold within its stores and how those suppliers would be compensated by Home Depot for those products. As part of Home Depot's negotiation and agreement with said suppliers as to compensation for their products sold in its stores, Home Depot and those suppliers agreed that the suppliers would be responsible for compensating Defendant EVANS, Vendor Efficiencies, and JDJ for consolidation project services.

6. Matheny was employed by Home Depot in various positions from May, 1987 until July, 2007. He held the position of a Product Merchant for Home Depot Department 23 (Flooring), during the approximate period May, 2002 through April, 2005. As a Product Merchant and throughout his career at

Home Depot, Matheny owed a fiduciary duty to Home Depot. Matheny could be terminated if he failed to discharge such duty. As a Product Merchant, he was based in Home Depot's Atlanta Store Support Center. In his position as a Product Merchant, among other things, Matheny was responsible for overseeing the location of suppliers which could supply high quality items at the lowest possible cost to Home Depot for resale in Home Depot retail stores. Matheny was also responsible for locating high quality firms which could provide services to facilitate the display of products within those stores at the lowest possible cost to Home Depot and Home Depot's suppliers of those products.

7. At all times relevant to this Indictment, including during the time that Matheny was a Product Merchant for Home Depot, Home Depot maintained corporate policies prohibiting its employees from engaging in activities in which their personal interests would interfere with company business and prohibited its employees from receiving improper personal benefits as a result of their positions with the company such as bribes and kickbacks from suppliers. These policies were enacted by Home Depot to ensure: (1) that Home Depot employees fulfilled their fiduciary duties, including a duty to make full and fair disclosure to Home Depot of any personal interest, profit, or kickback the employee expected to derive from any transaction in which he participated in the course

of the employment; and (2) that its employees who had responsibilities like Matheny's obtained lower cost, high quality items for resale in Home Depot retail stores and located high quality firms who could supply services to facilitate the display of products within those stores at the lowest possible costs. If those employees violated those duties, they could be terminated.

8. In July, 2002, at the suggestion of Defendant EVANS, Matheny caused Xenza Consulting LLC (hereinafter referred to as "Xenza") to be organized. Xenza was a corporation organized and existing under the laws of the State of Georgia.

THE MANNER AND MEANS

9. Home Depot was defrauded of its money and property by a kickback scheme arranged by Defendant EVANS, Matheny, and other co-conspirators in which Defendant EVANS paid Matheny approximately $1,469,357.73 in kickback payments in exchange for Matheny taking actions in the course of his employment with Home Depot to benefit Defendant EVANS, Vendor Efficiencies, JDJ, and Matheny to the detriment of Home Depot. Home Depot had a right to rely on Matheny to conduct his work on Home Depot's behalf so as to benefit Home Depot, including his work in securing high quality items from suppliers at the lowest possible prices and on the most advantageous other terms of sale,

for resale in Home Depot retail stores, as well as dealing with firms who could supply services to facilitate the display of products within those stores. Home Depot employees were prohibited from taking such kickback payments. Matheny provided favorable treatment to Defendant EVANS, Vendor Efficiencies, and JDJ, resulting in a loss of money and property to Home Depot.

10. Defendant EVANS and Matheny arranged for Home Depot to purchase items for resale in Home Depot retail stores, on less than the most advantageous terms of sale, from certain Home Depot suppliers. Defendant EVANS and Matheny also arranged for Home Depot and certain of its suppliers to have Defendant EVANS, Vendor Efficiencies, and JDJ supply consolidation services to Home Depot and certain Home Depot suppliers, on less than the most advantageous terms, to facilitate the display of products within Home Depot retail stores. In return, Defendant EVANS, Vendor Efficiencies, and JDJ paid Matheny approximately $1,469,357.73 in kickback payments for his role in approving and supporting Home Depot's purchases from certain Home Depot suppliers and for his role in approving and supporting Defendant EVANS, Vendor Efficiencies, and JDJ supplying consolidation services to Home Depot and certain of its suppliers to facilitate the display of products within Home Depot retail stores, resulting in a loss of money and property to Home Depot.

11. For the purposes of forming and effectuating the aforesaid conspiracy, Defendant EVANS, Matheny, and other co-conspirators did those things they conspired to do, including, among other things:

(a) While employed by Home Depot as a Product Merchant, Matheny approved and supported Home Depot's purchase of items from certain suppliers represented by Defendant EVANS, Vendor Efficiencies, and JDJ for resale in Home Depot's various retail stores at less than the most favorable prices and on less than the most favorable other terms and conditions, resulting in a loss of money and property to Home Depot;

(b) While employed by Home Depot as a Product Merchant, Matheny recommended the selection of Defendant EVANS and companies he controlled, Vendor Efficiencies and JDJ, to supply consolidation services, at less than the most favorable prices and on less than the most favorable other terms and conditions, to Home Depot and certain of its suppliers, to facilitate the display of products within Home Depot retail stores, resulting in a loss of money and property to Home

Depot;

(c) While employed by Home Depot as a Product Merchant, Matheny did not seriously seek to obtain, recommend and otherwise accept alternatives, at more favorable prices and on more favorable other terms and conditions, to Defendant EVANS, Vendor Efficiencies, and JDJ providing consolidation services to Home Depot and certain Home Depot suppliers, resulting in a loss of money and property to Home Depot;

(d) While Matheny was employed by Home Depot as a Product Merchant, Defendant EVANS, Vendor Efficiencies, and JDJ paid Matheny approximately $1,469,357.73 in kickback payments for his activities described in paragraphs 11(a)-11(c) above, which Matheny did not provide to Home Depot in the course of his employment, resulting in a loss of money and property to Home Depot;

(e) While employed by Home Depot as a Product Merchant, Matheny caused millions of dollars to be paid by Home Depot to certain suppliers represented by Defendant EVANS, Vendor Efficiencies, and JDJ, which would not have been paid

by Home Depot had it known of the aforesaid acceptance by Matheny of approximately $1,469,357.73 in kickback payments from Defendant EVANS, Vendor Efficiencies, and JDJ, resulting in a loss of money and property to Home Depot;

(f) While employed by Home Depot as a Product Merchant, Matheny caused Home Depot to enter contractual arrangements with certain suppliers represented by Defendant EVANS, Vendor Efficiencies, and JDJ which it would not have done had it known of the aforesaid acceptance by Matheny of approximately $1,469,357.73 in kickback payments from Defendant EVANS, Vendor Efficiencies, and JDJ, resulting in a loss of money and property to Home Depot; and

(g) While employed by Home Depot as a Product Merchant, Matheny recommended the selection of Defendant EVANS, Vendor Efficiencies, and JDJ to provide consolidation services to Home Depot and certain of its suppliers, which it would not have done had it known of the aforesaid acceptance by Matheny of approximately $1,469,357.73 in kickback

payments from Defendant EVANS, Vendor Efficiencies, and JDJ, resulting in a loss of money and property to Home Depot.

12. In addition to the use of the United States Postal Service and commercial interstate carriers, interstate telephone calls, interstate facsimiles, and interstate wire transfers, used, made and caused to be transmitted in furtherance of the conspiracy by Defendant EVANS, Matheny, and other co-conspirators:

(a) Defendant EVANS, Vendor Efficiencies, and JDJ provided to Matheny substantial monetary payments in the approximate amount of $1,469,357.73 in kickback payments through a company which Matheny controlled, Xenza;

(b) Defendant EVANS, Vendor Efficiencies, JDJ, and Matheny concealed from Home Depot the fact that Defendant EVANS, Vendor Efficiencies, and JDJ provided substantial kickback payments in the approximate amount of $1,469,357.73 to Matheny through a company which Matheny controlled, Xenza, which monetary payments Matheny was prohibited by Home Depot from taking and was obligated to have made known to Home Depot; and

(c) Defendant EVANS, Vendor Efficiencies, JDJ, and Matheny caused millions of dollars to be paid by means of the United States Postal Service, commercial interstate carrier, and certain writings, signs, sounds, and signals transmitted in interstate wire communications: (i) by Home Depot to certain suppliers represented by and which compensated Defendant EVANS, Vendor Efficiencies, and JDJ; and (ii) by certain vendors to Defendant EVANS, Vendor Efficiencies, and JDJ for consolidation services, which resulted in Defendant EVANS, Vendor Efficiencies, and JDJ having the funds necessary to make the aforesaid kickback payments to Matheny through a company he controlled, Xenza.

All in violation of Title 18, United States Code, Section 1349.

COUNT TWO
(18 U.S.C. § 1956(h))
Conspiracy to violate 18 U.S.C. §§ 1956 and 1957

13. The factual allegations set forth in paragraphs 1-12 of this Indictment are hereby repeated, re-alleged and incorporated herein as if fully set forth in this Count.

14. Beginning on or about at least as early as June 2002 and continuing thereafter until on or about September 19, 2005, the exact dates being unknown to the Grand Jury, in the Northern District of Georgia and elsewhere, Defendant EVANS, Vendor Efficiencies, JDJ, Matheny, Xenza, and other co-conspirators did knowingly conspire, combine, confederate, and agree with each other in violation of Title 18, United States Code, Section 1956(h) to violate Title 18, United States Code, Sections 1956 and 1957 by:

(a) knowingly conducting and attempting to conduct financial transactions affecting interstate commerce, which involved the proceeds of a specified unlawful activity, that is, mail and commercial interstate carrier fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343, with the intent to promote the carrying on of a specified unlawful activity, knowing while conducting and attempting to conduct such financial transactions that the property involved in the transactions represented the proceeds of some form of unlawful activity, in violation of 18 U.S.C. § 1956(a)(1)(A)(i); and

(b) knowingly conducting and attempting to conduct financial

transactions affecting interstate commerce, which involved the proceeds of a specified unlawful activity, that is, mail and commercial interstate carrier fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343, with the intent to conceal and disguise the nature, location, source, ownership, and control of the proceeds, knowing while conducting and attempting to conduct such financial transactions that the property involved in the transactions represented the proceeds of some form of unlawful activity, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and

(c) knowingly engaging in and attempting to engage in monetary transactions in criminally derived property of a value greater than $10,000, consisting of the deposit, withdrawal, transfer and exchange, in and affecting interstate commerce, of funds and monetary instruments by, through and to a financial institution, specifically Wachovia Corporation and its subsidiaries and affiliates (hereinafter "Wachovia Bank") and SunTrust Banks, Inc. and its subsidiaries and affiliates

(hereinafter "SunTrust Bank"), such property having been derived from specified unlawful activity, that is, mail and commercial interstate carrier fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343, in violation of 18 U.S.C. § 1957.

THE MANNER AND MEANS

15. Said monetary and financial transactions included the deposits, withdrawals, wires, transfers, and exchanges in the amounts listed in paragraphs 16-18 below, as more particularly described therein, among others, were done in furtherance of the conspiracy and to effect its object, and were committed in the Northern District of Georgia and elsewhere on or about the dates set forth below:

16. On or about the following dates, monetary and financial transactions were made by and on behalf of Defendant EVANS, Vendor Efficiencies, and JDJ, from the below-listed bank accounts of Vendor Efficiencies and JDJ, in which the proceeds of the aforesaid criminal activity had been deposited, by means of checks drawn on those accounts which were deposited by or on behalf of Matheny in the bank account *********5673 of Xenza at SunTrust Bank over which Matheny had control.

Transaction No.	Date of debit to accounts of Vendor Efficiencies and JDJ	Check made out to Xenza and drawn on Vendor Efficiencies' Wachovia Bank Account *********5307 and JDJ's Wachovia Bank account *********4841, both controlled by Defendant EVANS	Check No.	Amount deposited into Xenza SunTrust Bank Account *********5673 controlled by Matheny
1	09/23/2002	*********5307	1012	$15,000.00
2	10/10/2002	*********5307	1019	$63,000.00
3	10/29/2002	*********5307	1021	$27,000.00
4	11/05/2002	*********5307	1028	$35,000.00
5	11/22/2002	*********5307	1035	$25,000.00
6	01/10/2003	*********5307	1085	$12,500.00
7	01/07/2003	*********5307	1040	$30,000.00
8	02/20/2003	*********5307	1102	$12,885.15
9	03/10/2003	*********5307	1108	$15,816.00
10	04/28/2003	*********5307	1117	$60,000.00
11	07/11/2003	*********5307	1068	$56,480.60
12	11/17/2003	*********5307	1127	$11,227.35
13	12/10/2003	*********5307	1134	$20,000.00
14	01/05/2004	*********5307	1143	$31,500.00
15	02/11/2004	*********5307	1154	$22,943.79
16	04/01/2004	*********5307	1160	$51,018.00

17	08/03/2004	*********4841	2089	$30,000.00
18	08/31/2004	*********4841	2110	$50,000.00
19	09/10/2004	*********4841	2119	$50,000.00
20	10/06/2004	*********4841	2097	$38,000.00
21	10/19/2004	*********5307	1291	$55,500.00
22	10/27/2004	*********5307	1293	$25,000.00
23	10/27/2004	*********5307	1294	$25,000.00
24	11/23/2004	*********5307	1309	$59,000.00
25	12/10/2004	*********5307	1322	$37,000.00
26	01/05/2005	*********5307	1318	$285,000.00
27	03/10/2005	*********5307	1283	$90,000.00
28	03/10/2005	*********5307	1284	$90,000.00

17. On or about the following dates, monetary and financial transactions were made by and on behalf of Matheny from the bank account *********5673 of Xenza at SunTrust Bank over which Matheny had control, in which the proceeds of the aforesaid criminal activity had been deposited referred to in paragraph 16 above, by means of checks, wire transfer, and other transfers from that account to the following recipients:

Transaction No.	Date of debit to SunTrust Bank account *********5673 of Xenza controlled by Matheny	Recipient	Check No., Wire Transfer or Other Transfer	Amount of transaction
29	10/23/2002	L.K. c/o First Tennessee Bank	Wire Transfer	$47,100.00
30	06/07/2004	SunTrust Bank Account No. *********4224 Controlled by Matheny	Other Transfer	$17,500.00
31	09/16/2004	CarMax	1548	$42,051.34
32	10/07/2004	Marietta Jeep	1686	$27,595.00
33	11/24/2004	Anthony & Sylvan Pools	1578	$28,269.20
34	12/22/2004	Anthony & Sylvan Pools	1712	$38,320.15
35	03/01/2005	SunTrust Bank Account No. *********4224 Controlled by Matheny	Other Transfer	$60,000.00
36	05/02/2005	Environ & Associates	1962	$15,695.00
37	05/06/2005	Bay Marine	2120	$82,829.25
38	07/13/2005	Environ & Associates	1586	$11,800.00
39	09/19/2005	Environ & Associates	1884	$11,169.00

18. On or about the following dates, monetary and financial transactions were made by and on behalf of Matheny from the bank account*********4224 at SunTrust Bank over which he had control, in which the proceeds of the aforesaid criminal activity referred to in paragraph 16 above had been transferred as detailed in paragraph 17 above, by means of checks to the following recipients:

Transaction No.	Date of debit to SunTrust Bank account *********4224 controlled by Matheny	Recipient	Check No.	Amount
40	02/28/2005	Harley Davidson Credit	7741	$13,700.00
41	03/01/2005	SunTrust Bank Account No. *********00911	7736	$27,874.15

All in violation of Title 18, United States Code, Section 1956(h).

COUNTS 3 - 19
(18 U.S.C. § 1957)
Money Laundering

19. The factual allegations set forth in paragraphs 1-18 of this Indictment are hereby repeated, re-alleged and incorporated herein as if fully set

forth in these Counts.

20. On or about the dates set forth below, in the Northern District of Georgia and elsewhere, Defendant EVANS, aided and abetted by others known and unknown to the grand jury, did knowingly engage and attempt to engage in the following monetary transactions by, through, or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than $10,000, that is, the deposit, withdrawal, transfer, and exchange of U.S. currency, funds, and monetary instruments in the amounts set forth below, such property having been derived from a specified unlawful activity, that is, mail and commercial interstate carrier fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343.

Count	Date of debit to Vendor Efficiencies Wachovia Bank account *********5307 controlled by Defendant EVANS	Check made out to Xenza and deposited in SunTrust Bank account *********5673 controlled by Matheny	Check No.	Amount
3	10/19/2004	*********5673	1291	$55,500.00
4	10/27/2004	*********5673	1293	$25,000.00

5	10/27/2004	*********5673	1294	$25,000.00
6	11/23/2004	*********5673	1309	$59,000.00
7	12/10/2004	*********5673	1322	$37,000.00
8	01/05/2005	*********5673	1318	$285,000.00
9	03/10/2005	*********5673	1283	$90,000.00
10	03/10/2005	*********5673	1284	$90,000.00

Count	Date of debit to Vendor Efficiencies Wachovia Bank account *********5307 controlled by Defendant EVANS	Recipient	Check No.	Amount
11	11/19/2004	Bleakley MotorHomes	5043	$172,000.00
12	12/07/2004	John Bleakley Ford	1312	$26,500.00
13	12/22/2004	JL Evans Holdings, Inc. Wachovia Bank account *********2291	5152	$90,000.00
14	4/28/2005	Marietta Pontiac	1253	$13,672.00

Count No.	Date of debit to Vendor Efficiencies Wachovia Bank accounts *********4739 and ********5307 controlled by Defendant EVANS	Type of transfer and credit	To Wachovia Bank Account *********3320 controlled by Defendant EVANS	Amount
15	10/21/2004 ********4739	Intra bank transfer	*********3320	$100,000.00
16	11/17/2004 ********4739	Intra bank transfer	*********3320	$175,000.00
17	01/07/2005 ********5307	Intra bank transfer	*********3320	$125,000.00

Count No.	Date of debit to Wachovia Bank account *********3320 controlled by Defendant EVANS	To	Check No.	Amount
18	11/19/2004	Countrywide Mortgage	5181	$150,000.00
19	12/24/2004	Countrywide Mortgage Company	6026	$149,000.00

All in violation of Title 18, United States Code, Sections 1957 and 2.

Dated this 13th day of October, 2009.

A TRUE BILL:

FOREPERSON

SALLY QUILLIAN YATES
ACTING UNITED STATES
ATTORNEY

RUSSELL PHILLIPS
ASSISTANT U.S. ATTORNEY
Georgia Bar No. 576335

75 Spring Street, S.W.
Suite 600
Atlanta, Georgia 30303
(404) 581-6000
(404) 581-6181 (fax)

CHRISTINE A. VARNEY
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION
U.S. DEPARTMENT OF JUSTICE

NEZIDA S. DAVIS
CHIEF, ATLANTA FIELD OFFICE

JOHN R. FITZPATRICK
TRIAL ATTORNEY
Georgia Bar No. 262360

BARBARA W. CASH
TRIAL ATTORNEY
Georgia Bar No. 743460

75 Spring Street, S.W.
Suite 1176
Atlanta, Georgia 30303
(404) 331-7119
(404) 331-7110 (fax)