

In fact, the records the Commission seeks are not privileged because they are not communications between an attorney and a client created or maintained for the purpose of securing or rendering legal advice. The documents in question are wire transfer records showing Bush Ross' receipt of funds from clients and disbursements to clients and non-clients alike. Under well settled case law in the Eleventh Circuit and elsewhere, records documenting receipt and transfer of funds by a law firm are not privileged. The Commission therefore asks the Court to compel Bush Ross to comply with the subpoena and produce responsive documents.

II. Factual Background

The Court is well aware of the facts of this lawsuit from the Commission's motions for a temporary asset freeze and a preliminary injunction, so it is not necessary to repeat the facts in detail here. In summary, the Commission alleges several Defendants orchestrated fraudulent promotional campaigns that artificially inflated the price of two thinly-traded startup companies, Concorde America, Inc. ("Concorde") and Absolute Health and Fitness, Inc. ("Absolute Health"), both of which had no assets, no revenues, and no business. The result of the campaigns, which featured false and misleading news releases, analyst reports, videos, and spam telephone and email campaigns, was to drive the price of both companies' stock up so that some of the Defendants could sell it, transfer the proceeds offshore, and make huge profits.

The Commission sought an emergency, *ex parte*, temporary asset freeze when it filed the complaint in February 2005 to stop the flow of investors' funds offshore. The Court granted the motion and entered an order freezing the assets of the relief defendants and Defendants Donald Oehmke and Bryan Kos, which remains in effect pending the Court's ruling on the Commission's motion for a preliminary injunction.

The Commission's motion for an asset freeze was supported by the Declaration of Timothy Galdencio, a Commission accountant. The declaration is attached to this motion for the Court's convenience as Exhibit 1. In the declaration, Galdencio reviewed certain brokerage account, bank account, and wire transfer records and documented trading in Concorde and Absolute Health stock and disbursement of the proceeds during the promotional campaign. *See* Ex. 1. Several of the transfers are relevant to this motion. As set forth in Paragraphs 12(a) and (b) to his declaration, Galdencio documented the transfer of more than \$5.3 million in proceeds from brokerage accounts where two of the Relief Defendants traded in Concorde and Absolute Health stock to a specific SunTrust Bank account during the fraudulent promotion. Ex. 1 at ¶¶12(a) and (b). That account turned out to be Bush Ross' IOTA trust account (which the Florida Bar requires all law firms to keep).

Accordingly, to determine what happened to the \$5.3 million in trading proceeds that Bush Ross received, the Commission issued a subpoena pursuant to Federal Rule of Civil Procedure 45 to Bush Ross on August 2, 2005 for records related to the receipt and transfer of funds in and out of the account.¹ The subpoena is attached as Exhibit 2 to this motion.² Bush Ross responded to the subpoena, both orally and in writing. As discussed in the firm's August 17, 2005 letter to the Commission, Bush Ross acknowledges having documents responsive to subpoena, which consist of wire transfer confirmation sheets, written instructions to disburse

¹ Other records the Commission has obtained in discovery suggest that additional transfers in and out of the Bush Ross account may have come from trading proceeds. For example, records produced by the First Curacao International Bank – where the Relief Defendants transferred the majority of their trading proceeds – show hundreds of thousands of dollars being sent from that bank back to the Bush Ross trust account. Thus, tracking the \$5.3 million is not the only reason the Commission issued the subpoena.

² The Commission simultaneously issued a subpoena to SunTrust Bank for the account records. SunTrust is in the process of producing records, but the law firm has more complete and detailed records than the bank. Therefore, the Commission still needs the Bush Ross records to determine how the Defendants and the Relief Defendants disposed of the proceeds of the fraud alleged in this case.

funds from the trust account, and written inquiries as to account balances. Jeremy P. Ross Letter of August 17, 2005, attached as Exhibit 3, at 1.

However, as further set forth in the August 17 letter and as discussed in several follow-up telephone conversations between counsel for the Commission and Mr. Ross (the most recent of which occurred on November 3, 2005), Bush Ross will not produce the vast majority of the documents because former clients of the firm, on whose behalf the transactions in question were undertaken, have asserted the records are subject to the attorney-client privilege.³ However, as explained in the next section, the types of records the Commission seeks are not privileged, and the Court should order Bush Ross to produce them.

III. Memorandum of Law

It is well settled that the attorney-client privilege protects only communications between an attorney and his client made for the purpose of securing legal advice. *In re Grand Jury Subpoena (Lipnack)*, 831 F.2d 225, 227-28 (11th Cir. 1987); *United States v. McQuillan*, 1994 WL 692851 at *2 (M.D. Fla. Dec. 12, 1994). It is equally well established that attorney-client communications related to areas other than legal counseling, such as business advice or financial transactions on behalf of a client, are not privileged. *Lipnack*, 831 F.2d at 227-28; *In re Grand Jury Subpoena Duces Tecum*, 732 F.2d 1032, 1037 (2nd Cir. 1984); *McQuillan*, 1994 WL 692851 at *2.

Here, Bush Ross asserts that trust account records consisting of confirmations of wire transfers in and out of its trust account, written instructions to disburse funds from its trust

³ As set forth in the August 17 letter, Bush Ross has records relating to the following entities: Concorde; DaSilva; Chiang Ze Capital; and Ryzcek Investments (all of whom are parties to the case); and non-parties Jeremy Jaynes; Ventana Consultants; BK Ventures; and Corporate Financial Consultants. The latter three entities were set up by or have direct connections to Defendants Oehmke and Kos. Concorde has waived its attorney-client privilege (to the extent one exists) and Bush Ross is producing responsive documents related to Concorde. The remaining people and entities have not waived the privilege, and so Bush Ross will not produce records pertaining to those entities absent a court order.

account, and written inquiries as to account balances, are privileged. But it is plain from the face of Bush Ross' description of these documents that they are not communications between attorney and client for the purpose of securing legal advice, and thus are not privileged. Rather, they are run-of-the-mill financial records and related documents reflecting business transactions. Such records are not privileged. *Lipnack*, 831 F.2d at 227-28 (“an attorney who acts as his client’s agent for receipt or disbursement of money or property to or from third parties is not acting in a legal capacity, and records of such transactions are not privileged”).

Numerous courts, both in this circuit and elsewhere, have held in virtually identical situations that an attorney’s trust account records, and in particular those documenting receipt and disbursement of funds on behalf of a client, are not privileged. For example, in *In re Grand Jury Investigation (Heller)*, 921 F.2d 1184 (11th Cir. 1991), a grand jury subpoenaed trust account records of attorney Heller during an investigation of whether his clients were laundering money through the firm. Heller, objected, but the District Court judge upheld the subpoena, concluding that because the Florida Bar required the attorney to keep the trust account records, they were not privileged. *Id.* at 1185. The Eleventh Circuit affirmed. *Id.* See also *McQuillan*, 1994 WL 692851 at *2 (the fact that the Florida Bar requires attorneys to keep trust account records and produce them for inspection by the Bar indicates the lack of confidentiality in attorney trust accounts).

The situation is the same here. The Florida Bar requires Bush Ross to keep trust account records documenting receipt of and disbursement of client and other funds. See Rule 5-1.2(b) of the Rules Regulating the Florida Bar. The records the Commission seeks through its subpoena are records documenting receipt and disbursement of client and other funds. Because the Florida

Bar requires the firm to keep the records, they are not privileged under *Heller*, and the Court should compel the firm to produce them.

Similarly, other courts have denied attorneys' assertion of privilege over financial and trust account records. In *SEC v. First Sec. Bank of Utah*, 447 F.2d 166 (10th Cir. 1971), two lawyers objected to Commission subpoenas seeking their trust account records. Both the District Court and the Tenth Circuit overruled the objections and ordered the lawyers to produce records. In so doing, the Circuit Court repeated the well known proposition that the attorney-client privilege applies only to communications related to legal advice, then stated that "the deposit and disbursement of money in a commercial checking account are not confidential communications." *Id.* at 167. The court reasoned that "a client may not immunize his business transactions from discovery by the device of a lawyer's commercial checking account." *Id.* See also *United States v. Leventhal*, 961 F.2d 936 (11th Cir. 1992) (records documenting receipt of funds from client into trust account could not be withheld from IRS summons on the grounds they were privileged because receipt of fees are not normally within the attorney-client privilege); *In re Grand Jury Proceedings (Rabin)*, 896 F.2d 1267 (11th Cir. 1990) (per curiam) (records related to money received from client were not privileged and had to be produced to grand jury); *United States v. Davis*, 636 F.2d 1028, 1044 and n.19 (5th Cir. Unit A 1981) (documents relating to trust funds are not privileged because attorney merely acts as a scrivener); *Gannett v. First Nat'l Bank of N.J.*, 546 F.2d 1072 (3rd Cir. 1976) (attorney-client privilege does not cover bank records derived from an attorney's trust account; therefore IRS was entitled to see cashier's checks deposited in attorney's trust account because they were not privileged); *Pollock v. United States*, 202 F.2d 281 (5th Cir. 1953) (information showing client gave cash to attorney, who then purchased real

estate on client's behalf, was not privileged because the attorney was not rendering legal advice in his professional capacity).

The records Bush Ross refuses to produce are those reflecting receipt and disbursement of funds both to and from clients and third parties through its trust account. These records have nothing to do with the rendering of legal advice, and thus the Court should compel the firm to produce records responsive to the subpoena.

As a final matter, the manner in which Bush Ross has asserted the privilege is improper. The firm has asserted a wholesale privilege over all the documents in question. This does not satisfy their burden under the law. They cannot simply claim the entire group of documents are privileged. They must assert the privilege on a document-by-document basis. *Lipnack*, 831 F.2d at 227 (attorney seeking to quash a subpoena must assert the attorney-client privilege on a document-by-document basis); *McQuillan*, 1994 WL 692851 at *2 (blanket assertion of privilege over "a large amount of material" is usually unacceptable).

IV. Conclusion

Because the firm has not shown on a document-by-document basis that any of the material the Commission seeks is privileged, and indeed *cannot* under the authorities discussed above, the Court should issue an order compelling Bush Ross to produce documents responsive to the Commission's subpoena.

Respectfully submitted,

November 17, 2005

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Regional Trial Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. Mail this

17th day of November, 2005 on the following:

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s/Robert K. Levenson
Robert K. Levenson, Esq.

EXHIBIT 1

DECLARATION OF TIMOTHY J. GALDENCIO

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

1. My name is Timothy J. Galdencio. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

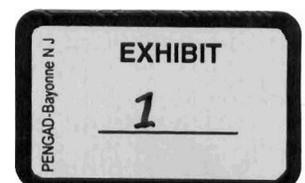
2. I am a certified public accountant in the State of Florida and am employed as a staff accountant with the Southeast Regional Office of the United States Securities and Exchange Commission ("Commission").

Documents Reviewed – Transfer Agent Records

3. I personally reviewed records of Interwest Transfer Company, Inc. ("Interwest"), a stock transfer company located in Salt Lake City, Utah. A true and correct copy is attached hereto as Composite Exhibit A.

4. I reviewed offering documents, stock certificates, and transfer records relating to the purchase of 10 million shares of Concorde America, Inc. ("Concorde") stock for \$1 million by Ventana Consultants of Pennsylvania, LLC ("Ventana of PA"), and the subsequent transfer of Concorde stock certificate number 2109 issued to Ventana of PA (see attached Composite Exhibit A), in the following manner:

- a. 1 million shares issued to Barranquilla Holdings, SA ("Barranquilla"), certificate numbers 2128 and 2129. A true and correct copy is attached hereto as Exhibit B.
- b. 2 million shares issued to Vanderlip Holdings, NV ("Vanderlip"), certificate numbers 2110, 2111, 2112, and 2113. A true and correct copy is attached hereto as Exhibit C;



- c. 1 million shares issued to Chiang Ze Capital, AVV (“Chiang Ze”), certificate numbers 2126 and 2127. A true and correct copy is attached hereto as Exhibit D;
 - d. 2 million shares issued to Da Silva, SA, (“Da Silva”), certificate numbers 2114, 2115, 2116, and 2117. A true and correct copy is attached hereto as Exhibit E;
 - e. 2 million shares issued to Stromberti Esse GHBH, certificate numbers 2122, 2123, 2124, 2125. See attached Composite Exhibit A;
 - f. 2 million shares issued to Jonti Warburg, Ltd., certificate numbers 2118, 2119, 2120, and 2121. See attached Composite Exhibit A.
5. Based on my review of the foregoing records, I established a basis price of \$0.10 per share of Concorde stock. See attached Composite Exhibit A.

Documents Reviewed – Brokerage Account Records

6. This declaration is further based upon my personal review of records of Newbridge Securities Corp. (“Newbridge”), Sunstate Equity Trading, Inc. (“Sunstate”) and Electronic Access Direct, Inc. (“Electronic Access”), including documents that were obtained through electronic requests for trading information to broker dealers trading in the securities of Concorde and Absolute Health and Fitness, Inc. (“Absolute Health”). These requests were forwarded through the Securities Industry Automation Corporation (“SIAC”) to brokerage firms who responded electronically to SIAC, providing date, time, price, and other data relating to each purchase and sale of Concorde and Absolute Health stock. I reviewed the data for the following brokerage accounts:

- a. Barranquilla, an Anguillan International Business Company (“IBC”), account number 0101-LC-395443(0)8, produced by Newbridge (a true and correct copy is attached hereto as Exhibit F) and account number 14302137, produced by Electronic Access (a true and correct copy is attached hereto as Exhibit G);
 - b. Vanderlip, an Anguillan IBC, account number 42021907, produced by Sunstate. A true and correct copy is attached hereto as Exhibit H;
 - c. Chiang Ze, a Trinidadian corporation, account number 07-42020347, produced by Sunstate (a true and correct copy is attached hereto as Exhibit I) and account number 14300867, produced by Electronic Access (a true and correct copy is attached hereto as Exhibit J);
 - d. Da Silva, an Anguillan IBC, account number 07-42021915, produced by Sunstate. A true and correct copy is attached hereto as Exhibit K; and
 - e. Ventana Consultants, Ltd. (“Ventana”), a Michigan corporation, account number LC30000095402(2) produced by Newbridge (a true and correct copy is attached hereto as Exhibit L).
7. My review of trades of Concorde revealed the following:
- a. Barranquilla – Approximately 1,540,360 shares of Concorde were sold from August 5 to August 11, 2004 and approximately 1,540,360 shares (including shares issued under stock certificate numbers 2128 and 2129) were purchased through the Pink Sheets market (“Pink Sheets”) during that same period. Assuming a basis price of \$0.10 per share, Barranquilla realized a net gain of approximately \$5,233,753 from sales and purchases

of Concorde from August 5 to August 11, 2004. A true and correct copy of my analysis is attached hereto as Exhibit M.

b. Vanderlip - Approximately 1,647,530 shares of Concorde were sold from August 5 to August 11, 2004, and approximately 1,647,530 shares (including shares issued under stock certificate numbers 2110, 2111, 2112, and 2113) were purchased over the Pink Sheets during that same period. Assuming a basis price of \$0.10 per share, Vanderlip realized a net gain of approximately \$4,330,038 from sales and purchases of Concorde from August 5 to August 11, 2004. A true and correct copy of my analysis is attached hereto as Exhibit N.

c. Chiang Ze - Approximately 522,835 shares of Concorde were sold from July 28 to August 10, 2004, and approximately 522,835 shares (including shares issued under stock certificate numbers 2126 and 2127) were purchased over the Pink Sheets during that same period. Assuming a basis price of \$0.10 per share Chiang Ze realized a net gain of approximately \$1,696,611 from sales and purchases of Concorde from July 28 to August 10, 2004. A true and correct copy of my analysis is attached hereto as Exhibit O.

d. Da Silva - Approximately 499,495 shares of Concorde were sold from July 27 to August 5, 2004, and approximately 499,495 shares (including shares issued under stock certificate numbers 2114, 2115, 2116, and 2117) were purchased over the Pink Sheets during that same period. Assuming a basis price of \$0.10 per share, Da Silva realized a net gain of

approximately \$1,794,910 from sales and purchases of Concorde from July 27 to August 5, 2004. A true and correct copy of my analysis is attached hereto as Exhibit P.

- e. Ventana – purchased 10,500 shares of Concorde on July 27, which were then sold on August 3, 2004. Ventana realized a net gain of approximately \$5,265 from sales and purchases of Concorde from July 27 to August 3, 2004. A true and correct copy of my analysis is attached hereto as Exhibit Q.

8. I also reviewed offering documents, stock certificates, and transfer records relating to the purchase of 14.5 million shares of Absolute Health stock for \$85,000 by Victoria Management Ltd., IMA Advisors, Inc. and Brazos Partners. True and correct copies of Interwest documents related to these transactions are attached hereto as Composite Exhibit R. The certificates numbered 3074 to 3078, 3081, 3084 - 3098 issued to these entities were subsequently transferred in the following manner:

- a. 6.0 million shares issued to Ryzcek Investments (“Ryzcek”), certificate numbers 3099 - 3107, 3110. True and correct copies of certificates are attached hereto as Exhibit S;
- b. 4.5 million shares issued to Barranquilla, certificate numbers 3109, 3111. True and correct copies of these certificates are attached hereto as Exhibit T;
- c. 3.5 million shares issued to Chiang Ze, certificate number 3108. A true and correct copy of this certificate is attached hereto as Exhibit U;

- d. 100,000 shares issued to Ventana certificate number 3116. A true and correct copy of this certificate is attached hereto as Exhibit V;
 - e. 400,000 shares issued to Corporate Financial Consultants Ltd. (“CFC”), certificate numbers 3112 – 3115. True and correct copies of these certificates are attached as Exhibit W;
9. Based on my review of the foregoing records, I established a basis price of \$0.01 per share of Absolute Health stock. See Composite Exhibit R.
10. My review of trades of Absolute Health revealed the following:
- a. Barranquilla – Newbridge account - Approximately 25,300 shares of Absolute Health were sold from August 5 to August 16, 2004, and approximately 25,300 shares were purchased and sold during that same period (including shares issued under stock certificate numbers 3109 and 3111), Barranquilla realized a net gain of approximately \$10,990 from August 5 to August 16, 2004. A true and correct copy of my analysis is attached hereto as Exhibit X.
 - b. Barranquilla – Electronic Access account - Approximately 4,533,819 shares of Absolute Health were sold from November 15 to December 3, 2004 and approximately 4,533,819 shares were purchased during that same period (including shares issued under stock certificate numbers 3109 and 3111), Barranquilla realized a net gain of approximately \$9,394,156 from sales and purchases of Absolute Health from November 15 to December 3, 2004. See attached Exhibit X.

- c. Chiang Ze – Sunstate account – Approximately 521,655 shares of Absolute Health were sold from June 14 to August 24, 2004, and approximately 521,655 shares were purchased during that same period (including shares issued under stock certificate number 3108), Chiang Ze realized a net gain of approximately \$623,757 from sales and purchases of Absolute Health from June 14 to August 24, 2004. A true and correct copy of my analysis is attached hereto as Exhibit Y.
- d. Chiang Ze – Electronic Access account – Approximately 3,211,743 shares of Absolute Health were sold from October 13 to December 10, 2004, and approximately 3,211,743 shares were purchased during that same period (including shares issued under stock certificate number 3108), Chiang Ze realized a net gain of approximately \$4,427,965 from sales and purchases of Absolute Health from October 13 to December 12, 2004. See attached Exhibit Y.

11. In addition, Ventana sold approximately 100,000 shares of Absolute Health between June 14 and June 18, 2004 (including shares issued under stock certificate number 3116), Ventana realized a net gain of approximately \$81,000 from sales and purchases of Absolute Health from July 27 to August 3, 2004. A true and correct copy of my analysis is attached hereto as Exhibit Z.

Documents Reviewed – Wire Transfer Records

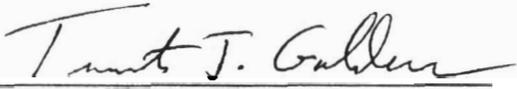
12. I also reviewed records of wire transfers received from Newbridge, Sunstate, Electronic Access, and Penson Financial Services Inc., the clearing firm for each of these stock brokerage firms. My review revealed the following:

- a. Ryzcek – \$1,172,876 was transferred from Ryzcek’s account to Sun Trust Bank account number 41001143506 between June 29 and August 5, 2004, for the benefit of Ryzcek.
- b. Chiang Ze - \$4,134,865 was transferred from Chiang Ze’s account to Sun Trust Bank Bank account number 41001143506 between July 28 and August 11, 2004. Also, \$4,858,712 was transferred from Chiang Ze’s account to First Curacao International Bank, N.V., (“First Curacao”), for the benefit of Chiang Ze account number 01-801-200455-01.
- c. Barranquilla - \$9,213,425 was transferred from Barranquilla’s account to Barclay’s Bank, for the benefit of First Curacao for further credit to Barranquilla’s account number SA 01-801-200637-01.
- d. Da Silva – \$1,769,005 was transferred from Da Silva’s account to an unknown destination.

Documents Reviewed – Trading History

13. I also have reviewed the 52-week high and low stock prices for Concorde as reported by Yahoo! Finance, which demonstrate that the stock price declined from a 52-week high of \$8.90 on August 12, 2004, to \$2.51 the next day then climbing to \$5.40 on August 18 followed by a steady decline to a low of \$0.16 on November 2, 2004.

14. I also have reviewed the 52-week high and low stock prices for Absolute Health as reported by Yahoo! Finance which demonstrate that the stock price declined from a 52-week high of \$2.75 on August 12, 2004, to a 52-week low of \$0.55 on October 20 before achieving new 52-week highs of \$2.86 on November 30 and then \$5.09 the next day, December 1, 2004.



Timothy J. Galdencio

Executed on February 11, 2005

EXHIBIT 2

United States District Court

SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 05-80128-CIV-ZLOCH/SNOW

CONCORDE AMERICA, INC.,
ABSOLUTE HEALTH AND FITNESS, INC.,
HARTLEY LORD, DONALD E. OEHMKE,
BRYAN KOS, THOMAS M. HEYSEK,
ANDREW M. KLINE, AND PAUL A. SPREADBURY

Defendants,

DASILVA, SA, VANDERLIP HOLDINGS, NV,
CHIANG ZE CAPITAL, AVV,
RYZCEK INVESTMENTS, GMBH,
BARRANQUILLA HOLDINGS, SA,

Relief Defendants.



TO: Jeremy Ross, Esq.
Bush Ross, P.A.
220 South Franklin Street
Tampa, Florida 33602-5330

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **See Attachment for list of documents to produce the address below, via US Mail or Federal Express**

PLACE Securities and Exchange Commission 801 Brickell Avenue, Suite 1800, Miami FL 33131	DATE AND TIME August 8, 2005 at 9:00 a.m.
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure. 30(b) (6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Plaintiff	DATE August 2, 2005
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Linda S. Schmidt, Senior Trial Counsel
U.S. Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131, (305) 982-6315

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

PROOF OF SERVICE

served	DATE	PLACE
	SERVED ION (PRINT NAME)	
SERVED BY (PRINT NAME)		MANNER OF SERVICE
		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is no limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Attachment to Subpoena Duces Tecum

A. DEFINITIONS AND INSTRUCTIONS

1. You may comply with this subpoena by producing legible copies of the responsive documents. The SEC retains the right to inspect the originals of the documents produced prior to the trial of this cause.

2. "Documents" includes all writings and graphic matter of any kind, including, but not limited to, the original, all interim drafts, and each copy containing interlineation, deletions, marginal notes, or which is otherwise non-conforming and which shall include, but not be limited to, any file, financial statement or report, note, bank statement, canceled checks, analysis, deposit slip, credit and debit memoranda, wire transfer, telex, bill (including telephone and credit card), correspondence, prospectus, script, transcript, offering materials, e-mails, ledger sheet, receipt, transcript, photograph, sketch, chart, graph, diagram, diary, telephone log, appointment calendar, telegram, telecopy, fax, diary, mailgram, accounting work paper, report, computer printout, filing with any state or federal agency, inter- or intra-office communication, minutes of meetings, invoices, and any tangible items of readable or visual material, whether printed, typed, handwritten, microfilmed, or recorded on tape, computer hardrive or disk or other means of recording or data entry.

3. "Relating or referring to" a given subject matter means any document or communication that constitutes, contains, embodies, comprises, reflects, identifies, describes, analyzes, or in any way relates to that subject, including, without being limited to, cover letters and correspondence sent in connection with any document.

4. Unless otherwise stated, the time period covered by these requests shall be from January 1, 2004, through the date of service of this subpoena.

B. DOCUMENTS REQUESTED

1. Please produce any and all documents relating to the Bush Ross, P.A. Trust Account(s) including, but not limited to, any bank accounts held at SunTrust Bank, in the possession or subject to the control of Bush Ross, P.A. or any subsidiaries, predecessors, affiliates, or agents thereof, made, dated or pertaining to any of the individuals or entities listed below:

1. Concorde America, Inc.;
2. Absolute Health and Fitness, Inc.;
3. DaSilva, SA;
4. Vanderlip Holdings, NV;
5. Chiang Ze Capital, AVV;
6. Ryzcek Investments, GMBH;
7. Barranquilla Holdings, SA;
8. Keel Enterprises;
9. Bovee Enterprises, LLC;

10. Jasmine Takamine, Sdn Bdh;
11. Stromberti Esse, GbmH;
12. Ventana Consultants, Ltd.;
13. Ventana of Pennsylvania;
14. Storage Innovation Technologies, Inc.;
15. Storage Internet Communications, Inc.;
16. Brooke Holdings, SA;
17. Jonti Warburg, Ltd.;
18. Allied Funding Group, Inc.;
19. Turquoise Investments, Ltd.;
20. Sterling ACS Ltd;
21. Sterling Trust, Ltd. (Anguilla);
22. Sterling Management, LLC;
23. IMA Advisers, Inc.;
24. Brazos Partners;
25. Victoria Management, Ltd.;
26. Investment Profiles, LLC;
27. Asian American Capital;
28. Asian American Capital Management;
29. Asian American Capital Partners;
30. Thomas Heysek Associates Company, Inc.;
31. Donald E. Oehmke;
32. Bryan Kos;
33. Jeremy Jaynes;
34. Hartley Lord;
35. Andrew Kline;
36. Thomas Heysek;
37. Francis Gaskins;
38. Caroline Archambault;
39. Warren Hansen;
40. Erica Hansen;
41. Ellen Dembski;
42. Mark Rice;
43. Howell Woltz;
44. Vernice Woltz;
45. Connie Oysterman Webb
46. Scott Campbell;
47. BK Ventures;
48. Corporate Financial Consultants;
49. Lucky 123;
50. Dude Enterprises;
51. Internet Profiles, LLC;
52. Internet Promotions, LLC a/k/a Internet Promos, LLC;
53. Internet Opportunities, LLC;
54. JDJ Associates;
55. Alpine Properties, LLC;

56. Steamline Capital Group, Inc.;
57. Park City Properties, LLC;
58. Freewebland, Inc.
59. Merrydale Partners Group;
60. I Max Direct, Inc.;
61. Sunstate Equity Trading;
62. Hyperion Trading;
63. First Research Financial;
64. Daniel Kantrowitz; and
65. Wexton Investments

EXHIBIT 3

BUSH | ROSS

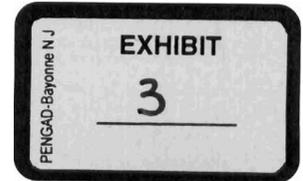
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August 17, 2005

Linda S. Schmidt, Esq.
United States Securities and Exchange Commission
Southeast Regional Office
801 Brickell Avenue, Suite 1800
Miami, Florida 33131



Re: SEC v. Concorde America, Inc. (the "Company")
Case No. 05-80128-CIV-Zloch

Dear Ms. Schmidt:

I acknowledge receipt of the staff's subpoena, dated August 2, 2005 (the "Subpoena"), requiring production by the Bush Ross, P.A. law firm (the "Firm") and myself of all documents within the possession of either which comprise or relate to transactions undertaken through the medium of Firm trust accounts and on behalf of or otherwise with respect to entities and individuals identified in the subpoena. Although the Subpoena directs a document transmittal date of August 8, discussion held in my absence from the office between you and my legal assistant has caused us to understand that an informal extension of that transmittal date has been granted to August 19. I appreciate that accommodation.

With regard to our compliance, I advise that: (a) the Firm (f/k/a Bush Ross Gardner Warren & Rudy, P.A.) is not the successor in interest to any other entity, has no affiliates (other than its individual shareholders) or subsidiaries, and is not the principal in any agency relationship having anything to do with the captioned action; (b) the Firm maintains with SunTrust Bank a single IOTA Trust Account, as well as a number of money market trust accounts established on behalf of a variety of clients; (c) of the 65 persons named in the Subpoena, the Firm's trust account records reflect transactions undertaken with respect only to the following: the Company, DaSilva, SA, Chiang Ze Capital, AVV, Ryzcek Investments, GMBH, Ventana Consultants, Ltd. ("Ventana"), Jeremy Jaynes, BK Ventures and Corporate Financial Consultants, LC ("CFC"); (d) each of such transactions was undertaken through the Firm's IOTA trust account; (e) the records within the Firm's possession which would respond to the Subpoena include wire transfer (incoming and outgoing) confirmation sheets, written instructions to disburse funds from such trust account, written inquiries as to trust account balances and related documents; (f) all such documents as related to the Company have heretofore been transmitted to your offices; and (g) in my individual capacity I am in possession of no documents to which the Subpoena has reference.

As you are aware, Ventana is currently represented by Messrs. Planzos and Serafini, and each of BK Ventures and CFC by Messrs. Levenson and Nortman. Additionally, Mr. Jaynes is represented by Scott Wellons. I have, accordingly, provided Messrs. Planzos, Levenson and Wellons with a copy of the Subpoena and requested guidance as to whether their respective clients wish to assert an attorney-client

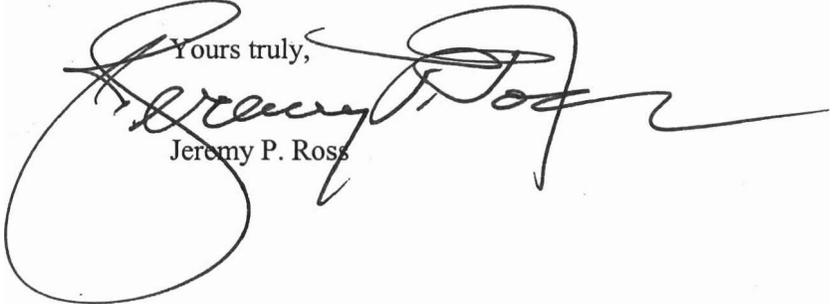
privilege with respect to such records. Each has responded with a request that I assert such privilege to its maximum level of applicability¹, and Mr. Levenson has further requested that the privilege be asserted with respect to all records applicable to entities with which Brian Kos, the principal of each of CFC and BK Ventures, was affiliated at the time of their creation. Inasmuch as each of the Firm's trust account transactions undertaken on behalf of an above-named relief defendant was done so on the basis of an instruction provided by a representative or agent of CFC, I have assumed that the Levenson directive was intended to apply to such defendants².

Given that circumstance, I have reviewed Rule 4-1.6 (Confidentiality of Information) of the Rules Regulating the Florida Bar³ which states under subdivision (a) that a "lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c) and (d), unless the client consents after disclosure to the client." As you will observe from a review of the cited subdivisions, none apply currently and only subdivision (d) (disclosure following tribunal order and permitted exhaustion of all appellate remedies) has possible future applicability. The official comment appended to such Rule further states in applicable part that:

"The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege . . . in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be . . . required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or by law."

Accordingly, pending our receipt of a court order compelling production by the Firm of the records which I have been instructed by Messrs. Planzos, Levenson and Wellons to withhold, I am unable to effect further compliance with the directive of the Subpoena, and in that regard you may treat this letter as an objection effected under Rule 45(c)(2)(B), Fed.R.Civ.P.

Yours truly,


Jeremy P. Ross

Cc: David Levenson, Esq.
Sotiris Planzos, Esq.
Scott Wellons, Esq.

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¹ Mr. Planzos has noted, however, that his response is dictated by his absence from the office and that upon his return later this month he may be willing to modify that instruction.

² I have requested Mr. Levenson's confirmation of this assumption but to date have not received the same. Should I do so I will advise.

³ Such rules, as you recognize, govern the professional conduct of all members of that Bar.