

Memorandum in Support of Motion for Disgorgement, Prejudgment Interest, and Civil Penalties Against Defendant Tobin Senefeld [Filing No. 445]. In Defendant Tobin J. Senefeld's Response to Plaintiff's Motion for Disgorgement, Prejudgment Interest, and Civil Penalties, while arguing that any civil penalty against him should be small, Senefeld misleadingly told this Court that he makes \$44,993.25 a year. [Filing No. 448 at 13.] Senefeld did not provide any documents or other evidence to support his misleading claim. In response to Senefeld's misleading claim, the SEC filed the Declaration of Craig L. McShane Regarding Tobin Senefeld's Finances ("McShane Declaration on Senefeld's Finances"). [Filing No. 453.] The McShane Declaration on Senefeld's Finances demonstrated that from September 3, 2015, through January 18, 2017, Senefeld received **\$524,412.14** from several business lines. [Filing No. 453 at ¶ 14.]

Senefeld's Motion fails to demonstrate that even one fact or figure in the McShane Declaration on Senefeld's Finances is incorrect. Rather, three weeks after the SEC filed the declaration Senefeld filed his Motion complaining about the declaration apparently because it sets forth facts and information that directly contradicts Senefeld's unsupported claim that he received only \$44,993.25 a year. Of course, this is not a basis to strike references to the declaration. Senefeld's Motion should be denied because it has not set forth any legal or factual basis to strike the references to the McShane Declaration on Senefeld's Finances.

II. BACKGROUND

On April 22, 2015, the SEC filed this action. [Filing No. 1.] On April 23, 2015, this Court entered a Temporary Restraining Order against Senefeld and the other defendants. [Filing No. 12.] The TRO froze the assets of Senefeld and the other defendants. [Filing No. 12 at 4-6.] On May 7, 2015, the Court entered a Preliminary Injunction Order. [Filing No. 48.] Pursuant to the Preliminary Injunction Order, Senefeld's assets remained frozen. [*Id.*]

Four months after this Court entered the Preliminary Injunction Order against Senefeld that continued the freeze on his assets, Senefeld and his wife incorporated two companies and put the companies in the names of Senefeld's wife and his three dependent children.

Specifically, on September 1, 2015, Senefeld and Mary, his wife, incorporated Feumach Air Airgead, Ltd. ("Feumach"). (Ex. 1, Articles of Incorporation for Feumach.) In the Articles of Incorporation, Senefeld was listed as the registered agent. (Ex. 1.) According to documents produced by Senefeld, Feumach was organized so that Senefeld's wife owns 49% of Feumach and each of his three dependent children owns 17%. [Filing No. 453 at ¶ 9.] In 2016, the children were 13, 18, and 19. [Filing No. 453 at ¶ 1.]

Then on September 23, 2015, Senefeld and Mary, his wife, incorporated Field Notes, Ltd. ("Field Notes"). (Ex. 2, Articles of Incorporation for Field Notes.) In the Articles of Incorporation, Senefeld was listed as the registered agent. (Ex. 2.) According to documents produced by Senefeld, Field Notes was organized so that Senefeld's wife owns 49% of Field Notes and each of his three dependent children owns 17%. [Filing No. 453 at ¶ 9.]

According to a document written by Senefeld and produced to the SEC, Feumach provides the following services: "merchant cash advance, credit card processing, point of sale solutions & small business consulting services. Feumach Air Airgead, Ltd. has multiple ISO Referral Agreements with Merchant Cash Advance Companies, Point of Sale Organizations and Credit Card Processing Companies. Company receives referral fees from its business partners and vendors for referring potential clients to these organizations for service." [Filing No. 453 at ¶ 10.] Senefeld wrote that his job responsibilities at Feumach are "develop lead list of potential business clients; maintain and manage potential client CRM system; meet with potential business

clients; and originate Credit Card Processing and Merchant Cash Advance Opportunities, and Point of Sale Systems.” [Filing No. 453 at ¶ 11.]

According to a document written by Senefeld and produced to the SEC, Field Notes “provides Agricultural Business Consulting Services centered around Agriculture Production Grain and Live Stock, Agronomic Business Management & Precision AG Technology & Services.” [Filing No. 453 at ¶ 12.]

According to documentation provided by Senefeld, Senefeld’s wife, Mary, works as a registered nurse. [Filing No. 453 at ¶ 16.]

III. ANY CIVIL PENALTY AGAINST SENEFELD SHOULD NOT BE REDUCED

Senefeld’s Motion claims that any civil penalty amount should be reduced because he makes less than \$45,000 per year. [Filing No. 465 at 2-3.] Senefeld’s Motion complains that the McShane Declaration on Senefeld’s Finances stated the facts that Feumach and Field Notes, two businesses established by Senefeld and his wife, made over \$425,000 from September 3, 2015 to January 18, 2017. [See, e.g., Filing No. 453-1.] One of the factors this Court can weigh in determining the amount of the civil penalty against Senefeld is “whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition.” *SEC v. Tourre*, 4 F.Supp.3d 579, 593 (S.D.N.Y. 2014). As demonstrated in the declaration, Senefeld’s “**financial condition**” is that he generated, had access to, used, and/or benefitted from **\$524,412.14** during September 3, 2015, through January 18, 2017. [Filing No. 453 at ¶¶ 9-14.] The SEC does not have any financial information for Senefeld after January 18, 2017; therefore, the SEC has not been able to determine what additional amounts were received for the remainder of 2017. [Filing No. 453 at fn. 3.]

Cash from the Feumach and Field Notes bank accounts was transferred to accounts in the names of Senefeld's wife or his dependent children. Then over 90% of the money that was transferred to accounts in the names of Senefeld's dependent children was transferred to Senefeld's wife's bank account. The cash in Senefeld's wife's account, including the money that had been transferred from the dependent children's accounts, was used to pay for expenses and items such as

- the mortgage on the home owned by Senefeld and his wife,
- utilities for the home owned by Senefeld and his wife,
- insurance,
- taxes,
- Senefeld's legal bills for this litigation,
- a \$1,979.50 bike for Senefeld,
- multiple family vacations,
- a \$1,780 dog, and
- Lollapalooza tickets.

The charade of first transferring the money to bank accounts in the names of Senefeld's wife and dependent children does not preclude this money from being considered as part of Senefeld's financial condition.

A. \$359,472.89 Was Transferred From Feumach to Senefeld's Wife and Dependent Children

From September 3, 2015 through December 31, 2016, the Feumach bank account received \$410,800.14 from income sources after known expenses were deducted and an additional \$40,000 in the form of a personal loan from Scott Yeager, for whom Senefeld has worked. [Filing No. 466 at ¶ 13.] In turn, a total of \$359,472.89 was transferred to accounts in

the name of Senefeld's wife or his dependent children. [Filing No. 466 at ¶ 14.] The table below shows the amounts transferred to each account:

Name of Account Holder	Amount Transferred from Feumach
Mary Senefeld checking	\$230,324.54
Mary Senefeld savings	\$18,850
Senefeld's Son's account	\$37,069.45
Senefeld's First Daughter's account	\$37,039.45
Senefeld's Second Daughter's account	\$36,189.45
TOTAL	\$359,472.89

B. \$18,030 Was Transferred From Field Notes to Senefeld's Wife and Dependent Children

The Field Notes bank account received \$15,000 in income, \$5,055.21 in travel reimbursements, and \$1,700 in transfers from the second daughter's account. [Filing No. 466 at ¶ 15.] A net of \$18,030 was transferred from the Field Notes account to the accounts of Senefeld's wife and three dependent children. [Filing No. 466 at ¶ 16.] The table below shows the amounts transferred to each account

Name of Account Holder	Net Amount Transferred from Field Notes
Mary Senefeld checking	\$12,794
Senefeld's Son's account	\$2,312
Senefeld's First Daughter's account	\$2,312
Senefeld's Second Daughter's account	\$612
TOTAL	\$18,030

C. The Cash Flowed To Senefeld's Wife's Account From The Dependent Children's Accounts

In total, 92.71% of the cash transferred from the Feumach and Field Notes accounts to Senefeld's dependent children's accounts was later transferred to Senefeld's wife's accounts.

[Filing No. 466 at ¶ 23.] The specific amounts follow:

1. The Son's Account

In total, Senefeld's dependent son's account received \$39,381.45 from the Feumach and Field Notes accounts between September 23, 2014 and December 21, 2016. [Filing No. 466 at ¶ 17.] A net total of \$33,438.44 was transferred from Senefeld's son's account to Senefeld's wife's checking and savings accounts. [Filing No. 466 at ¶ 18.]

2. The First Daughter's Account

In total, Senefeld's first daughter's account received \$39,351.45 from the Feumach and Field Notes accounts between September 26, 2015 and December 27, 2016. [Filing No. 466 at ¶ 19.] Senefeld's first daughter's account transferred a net total of \$32,973.62 to Senefeld's wife's checking account. [Filing No. 466 at ¶ 20.]

3. The Second Daughter's Account

Senefeld's second daughter's account received a net total of \$36,801.45 from the Feumach and Field Notes accounts. [Filing No. 466 at ¶ 21.] This account also received \$4,760 from Senefeld's first daughter's account. [Filing No. 466 at ¶ 21.] Senefeld's second daughter's account transferred a net total of \$40,702.84 to Senefeld's wife's checking account. [Filing No. 466 at ¶ 22.]

D. The Cash Transferred To Senefeld's Wife's Account Was Used To Pay For Expenses And Luxury Items For Senefeld And The Family

The cash transferred to Senefeld's wife's checking account was used to pay \$5,000 to Barnes and Thornburg, LLP in payment for legal services related to Senefeld's defense in this SEC matter. [Filing No. 466 at ¶ 25.] According to Senefeld, another \$6,000 was paid to Barnes and Thornburg, LLP for services related to this case using credit cards. [Filing No. 466 at fn. 3.]

Furthermore, between September 22, 2015 through December 20, 2016, the cash in Senefeld's wife's account, including cash received by the dependent children from Feumach and Field Notes and then transferred to Senefeld's wife's account, was used to pay a number of expenses that Senefeld was responsible for including the following:

Expense	Amount Paid
Credit Card Payments	\$216,758.45
Mortgage Payments	\$73,326.15
Insurance Payments	\$36,551.99
Utilities and Other Recurring Bills	\$33,070.99
Tax Payments	\$25,056.55
Private School Tuition Payments	\$19,032.35
TOTAL	\$403,796.48

In addition to these expenditures, cash transferred to Senefeld's wife's checking account either directly paid for or paid credit card bills incurred for the following purchases:

Date	Purchase Description	Amount	Payment Method
3/8/2016	Spring Break Vacation to Copper Mountain	\$ 2,087.17	Southwest credit card
3/22/2016	Lollapalooza tickets	\$ 1,034.72	Southwest credit card
5/4/2016	Bicycle purchase for Tobin's stolen bike	\$ 1,979.50	Southwest credit card
5/4/2016	Purchase of new dog	\$ 1,780.00	Mary Senefeld Checking Account
6/2/2016	Canoe Purchase	\$ 1,142.76	Southwest credit card
6/15/2016	Western River, summer vacation 2016	\$ 1,386.80	Southwest credit card
7/23/2016	Thrifty Car Rental, summer vacation 2016	\$ 1,394.22	Southwest credit card
8/3/2016	Apple computer purchase for son	\$ 1,198.43	Southwest credit card
8/4/2016	payment for Jeep for first daughter	\$ 6,900.00	Mary Senefeld Checking Account

[Filing No. 466 at ¶ 26.]

In sum, Senefeld generated, had access to, used, and/or benefitted from **\$524,412.14**.

[Filing No. 453 at ¶¶ 9-14.] This amount was received during September 3, 2015, to January 18, 2017. [Filing No. 453 at ¶ 14.] Senefeld has represented to this Court that he made less than \$45,000 a year, and therefore, any penalty against him should be small. [Filing No. 448 at 13.] Senefeld did not provide any evidence to support this \$45,000 a year assertion. One of the factors this Court can weigh in determining the amount of the civil penalty against Senefeld is "whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition." *SEC v. Tourre*, 4 F.Supp.3d at 593. The Court should not reduce any civil penalty against Senefeld because his financial condition is that he generated, had access to, used, and/or benefitted from at least \$524,412.14 during the pendency of this lawsuit.

Over \$425,000 was received through two companies established by Senefeld and his wife. Senefeld works for both of these companies. The cash from the two companies was transferred to accounts in the names of Senefeld's wife and his dependent children. The cash transferred to the dependent children's accounts is later transferred to Senefeld's wife's account. The cash in Senefeld's wife's account is then used to pay expenses that benefitted Senefeld such as his mortgage and utility bills. The cash transferred to Senefeld's wife's account was also used to pay legal bills incurred by Senefeld for this SEC matter. Additionally, the cash was used for luxury items such as a \$1,979.50 bike for Senefeld, a \$1,780 dog, \$1,034.72 Lollapalooza tickets, and family vacations. That the money was transferred to Senefeld's wife's account and his dependent children's accounts does not preclude this money from being considered as part of Senefeld's financial condition.

IV. THE REFERENCES TO THE DECLARATION SHOULD NOT BE STRICKEN

Senefeld's Motion [Filing No. 465] does not state a legal or factual basis on which to strike the references to the McShane Declaration on Senefeld's Finances. Senefeld's Motion does not demonstrate that even one fact or figure stated in the declaration is incorrect.

Additionally, Senefeld's Motion is untimely. On December 12, 2017, the SEC filed Plaintiff's Reply in Support of Motion for Disgorgement, Prejudgment Interest, and Civil Penalties Against Defendant Tobin Senefeld. [Filing No. 455.] In support of its reply, the SEC filed the Declaration of Craig L. McShane Regarding Tobin Senefeld's Finances. [Filing No. 453.] Senefeld waited until January 2, 2018 - three weeks - to file its 3-page motion to strike. That is untimely.

V. CONCLUSION

For all of the foregoing reasons, Plaintiff U.S. Securities and Exchange Commission respectfully requests that the Court deny Tobin Senefeld's Motion to Strike References to McShane Affidavit.

January 16, 2018

Respectfully submitted,

By: /s/Doressia L. Hutton
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Doressia L. Hutton (HuttonD@sec.gov)
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175 West Jackson Blvd., Suite 1450
Chicago, IL 60604
(312) 353-7390

*Attorneys for Plaintiff U.S. Securities and
Exchange Commission*

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2018, I served **PLAINTIFF'S RESPONSE TO TOBIN SENEFELD'S MOTION TO STRIKE REFERENCES TO MCSHANE AFFIDAVIT** on all counsel of record through the Court's ECF filing system.

/s/Doressia L. Hutton

EXHIBIT

1

Indiana Secretary of State
 Filing Date: 09/01/2015
 Effective Date: 09/01/2015

WMO

APPROVED
 AND
 FILED

Connie Lawson
 INDIAN SECRETARY OF STATE

CONNIE LAWSON
 SECRETARY OF STATE
 BUSINESS SERVICES DIVISION
 302 W. Washington Street, E018
 Indianapolis, IN 46204
 Telephone: (317) 232-6576



ARTICLES OF INCORPORATION

State Form 4159 (R16 / 5-14)
 Approved by State Board of Accounts, 2014

- INSTRUCTIONS:
1. Use 8 1/2" x 11" white paper for attachments.
 2. Present original and one copy to address in upper right corner of this form.
 3. Please TYPE or PRINT in INK.
 4. Please visit our office at www.sos.in.gov.
 5. Make check or money order payable to Secretary of State.

Indiana Code 23-1-21-2
FILING FEE: \$90.00

2015 SEP - 1 AM 11:08

ARTICLES OF INCORPORATION

The undersigned, desiring to form a Corporation (*hereinafter referred to as "Corporation"*) pursuant to the provisions of:
 Indiana Business Corporation Law Indiana Professional Corporation Act 1983, Indiana Code 23-1.5-1-1, et seq. (*Must include a Certificate of Registration.*)
 As amended, executes the following Articles of Incorporation:

ARTICLE I - NAME AND PRINCIPAL OFFICE

Name of Corporation (*The name must include the word Corporation, Incorporated, Limited, Company or an abbreviation thereof.*)
Feumach Air Airgead, Ltd.

Address of Principal Office (number and street)	City	State	ZIP code
6329 Glen Coe Drive	Indianapolis	IN	46260

ARTICLE II - REGISTERED OFFICE AND AGENT

Registered Agent: The name and street address of the Corporation's Registered Agent and Registered Office for service of process are:
 Name of Registered Agent (*Cannot be the corporation itself.*)
Tobin J. Senefeld

Address of Registered Office (<i>number and street</i>) (<i>PO Box not accepted</i>)	City	State	ZIP code
6329 Glen Coe Drive	Indianapolis	IN	46260

Required:
 By checking the box, the Signator(s) represents that the registered agent named in the application has consented to the appointment of registered agent.

ARTICLE III - AUTHORIZED SHARES

Number of shares the Corporation is authorized to issue: 1,000
If there is more than one class of shares, shares with rights and preferences, list such information as "Exhibit A."

ARTICLE IV - INCORPORATORS
 (INCORPORATORS MAY NEVER BE AMENDED)

NAME	NUMBER AND STREET OR BUILDING	CITY	STATE	ZIP CODE
Mary Ellen Senefeld	6329 Glen Coe Drive	Indianapolis	IN	46260
Tobin J. Senefeld	6329 Glen Coe Drive	Indianapolis	IN	46260

In Witness Whereof, the undersigned being all the incorporators of said Corporation sign these Articles of Incorporation and verify, subject to penalties of perjury, that the statements contained herein are true,
 this 31st day of August, 2015.

Signature of incorporator <i>Mary Ellen Senefeld</i>	Printed name Mary Ellen Senefeld
Signature of incorporator <i>Tobin J. Senefeld</i>	Printed name Tobin J. Senefeld
Signature of incorporator	Printed name

This instrument was prepared by: (*name*)
BGBC Partners, LLP
 Address (*number and street, city, state, and ZIP code*)
300 N. Meridian Street, Suite 1100, Indianapolis, IN 46204

Indiana Secretary of State
Packet: 2015090200608
Filing Date: 09/01/2015
Effective Date: 09/01/2015

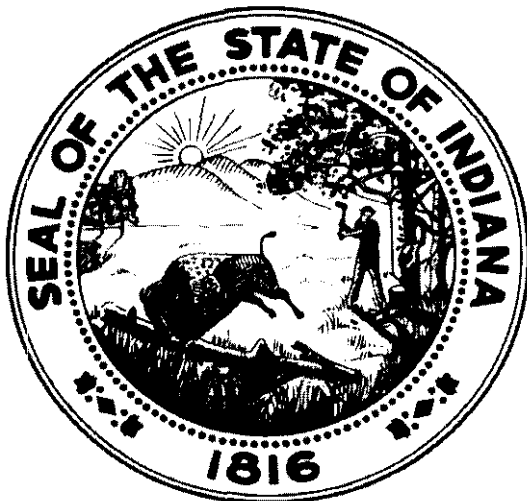
State of Indiana
Office of the Secretary of State

CERTIFICATE OF INCORPORATION
of
FEUMACH AIR AIRGEAD, LTD.

I, CONNIE LAWSON, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above For-Profit Domestic Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Business Corporation Law.

NOW, THEREFORE, with this document I certify that said transaction will become effective Tuesday, September 01, 2015.

In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, September 1, 2015.



Connie Lawson

CONNIE LAWSON,
SECRETARY OF STATE

EXHIBIT

2

Indiana Secretary of State
 Filing Date: 09/23/2015
 Effective Date: 09/23/2015

WMC



ARTICLES OF INCORPORATION

State Form 4159 (R16 / 5-14)
 Approved by State Board of Accounts, 2014

APPROVED AND FILED

Connie Lawson
 SECRETARY OF STATE

CONNIE LAWSON
 SECRETARY OF STATE
 BUSINESS SERVICES DIVISION
 302 W. Washington Street, E018
 Indianapolis, IN 46204
 Telephone: (317) 232-8576

- INSTRUCTIONS:
1. Use 8 1/2" x 11" white paper for attachments.
 2. Present original and one copy to the Secretary of State in upper right corner of this form.
 3. Please TYPE or PRINT in INK.
 4. Please visit our office at www.sos.in.gov.
 5. Make check or money order payable to Secretary of State.

2015 SEP 23 PM 1:58

Indiana Code 23-1-21-2
FILING FEE: \$90.00

ARTICLES OF INCORPORATION

The undersigned, desiring to form a Corporation (*hereinafter referred to as "Corporation"*) pursuant to the provisions of:

- Indiana Business Corporation Law Indiana Professional Corporation Act 1983, Indiana Code 23-1.5-1-1, et seq. (*Must include a Certificate of Registration.*)

As amended, executes the following Articles of Incorporation:

ARTICLE I - NAME AND PRINCIPAL OFFICE

Name of Corporation (*The name must include the word Corporation, Incorporated, Limited, Company or an abbreviation thereof.*)

Field Notes, Ltd.

Address of Principal Office (number and street)	City	State	ZIP code
6329 Glen Coe Drive	Indianapolis	IN	46260

ARTICLE II - REGISTERED OFFICE AND AGENT

Registered Agent: The name and street address of the Corporation's Registered Agent and Registered Office for service of process are:

Name of Registered Agent (*Cannot be the corporation itself.*)

Tobin J. Senefeld

Address of Registered Office (<i>number and street</i>) (<i>PO Box not accepted</i>)	City	State	ZIP code
6329 Glen Coe Drive	Indianapolis	IN	46260

Required:

- By checking the box, the Signator(s) represents that the registered agent named in the application has consented to the appointment of registered agent.

ARTICLE III - AUTHORIZED SHARES

Number of shares the Corporation is authorized to issue: 1,000.

If there is more than one class of shares, shares with rights and preferences, list such information as "Exhibit A."

ARTICLE IV - INCORPORATORS
(INCORPORATORS MAY NEVER BE AMENDED)

NAME	NUMBER AND STREET OR BUILDING	CITY	STATE	ZIP CODE
Mary Ellen Senefeld	6329 Glen Coe Drive	Indianapolis	IN	46260
Tobin J. Senefeld	6329 Glen Coe Drive	Indianapolis	IN	46260

In Witness Whereof, the undersigned being all the incorporators of said Corporation sign these Articles of Incorporation and verify, subject to penalties of perjury, that the statements contained herein are true,

this 31st day of August, 2015.

Signature of incorporator 	Printed name Mary Ellen Senefeld
Signature of incorporator 	Printed name Tobin J. Senefeld
Signature of incorporator	Printed name

This instrument was prepared by: (*name*)

BGBC Partners, LLP

Address (*number and street, city, state, and ZIP code*)

300 N. Meridian Street, Suite 1100, Indianapolis, IN 46204

Indiana Secretary of State
Packet: 2015092500413
Filing Date: 09/23/2015
Effective Date: 09/23/2015

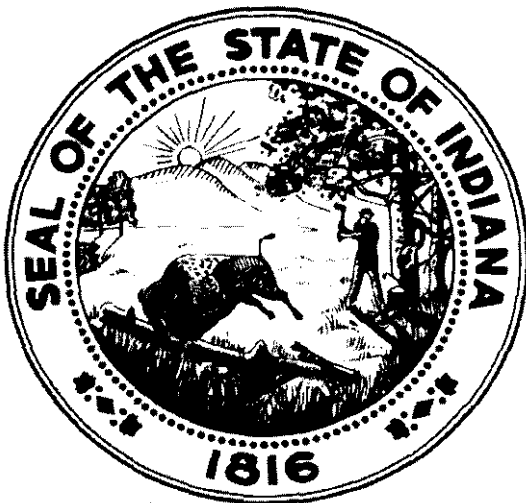
State of Indiana
Office of the Secretary of State

CERTIFICATE OF INCORPORATION
of
FIELD NOTES, LTD.

I, CONNIE LAWSON, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above For-Profit Domestic Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Business Corporation Law.

NOW, THEREFORE, with this document I certify that said transaction will become effective Wednesday, September 23, 2015.

In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, September 23, 2015.



Connie Lawson

CONNIE LAWSON,
SECRETARY OF STATE