Defendant: FORESTT R CAIN

JN #:

1408208-1

CLERK'S ORIGINAL

Address: 6311 WIGWAM, SAN ANTONIO, TX

Complainant:

CoDefendants:

Offense Code/Charge: 260218 - MISAPP FIDUC/FIN INSTIT OVER

\$200,000

GJ: 493788

PH Court:

Court #: スツィ

SID #:50346 Cause #:

2013-OR-1557A

Witness: State's Attorney

TRUE BILL OF INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS, the Grand Jury of Bexar County, State of Texas, duly organized, empanelled and sworn as such at the January term, A.D., 2013, of the 2964 Judicial District Court of said County, in said Court, at said term, do present in and to said Court that in the County and State aforesaid, and anterior to the presentment of this indictment:

Count I Paragraph A

on or about the 2nd Day of August, 2007, FORESTT RONALD CAIN, hereinafter referred to as defendant, with intent to defraud or harm Rackspace Managed Hosting or Rackspace, by deception, to-wit: by creating or confirming by words or conduct a false impression of fact that was likely to affect the judgment of another in the transaction, and that the Defendant did not believe to be true, by submitting a fraudulent Cost Certification, did cause Graham Weston to sign or execute a document, namely, a contract, affecting the PECUNIARY INTEREST of Rackspace Managed Hosting or Rackspace, having a value of Two Hundred Thousand Dollars (\$200,000.00) or more:

Paragraph B

on or about the 2nd Day of August, 2007, FORESTT RONALD CAIN, hereinafter referred to as defendant, with intent to defraud or harm Rackspace Managed Hosting or Rackspace, by deception, to-wit: by failing to correct a false impression of fact that was likely to affect the judgment of another in the transaction, that the Defendant previously created or confirmed by words or conduct, and that the Defendant did not believe to be true, by not correcting numbers in the Cost Certification after submitting an inaccurate Cost Certification, did cause Graham Weston to sign or execute a document, namely, a contract, affecting the PECUNIARY INTEREST of Rackspace Managed Hosting or Rackspace, having a value of Two Hundred Thousand Dollars (\$200,000.00) or more;

Count II

on or about the 2nd Day of August, 2007, FORESTT RONALD CAIN, hereinafter referred to as defendant, with intent to deprive the owner, Rackspace Managed Hosting or Rackspace, of property, namely: lawful currency of the United States of America, did then and there unlawfully, without the effective consent of the owner, namely, by deception, to-wit: by submitting an inaccurate cost certification, did then appropriate said property by acquiring or otherwise exercising control over said property, said property being other than real property which had a value of Two Hundred Thousand Dollars (\$200,000.00) or more;

INDICTMENT - CLERK'S ORIGINAL

FILED O'CLOCK FEB 1 9 2013 MARGARET G. MONTEMAYOR DISTRICT CLERK BEXAR COUNTY, TEXAS DEPUTY

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Count III Paragraph A

on or about the 7th day of December 2007 through on or about the 30th day of December 2009, FORESTT RONALD CAIN, hereinafter referred to as defendant, did intentionally or knowingly MISAPPLY property namely: lawful United States currency, having an aggregate value of One Hundred Thousand Dollars (\$100,000.00) or more but less than Two Hundred Thousand Dollars (\$200,000.00), that the defendant held as a fiduciary, contrary to an agreement under which the said defendant holds the property, and in a manner that involved substantial risk of loss of the property to the City of Windcrest and/or the Windcrest Economic Development Corporation, the owner(s) of said property or the person(s) for whose benefit the property was held, and all of the amounts alleged were misapplied pursuant to one scheme or continuing course of conduct;

Paragraph B

on or about the 7th day of December 2007 through on or about the 30th day of December 2009, FORESTT RONALD CAIN, hereinafter referred to as defendant, did recklessly MISAPPLY property namely: lawful United States currency, having an aggregate value of One Hundred Thousand Dollars (\$100,000.00) or more but less than Two Hundred Thousand Dollars (\$200,000.00), that the defendant held as a fiduciary, contrary to an agreement under which the said defendant holds the property, and in a manner that involved substantial risk of loss of the property to the City of Windcrest and/or the Windcrest Economic Development Corporation, the owner(s) of said property or the person(s) for whose benefit the property was held, by depositing checks made payable to the City of Windcrest in a bank account held by Urban Revitalization Real Estate Group, and all of the amounts alleged were misapplied pursuant to one scheme or continuing course of conduct;

Paragraph C

on or about the 7th day of December 2007 through on or about the 30th day of December 2009, FORESTT RONALD CAIN, hereinafter referred to as defendant, did intentionally or knowingly MISAPPLY property namely: lawful United States currency, having an aggregate value of One Hundred Thousand Dollars (\$100,000.00) or more but less than Two Hundred Thousand Dollars (\$200,000.00), that the defendant held as a person acting in a fiduciary capacity but not as a commercial bailee, contrary to an agreement under which the said defendant holds the property, and in a manner that involved substantial risk of loss of the property to the City of Windcrest and/or the Windcrest Economic Development Corporation, the owner(s) of said property or the person(s) for whose benefit the property was held, and all of the amounts alleged were misapplied pursuant to one scheme and continuing course of conduct;

Paragraph D

on or about the 7th day of December 2007 through on or about the 30th day of December 2009, FORESTT RONALD CAIN, hereinafter referred to as defendant, did recklessly MISAPPLY property namely: lawful United States currency, having an aggregate value of One Hundred Thousand Dollars (\$100,000.00) or more but less than Two Hundred Thousand Dollars (\$200,000.00), that the defendant held as a person acting in a fiduciary capacity but not as a commercial bailee, contrary to an agreement under which the said defendant holds the property, and in a manner that involved substantial risk of loss of the property to the City of Windcrest and/or the Windcrest Economic Development Corporation, the owner(s) of said property or the person(s) for whose benefit the property was held, by depositing checks made payable to the City of Windcrest in a bank account held by Urban Revitalization Real Estate Group, and all of the amounts alleged were misapplied pursuant to one scheme or continuing course of conduct;

Count IV

on or about the 11th day of January, 2008, through on or about the 24th day of December, 2009, FORESTT RONALD CAIN, hereinafter referred to as defendant, with intent to deprive the owner, the City of Windcrest and/or the Windcrest Economic Development Corporation, of property, namely: lawful currency of the United States of America, did unlawfully, without the effective consent of the owner, appropriate the property by acquiring and otherwise exercising control over the property, which had an aggregate value of Twenty Thousand Dollars (\$20,000.00) or more but less than One Hundred Thousand Dollars (\$100,000), and all of the amounts

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alleged were pursuant to one scheme or continuing course of conduct; and the defendant was a public servant, namely: City Manager for the City of Windcrest, and the property came into the defendant's custody, possession, or control by virtue of the defendant's status as a public servant;

Count V Paragraph A

on or about the 11th day of April, 2008, FORESTT RONALD CAIN, hereinafter referred to as defendant, did intentionally or knowingly misapply property, namely: lawful currency of the United States of America, having a value of Two Hundred Thousand Dollars (\$200,000.00) or more, that the defendant held as a fiduciary, contrary to AN AGREEMENT UNDER WHICH THE DEFENDANT HELD THE PROPERTY, and in a manner that involved a substantial risk of loss of the property to City of Windcrest and/or the Windcrest Economic Development Corporation, the owner of said property or the person for whose benefit the property was held;

Paragraph B

on or about the 11th day of April, 2008, FORESTT RONALD CAIN, hereinafter referred to as defendant, did recklessly misapply property, namely: lawful currency of the United States of America, having a value of Two Hundred Thousand Dollars (\$200,000.00) or more, that the defendant held as a fiduciary, contrary to AN AGREEMENT UNDER WHICH THE DEFENDANT HELD THE PROPERTY, and in a manner that involved a substantial risk of loss of the property to City of Windcrest and/or the Windcrest Economic Development Corporation, the owner of said property or the person for whose benefit the property was held, by authorizing payment to DDPZ which had a name substantially similar to DPZ;

Paragraph C

on or about the 11th day of April, 2008, FORESTT RONALD CAIN, hereinafter referred to as defendant, did intentionally or knowingly misapply property, namely: lawful currency of the United States of America, having a value of Two Hundred Thousand Dollars (\$200,000.00) or more, that the defendant held as a a person acting in a fiduciary capacity but not as a commercial bailee, contrary to AN AGREEMENT UNDER WHICH THE DEFENDANT HELD THE PROPERTY, and in a manner that involved a substantial risk of loss of the property to City of Windcrest and/or the Windcrest Economic Development Corporation, the owner of said property or the person for whose benefit the property was held;

Paragraph D

on or about the 11th day of April, 2008, FORESTT RONALD CAIN, hereinafter referred to as defendant, did recklessly misapply property, namely: lawful currency of the United States of America, having a value of Two Hundred Thousand Dollars (\$200,000.00) or more, that the defendant held as a person acting in a fiduciary capacity but not as a commercial bailee, contrary to AN AGREEMENT UNDER WHICH THE DEFENDANT HELD THE PROPERTY, and in a manner that involved a substantial risk of loss of the property to City of Windcrest and/or the Windcrest Economic Development Corporation, the owner of said property or the person for whose benefit the property was held, by authorizing payment to DDPZ which had a name substantially similar to DPZ;

Count VI Paragraph A

on or about the 11th Day of April, 2008, FORESTT RONALD CAIN, hereinafter referred to as defendant, with intent to deprive the owner, City of Windcrest, of property, namely: lawful currency of the United States of America, did then and there unlawfully, without the effective consent of the owner, namely, by deception, to-wit: by authorizing payment to DDPZ, did then appropriate said property by acquiring or otherwise exercising control over said property, said property being other than real property which had a value of Two Hundred Thousand Dollars (\$200,000.00) or more;

Paragraph B

on or about the 11th Day of April, 2008, FORESTT RONALD CAIN, hereinafter referred to as defendant, with

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intent to deprive the owner, City of Windcrest, of property, namely: lawful currency of the United States of America, did then and there unlawfully, without the effective consent of the owner, did then appropriate said property by acquiring or otherwise exercising control over said property, said property being other than real property which had a value of Two Hundred Thousand Dollars (\$200,000.00) or more;

Count VII Paragraph A

on or about the 8th day of September, 2009, through on or about the 9th day of September, 2009, FORESTT RONALD CAIN, hereinafter referred to as defendant, did intentionally or knowingly misapply property namely: lawful currency of the United States of America, to-wit:

- 1. Check number 2072, dated September 8, 2009, payable to Urban Revitalization Real Estate Group, in the amount of twenty-five thousand dollars (\$25,000.00), and/or
- 2. Check number 2073, dated September 9, 2009, payable to Urban Revitalization Real Estate Group, in the amount of two hundred seventy-five thousand dollars (\$275,000.00),

having an aggregate value of Two Hundred Thousand Dollars (\$200,000.00) or more, that the defendant held as a fiduciary, contrary to AN AGREEMENT UNDER WHICH THE DEFENDANT HELD THE PROPERTY, and in a manner that involved substantial risk of loss of the property to the City of Windcrest, the owner of said property or the person for whose benefit the property was held, and all of the amounts alleged were misapplied pursuant to one scheme or continuing course of conduct;

Paragraph B

on or about the 8th day of September, 2009, through on or about the 9th day of September, 2009, FORESTT RONALD CAIN, hereinafter referred to as defendant, did recklessly misapply property namely: lawful currency of the United States of America, having an aggregate value of Two Hundred Thousand Dollars (\$200,000.00) or more, that the defendant held as a fiduciary, contrary to AN AGREEMENT UNDER WHICH THE DEFENDANT HELD THE PROPERTY, and in a manner that involved substantial risk of loss of the property to the City of Windcrest, the owner of said property or the person for whose benefit the property was held, by authorizing payment of the following checks:

- 1. Check number 2072, dated September 8, 2009, payable to Urban Revitalization Real Estate Group, in the amount of twenty-five thousand dollars (\$25,000.00), and/or
- 2. Check number 2073, dated September 9, 2009, payable to Urban Revitalization Real Estate Group, in the amount of two hundred seventy-five thousand dollars (\$275,000.00),

while also entering an agreement with RHYA which was an entity associated with Gary Cain and all of the amounts alleged were misapplied pursuant to one scheme or continuing course of conduct;

Paragraph C

on or about the 8th day of September, 2009, through on or about the 9th day of September, 2009, FORESTT RONALD CAIN, hereinafter referred to as defendant, did intentionally or knowingly misapply property namely: lawful currency of the United States of America, to-wit:

- 1. Check number 2072, dated September 8, 2009, payable to Urban Revitalization Real Estate Group, in the amount of twenty-five thousand dollars (\$25,000.00), and/or
- 2. Check number 2073, dated September 9, 2009, payable to Urban Revitalization Real Estate Group, in the amount of two hundred seventy-five thousand dollars (\$275,000.00),

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having an aggregate value of Two Hundred Thousand Dollars (\$200,000.00) or more, that the defendant held as a person acting in a fiduciary capacity but not as a commercial bailee, contrary to AN AGREEMENT UNDER WHICH THE DEFENDANT HELD THE PROPERTY, and in a manner that involved substantial risk of loss of the property to the City of Windcrest, the owner of said property or the person for whose benefit the property was held, and all of the amounts alleged were misapplied pursuant to one scheme or continuing course of conduct;

Paragraph D

on or about the 8th day of September, 2009, through on or about the 9th day of September, 2009, FORESTT RONALD CAIN, hereinafter referred to as defendant, did recklessly misapply property namely: lawful currency of the United States of America, having an aggregate value of Two Hundred Thousand Dollars (\$200,000.00) or more, that the defendant held as a person acting in a fiduciary capacity, but not as a commercial bailee, contrary to AN AGREEMENT UNDER WHICH THE DEFENDANT HELD THE PROPERTY, and in a manner that involved substantial risk of loss of the property to the City of Windcrest, the owner of said property or the person for whose benefit the property was held, by authorizing payment of the following checks:

- 1. Check number 2072, dated September 8, 2009, payable to Urban Revitalization Real Estate Group, in the amount of twenty-five thousand dollars (\$25,000.00), and/or
- 2. Check number 2073, dated September 9, 2009, payable to Urban Revitalization Real Estate Group, in the amount of two hundred seventy-five thousand dollars (\$275,000.00),

while also entering an agreement with RHYA which was an entity associated with Gary Cain and all of the amounts alleged were misapplied pursuant to one scheme or continuing course of conduct;

And it is further presented in and to said court that during a period from on or about November 18, 2010, until on or about February 19, 2013, an indictment charging the above offense was pending in a court of competent jurisdiction, to-wit: 2010-CR-1157A in the 379th District Court of Bexar County, Texas;

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Foreman of the Grand Jury