

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 10-21944-CIV-ALTONAGA/Brown

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SOVEREIGN BONDS EXCHANGE LLC, :
Individually, and by and on behalf of its members, :
PLAINTIFF, :

v. :

FEDERAL REPUBLIC OF GERMANY; :

NORDDEUTSCHE LANDESBANK GIROZENTRALE :

HANNOVER d/b/a Norddeutsche Landesbank :

Girozentrale New York and successor to :

Hannoversche Landeskreditanstalt; :

HSH NORDBANK AG, KIEL :

d/b/a HSH Nordbank AG New York and successor to :

Landesbank der Provinz Schleswig-Holstein; :

WESTLB AG, DUESSELDORF.d/b/a WestLB AG New York :

and successor to Landesbank der Rheinprovinz, :

Landesbank der Provinz Westfalen and Landesbank :

für Westfalen (Girozentrale); :

HELABA LANDESBANK HESSEN-THUERINGEN, :

FRANKFURT AM MAIN d/b/a Helaba Landesbank :

Hessen-Thueringen New York; :

LBBW LANDESBANK BADEN-WUERTTEMBERG, :

STUTTGART d/b/a LBBW Niederlassung New York, :

LBBW New York and successors to :

Landeskreditbank Baden-Württemberg; :

DEKABANK DEUTSCHE GIROZENTRALE; :

DEUTSCHE LANDESBANKENZENTRALE AG :

Successor/ agent for Landesbank Der Provinz :

Ostpreussen, Hannovershe Landeskreditanstalt, :

Provinzialbank Pommern, Landesbank der Provinz :

Schleswig-Holstein, ProvinzialHilfskasse Fur Die :

Provinz Niederschlesien, Brandenburgische Provinzialbank :

Und Giro-Zentrale, Sachsische Provinzialbank und :

Giro-Zentrale, Provinzialbank Oberschlesien, Landesbank :

der Rheinprovinz, Landesbank der Provinz Westfalen, :

Provinzialbank Grenzmark Posen-Westpruessen :

Giro Zentrale, Nassauische Landesbank, Badischer :

Sparkassen-und Giroverband and :

Wurtembergischer Sparkassend-und Giroverband :

: :

DEFENDANTS. :

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Plaintiff files this Amended Complaint against Defendants and states the following:

INTRODUCTION

1. This action is brought to recover payment on obligations incurred by Defendants in connection with the issuance of certain bearer bonds issued by Defendants and sold within the United States and worldwide prior to the outbreak of World War II, for which payment has never been made by the obligors.

THE PARTIES

2. Plaintiff Sovereign Bonds Exchange, LLC is a Florida limited liability company with a principal place of business at Pembroke Pines, Broward County, Florida, within this District. Plaintiff is the holder and owner of and/or has interests in certain bearer bonds, entitled German Provincial and Communal Banks Consolidated Agricultural Loan, Secured Sinking Fund Gold Bond Series A 6 & ½ % Dated June 1928 – Due June 1, 1958 (the “Agra Bonds”).

3. Defendant Federal Republic of Germany (hereinafter “FRG”) is a foreign state as defined in the Foreign Sovereign Immunities Act, 28 U.S.C. §1603(a). FRG has a place of business located at Federal Ministry of Finance, Wilhelmstrasse 97, 10117 Berlin, Germany.

4. FRG is the legal successor to the German Reich and the obligations of the German Reich, the former State of Prussia (German name = Preußen Provinz), the former State of East Prussia (German name = OstPreußen Provinz), the former State of Posen-West Prussia (German name = Grenzmark Posen – Westpreußen Provinz), the former State of Brandenburg, the former State of Pomerania (German name = Pommern Provinz), the former State of Mecklenburg-Western Pomerania (German name = Mecklenberg-Vorpommern Provinz), the former State of Silesia (German name = Schleisen Provinz), the former State of Upper Silesia (German name = OberSchlesien Provinz), the former State of Lower Silesia (German name =

NiederSchlesien Provinz), the former State of Saxony (German name = Sachsische Provinz), and the German Democratic Republic ("East Germany").

5. Under the terms of the Agra Bonds, Defendant Deutsche Landesbankenzentrale AG (and, thus, its successor Defendant DekaBank Deutsche Girozentrale) was denominated as central agent and trustee for all the banks obligated to make payments of interest and principal under the terms of the Agra Bonds, to wit: (i) Landesbank Der Provinz Ostpreussen; (ii) Hannovershe Landeskreditanstalt; (iii) Provinzialbank Pommern; (iv) Landesbank der Provinz Schleswig-Holstein; (v) ProvinzialHilfskasse Fur Die Provinz Niederschlesien; (vi) Brandenburgische Provinzialbank Und Giro-Zentrale; (vii) Sachsische Provinzialbank und Giro-Zentrale; (viii) Provinzialbank Oberschlesien; (ix) Landesbank der Rheinprovinz; (x) Landesbank der Provinz Westfalen; (xi) Provinzialbank Grenzmark Posen-Westpruessen Giro Zentrale; (xii) Nassauische Landesbank; (xiii) Badischer Sparkassen-und Giroverband and (xiv) Wurttembergischer Sparkassend-und Giroverband. Hereinafter, these banking institutions are referred to as the “original obligor banks.”

6. Defendant Norddeutsche Landesbank Girozentrale Hannover (hereinafter “NORD/LB”) is a German Bank which does business in the State of Florida. Defendant NORD/LB is the successor to, among others, Hannoversche Landeskreditanstalt, one of the original obligor banks.

7. Defendant HSH Nordbank AG, Kiel (hereinafter “HSN BANK”) is a German Bank which does business in and/or engages in commerce in or that affects the State of Florida. Defendant HSH Bank is the successor to Landesbank der Provinz Schlewig-Holstein, one of the original obligor banks.

8. Defendant WestLB AG, Duesseldorf. (hereinafter “WestLB”) is a German Bank which does business in and/or engages in commerce in or that affects the State of Florida. Defendant WestLB is the successor to Landesbank der Rheinprovinz, Landesbank der Provinz Westfalen and Landesbank für Westfalen (Girozentrale), some of the original obligor banks.

9. Defendant Helaba Landesbank Hessen-Thueringen, Frankfurt am Main (hereinafter “HELABA”) is a German Bank which does business in and/or engages in commerce in or that affects the State of Florida. Defendant HELABA is the successor to one or more of the original obligor banks.

10. Defendant LBBW Landesbank Baden-Wuerttemberg, Stuttgart, (hereinafter “LBBW”) is a German Bank which does business in and/or engages in commerce in or that affects the State of Florida. Defendant LBBW is the successor to Landeskreditbank Baden-Württemberg, one of the original obligor banks.

11. Defendant DekaBank Deutsche Girozentrale (hereinafter “DEKA”) is a German Bank which does business in and/or engages in commerce in or that affects the State of Florida. Defendant DEKA is owned in part by Defendants LBBW, Helaba, HSH Nordbank, WestLB and Nord/LB, as well as various public savings associations in both West and East Germany, also including successors to the original obligors. Defendant DEKA is the successor to Deutsche Landesbankenzentrale AG, the original agent for all the original obligor banks.

12. Defendants NORD/LB, HSN BANK, WESTLB, HELABA, LBBW, Deutsche Landesbankenzentrale AG and DEKA shall be referred to hereinafter collectively as Defendant Banks.

13. At all times relevant, Defendant Banks were owned in whole or in part and/or controlled by Defendant FRG or one of its states and/or municipalities.

JURISDICTION and VENUE

14. This Court has determined that it has subject matter jurisdiction over this action pursuant to 28 USC § 1602-11. (See Order of the Honorable Cecilia M. Altonaga dated October 20, 2010, Docket #81; see also, *World Holdings, LLC. v. Federal Republic of Germany*, 11th Cir. August 9, 2010, 08-20198-CV-CMA; *Bleier v. Bundersrepublik Deutschland*, US Dist Ct ND IL, October 7, 2010).

15. This Court has in personam jurisdiction over Defendants pursuant to 28 USC §1330 (a) and (b) because this action is brought against a foreign state and pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution, laws, or treaties of the United States; because Plaintiff's claims are based upon a commercial activity carried on in the United States by a foreign state and because Defendant Banks have places of business and can be found in Florida and otherwise do business in Florida and are subject to jurisdiction pursuant to Florida's long arm statute. (FLA. STAT §48.193).

16. Venue is proper in this District pursuant to 28 USC §1391(a), (b), (c), (d) and (f) because Plaintiff is a resident of this District, because one or more of the principals of Plaintiff reside in this District, because Defendants maintain their offices or conduct business in this District, because this is a civil action against a foreign state as defined in 28 USC §1603 (a), because a substantial portion of the property at issue is situated in this District and because a substantial part of the events or omissions giving rise to the claims occurred within this District.

FACTUAL BACKGROUND RELATED TO THE AGRA BONDS

17. The Agra Bonds were issued on or about June 1, 1928, were payable in New York City, were listed on the New York Stock Exchange and were sold in this District and elsewhere.

18. Following World War I, Germany embarked on an international program to attract foreign investment so as to generate revenues to improve Germany's economy and to satisfy its obligation to pay reparations pursuant to the Treaty of Versailles. The Agra Bonds were a part of this program and were issued for the purpose of improving agricultural conditions in Germany, including what later became parts of East Germany following World War II.

19. Germany marketed many different bond issues, including the Agra Bonds, and guaranteed their repayment, to hundreds of thousands of individual American and other investors. While Germany was supposed to use the proceeds from the bonds to build a peaceful democracy, when Hitler came into power, the German government began to re-arm the country in violation of the Versailles Treaty and, in 1933, the German government issued a moratorium on payment under the Agra Bonds and refused to honor the obligations incurred to repay interest and principal under the terms of these bonds.

20. Fourteen provincial and communal banks participated in the operation of contracting for the loans underlying the issuance of the Agra Bonds and re-lending the proceeds to farmers.

21. The Agra Bonds had a 30-year term and interest coupons providing for interest payments at the rate of 6 1/2% per annum due on June 1 and December 1 of each year and principal and interest were also payable in New York City and/or Boston, Massachusetts.

22. The Agra Bonds are the obligations of Defendant FRG and Defendant Banks directly, or as successors in interest to the obligations of the original debtors.

23. At the time of issuance of the Agra Bonds, each German provincial and communal banks was owned in whole or in part by a German province and each province was legally responsible for all obligations of its bank.

24. The debtors on the Agra Bonds included the former State of Prussia (German name = Preußen Provinz), the former State of East Prussia (German name = OstPreußen Provinz), the former State of Posen-West Prussia (German name = Grenzmark Posen – Westpreußen Provinz), the former State of Brandenburg, the former State of Pomerania (German name = Pommern Provinz), the former State of Mecklenburg-Western Pomerania (German name = Mecklenberg-Vorpommern Provinz), the former State of Silesia (German name = Schleisen Provinz), the former State of Upper Silesia (German name = OberSchlesien Provinz), the former State of Lower Silesia (German name = NiederSchlesien Provinz), and the former State of Saxony (German name – Sachsische Provinz) and the German Democratic Republic also known as East Germany, as well as Defendant Banks and/or their predecessors.

25. The Agra Bonds were divided and/or shared as follows:

a.	Landesbank Der Provinz Ostpreussen	–	29.00 %
b.	Hannovershe Landeskreditanstalt	–	14.50 %
c.	Provinzialbank Pommern	-	10.00 %
d.	Landesbank der Provinz Schleswig-Holstein	-	8.00 %
e.	ProvinzialHilfsskasse Fur Die Provinz Niederschlesien	-	7.00 %
f.	Brandenburgische Provinzialbank Und Giro-Zentrale	-	7.00 %
g.	Sachsische Provinzialbank und Giro-Zentrale	-	5.50 %
h.	Provinzialbank Oberschlesien	-	4.00 %

i.	Landesbank der Rheinprovinz	-	3.00 %
j.	Landesbank der Provinz Westfalen	-	3.00 %
k.	Provinzialbank Grenzmark Posen-Westpruessen Giro Zentrale		2.00 %
l.	Nassauische Landesbank	-	2.00 %
m.	Badischer Sparkassen-und Giroverband	-	3.00 %
n.	Wurttembergischer Sparkassend-und Giroverband	-	2.00 %

26. At the end of World War II, when the borders of Germany were divided or reconfigured, the majority of the original obligor banks were not located in West Germany, but were in East Germany and/or Poland.

27. At the end of World War II, Defendant Banks' predecessor bank, Landesbank Der Provinz Ostpreussen (29% involvement with the original bonds), was located in territory known as East Prussia, which was located East of the German–Polish Border and came under territorial control of East Germany.

28. At the end of World War II, Defendant Banks' predecessor bank, Provinzialbank Pommern (10% involvement with the original bonds), was located in territory known as Pomerania that was located East of the current German–Polish Border and was divided between territorial control of Poland and East Germany.

29. At the end of World War II, Defendant Banks' predecessor bank, ProvinzialHilfsskasse Fur Die Provinz Niederschlesien (7% involvement with the original bonds), was located in territory known as Lower Silesia and was located East of the German – Polish Border and came under territorial control of Poland.

30. At the end of World War II, Defendant Banks' predecessor bank, Brandenburgische Provinzialbank Und Giro-Zentrale (7% involvement with the original

bonds), was located in territory known as Brandenburg which was located East of the German–Polish Border and the eastern portion came under territorial control of Poland and the western portion came under the territorial control of East Germany.

31. At the end of World War II, Defendant Banks’ predecessor bank, Sachsische Provinzialbank und Giro-Zentrale (5.5% involvement with the original bonds), was located in territory known as Saxony that was East of the German–Polish border and came under territorial control of East Germany.

32. At the end of World War II, Defendant Banks’ predecessor bank, Provinzialbank Oberschlesien (4% involvement with the original bonds), was located in territory known as Upper Silesia that was located East of the German–Polish Border and was divided between territorial control of Poland and East Germany.

33. At the end of World War II, Defendant Banks’ predecessor bank, Provinzialbank Grenzmark Posen-Westpruessen Giro Zentrale (2% involvement with the original bonds), was located in territory known as Posen-West Prussia and was located East of the German– Polish Border and came under territorial control of Poland.

34. At the end of World War II, 64.5 % of the Agra Bond obligors were located in East Germany or Poland, were under Communist control, and, therefore, no opportunity for payment of the outstanding principal and interest on the Agra Bonds or demand therefor could be made.

35. The Agra Bonds are bearer instruments that entitle the holder to payment upon demand. Plaintiff is the holder, owner and/or has an interest in the Agra Bonds with Serial Numbers and/or Certificate Numbers that have been previously disclosed to Defendants or their agents.

36. The Agra Bonds held by Plaintiff have not been canceled, perforated, voided, or otherwise modified. Each Bond has a \$1000 face amount that, under the gold clause in each Bond, represents the equivalent value in gold coin of the United States existing on June 1, 1928.

37. Interest amounts are also payable in the equivalent value in gold coin of the United States existing on June 1, 1928.

38. The Agra Bonds contain coupons from December 1941 through maturity on June 1, 1958.

39. The total outstanding and unpaid principal and interest under the Agra Bonds held by Plaintiff is currently estimated to exceed one million dollars per Agra Bond. Plaintiff holds an interest in over 100 Agra bonds.

40. During the period from the 1970's through to the present, Plaintiff or its predecessors took all reasonable steps to obtain the information and documents necessary to enforce their rights to payment of principal and interest due under the Agra Bonds.

41. Despite timely demand, Defendant FRG and Defendant Banks have refused payment of the outstanding unpaid principal and interest under the Agra Bonds.

42. Despite demands by Plaintiff or Plaintiff's predecessors, Defendants FRG and Defendant Banks have failed to refused to make payment for the Agra Bonds, erroneously claiming that the Agra Bonds owned by Plaintiff were among those bonds allegedly misappropriated by invading Russian forces at the end of World War II and forming part of a so-called "stolen bonds list", as described below, for which Defendants have consistently failed and refused to make payment.

HISTORICAL AND LEGAL ANTECEDENTS

43. After World War II, Germany's economy was once again in desperate need to attract foreign investment, but a cloud hanging over its default on its post-World War I debt detracted from its ability to convince foreign investors that they would be repaid.

44. Therefore, FRG entered into an agreement with the Allied High Commission in which it assumed liability for the pre-war external debt of the German Reich by which Defendant FRG succeeded to, and/or assumed the outstanding and unpaid obligations under the Agra Bonds, including, but not limited to obligations of the State of Prussia.

45. In 1952, Defendant FRG and Defendant Banks on the one hand and the certain of the former allied nations (the US, France and England) and other nations ¹ claiming reparations, convened a conference held in London.

46. The result of the Conference was an offer by Defendant FRG, individually and on behalf of Defendant Banks, to achieve some mechanism for payment of Germany's pre World War I debt, including the debt evidenced by the Agra Bonds.

47. The offer was memorialized in what has come to be known Agreement on German External Debts of 1953, 4 U.S.T. 443 (hereinafter referred to as the "London Debt Agreement" or "LDA").

¹ The "Creditor Nations" at the London Debt Conference were the Governments of Belgium, Canada, Ceylon, Denmark, the French Republic, Greece, Iran, Ireland, Italy, Liechtenstein, Luxembourg, Norway, Pakistan, Spain, Sweden, Switzerland, the Union of South Africa, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and Yugoslavia. The "Debtor Nation" was The Government of the Federal Republic of Germany. As of 1953, The Federal Republic of Germany did not include many of its former states, territories or provinces (such as Brandenburg, East & West Prussia, Pomerania, Saxony, and Upper and Lower Silesia) that were in the German Democratic Republic ("East Germany") or territories that were now located in Poland.

48. Because certain the Provinces, States and/or Provincial Banks and obligors on certain of bonds were in the former territory of East Germany or in territories that were in Eastern European countries that were formerly part of Germany as it existed during World War II, a clause was added to the LDA that permitted Defendant FRG and Defendant Banks to defer payment on such bonds, including the Agra Bonds.

49. Defendant FRG and Defendant Banks were able to defer their obligations under the Agra Bonds by making the payment and/or redemption therefor contingent upon the reunification of East Germany with West Germany.

Article 25 of the LDA provides:

Article 25 - Action on reunification of Germany

The parties to the present Agreement will review the present Agreement on the reunification of Germany exclusively for the purpose of-

(a) implementing the provisions of the Annexes to the present Agreement regarding adjustments to be made in respect of specific debts upon such reunification, except in so far as such provisions are to become automatically operative upon that event; and

(b) making the provisions of the present Agreement applicable to the debts of persons residing in the area reunited with the Federal Republic of Germany; and

(c) making equitable adjustments in respect of debts in the settlement of which consideration is given to the loss of or inability to use assets located in the area reunited with the Federal Republic of Germany.

50. As explained below, and as they related to Agra Bonds, the LDA addressed only those bonds which were issued by Provinces or Provincial authorities or entities that were located in West Germany as of the end of World War II. It was Defendant FRG and Defendant Banks that insisted upon delaying the obligations to address Bonds for which the obligors were located in whole or in part in the territory of East Germany as of the end of

World War II.

51. Pursuant to the terms of Article 25 of the LDA, the obligations of Defendant FRG and Defendant Banks to redeem, honor and/or pay for Bonds that were issued by Provinces or Provincial authorities or entities that were located in the territory of East Germany was deferred until such time that East Germany and West Germany reunited.

52. Holders of bonds who wished to accept the offer contained in the LDA, were required to go through certain procedures as a pre-condition to payment on their bonds. These procedures were commonly referred to as the "Validation" process to insure that the bonds were not among the "stolen bonds".

53. Those bond holders who chose not to accept the offer contained in the LDA were referred to as "Non-Assenting" bond holders. Plaintiff and its predecessors are Non-Assenting bond holders.

54. Because of the fact that 64.5 % of the Agra Bond obligors were located in East Germany or Poland or in other countries that were part of the former territory of East Germany or territories that were in Eastern European countries that were formerly part of Germany as it existed during World War II, the Agra Bonds were not subject to the same validation requirements as other bonds. Rather, repayment of such "East German bonds" would be determined upon re-unification of the two Germanys under Article 25 of the LDA, which provided that obligations of Defendant FRG and Defendant Banks for the Agra Bonds did not arise unless and until reunification.

55. Under the terms of the LDA, Non-Assenting bond holders had to wait to make their claims for redemption of the bonds until (i) all the persons who had accepted the LDA offer and exchanged their bonds for replacement bonds were paid (which occurred in or about

1989) and (ii) the reunification of East and West Germany.

56. Pursuant to the LDA, the laws of FRG and the United States, Non-Assenting bond holders retained all their original rights to demand payment and/or redemption of their bonds, including the Agra Bonds.

57. Also pursuant to the LDA, Non-Assenting bond holders could not demand payment on their bonds, including those held by Plaintiff, until all obligations payable to the Assenting bond holders were fully paid, which did not occur until 1994, at the earliest.

58. After East Germany and West Germany formally reunited in 1990, the rights of certain bondholders, including holders of the Agra Bonds, such as Plaintiff, under Article 25 of the LDA, became enforceable, subject to the deferral provisions of the LDA as set forth above.

59. However, Defendant FRG failed to follow the protocols and formalities of Article 25 of the LDA, specifically Article 25 (b) and 25 (c), both of which affected holders of the Agra Bonds and other bonds.

60. Despite the re-unification of the two Germanys in 1990, Non-Assenting bond holders have never been able to get Defendants FRG and/or the responsible obligor, successor corporate entities or financial institutions to redeem, pay or honor the debts represented by the bonds, including the Agra Bonds.

61. Before any bond holder could be paid for “West German” bonds (that is, unlike the Agra Bonds, those bonds which were issued by banks, institutions and governmental entities in territories forming part of West Germany after World War II), he or she was required to submit the bonds to a validation procedure established under a German Validation Law enacted in West Germany in 1952 and incorporated by reference in the London Debt

Agreement.

62. Under the terms of the Validation Law, West German bond holders were required to show that their bonds were held outside Germany on January 1, 1945, to dispel the notion that they were among those bonds allegedly looted by the invading Russian forces in 1945 and forming part of the “stolen bonds” list. This stolen bond theory was later propounded by FRG in arguments before a federal court in the case of *Abrey v. Reusch*, 153 F. Supp, 337 (S.D.N.Y. 1957).

63. Although Plaintiffs have made due demand for payment of principal and interest for the Agra Bonds held by Plaintiff, in each instance Defendants have responded to said demands with the uniform response that payment cannot be made because Plaintiff’s bonds are found on the “stolen bonds” list, an assertion which is false.

64. While Defendants maintain that all bonds must be submitted for validation before they can be paid, a proposition which cannot apply to East German bonds, FRG has never complied with the terms of the LDA and the Validation Law by creating validation boards or examining authorities within the United States to permit domestic examination and proof of the validity of such bonds.

65. Furthermore, there is currently no existing Validation Board in any location through which bond holders can seek validation.

66. By reason of the foregoing, all pre-conditions for payment of principal and interest accruing under the terms of the Agra Bonds held by Plaintiff and its predecessors have been satisfied and/or waived and payment is now due and owing by Defendant FRG and Defendant Banks to Plaintiff therefor.

COUNT FOR RELIEF

67. Plaintiff repeats and incorporates the allegations of ¶¶ 1 to 66 as if fully set forth herein.

68. Plaintiff is the lawful owner of Agra Bonds, which are valid and remain unpaid.

69. Defendant FRG and Defendant Banks are the borrower, debtors and/or successors in interest to the obligors under the Agra Bonds.

70. Defendant FRG and Defendant Banks are obligated to pay for the Agra Bonds, for which they are now in default.

71. The failure of Defendant FRG and Defendant Banks to pay for the Agra Bonds constitutes a breach of contract for which Defendants are liable.

72. Plaintiff has made timely demand for payment under the Agra Bonds, and the demand has been refused.

73. All conditions precedent for payment on Plaintiff's Agra Bonds have occurred or have been excused.

74. As a direct and proximate result of breach of contract on the part of Defendant FRG and Defendant Banks, Plaintiff has suffered monetary damages in an amount believed to exceed \$100,000,000.

WHEREFORE, Plaintiff demands judgment against Defendant FRG and Defendant Banks, jointly, severally and/or in the alternative, for (i) judgment in the full amount of all outstanding and unpaid principal and interest, including compound interest, due on the Agra Bonds in equivalent value of gold coin of the United States existing on June 1, 1928 in a total amount to be proven at trial; (ii) fees, interest, costs of this action; and (iii) for such other and

further relief as this Court deems just and proper.

DATED: November 2, 2010

Respectfully Submitted:

/s/

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