

Approved: Mark Lanpher  
MARK LANPHER  
Assistant United States Attorney

Before: HONORABLE FRANK MAAS  
United States Magistrate Judge  
Southern District of New York

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : SEALED  
 : COMPLAINT  
 v. : Violation of 18 U.S.C.  
 : §§ 1349, 505, and 2  
HUGH ZUBER, :  
 :  
 Defendant. : COUNTIES OF OFFENSE:  
 : NEW YORK AND BRONX  
- - - - - X

STATE OF NEW YORK ) : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

STEVEN WINTONICK, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

1. From at least in or about April 2006, up to and including at least in or about March 2009, in the Southern District of New York and elsewhere, HUGH ZUBER, the defendant, together with others known and unknown, unlawfully, willfully, and knowingly combined, conspired, confederated, and agreed together and with each other to violate the laws of the United States, to wit, to violate Sections 1343 and 1341 of Title 18, United States Code.

2. It was a part and an object of the conspiracy that HUGH ZUBER, the defendant, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing

such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

3. It was further a part and an object of the conspiracy that HUGH ZUBER, the defendant, and others known and unknown, unlawfully, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice and attempting so to do, would and did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and would and did take and receive therefrom, such matters and things, and would and did knowingly cause to be delivered by mail according to the direction thereon, and at the place at which it was directed to be delivered by the person to whom it was addressed, such matters and things, in violation of Title 18, United States Code, Section 1341.

(Title 18, United States Code, Section 1349.)

#### COUNT TWO

4. In or about May 2008, in the Southern District of New York and elsewhere, HUGH ZUBER, the defendant, unlawfully, willfully and knowingly, forged the signature of a judge, register, and other officer of a court of the United States, and of a Territory thereof, and forged and counterfeited the seal of such court, and knowingly concurred in using such forged and counterfeited signature, for the purpose of authenticating a proceeding and document, to wit, ZUBER gave a victim ("Victim-1") a bankruptcy document called an "Order Confirming Plan," which had purportedly been executed by a United States Bankruptcy Judge for the Eastern District of New York, knowing that the document was fraudulent and that the judge's electronic signature thereon was a forgery, for the purpose of convincing the recipient of the document that Alana Property Management LLC had filed for and completed a bankruptcy proceeding in the United States Bankruptcy Court for the Eastern District of New York when, in fact, it had not.

(Title 18, United States Code, Sections 505 and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

5. I am a Special Agent of the Federal Bureau of Investigation. I have personally investigated the facts and

circumstances set forth below. In the course of conducting this investigation into mortgage fraud, I have examined reports and records of various financial institutions and other entities. I have also interviewed law enforcement officers and other witnesses. This affidavit is being submitted for the limited purpose of establishing probable cause, and does not include all of the facts that I have learned during my investigation. Where the contents of documents and the actions and statements of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

6. In the course of my investigation, I have identified a scheme to defraud that I believe was perpetrated by HUGH ZUBER, the defendant, together with others known and unknown, to defraud two different individuals ("Victim-1" and "Victim-2") and lending institutions out of hundreds of thousands of dollars worth of money and property. Specifically, through his scheme, ZUBER and others (1) caused Victim-1 to sell property located in the Bronx to an entity controlled by a co-conspirator of ZUBER ("CC-1")<sup>1</sup> for significantly less than it was worth and on terms that were materially misrepresented by ZUBER; (2) caused Victim-2 to sell property located in Rockland County, New York to a co-conspirator of ZUBER ("CC-2") for significantly less than it was worth and on terms that were materially misrepresented by ZUBER; and (3) caused Interbay Funding LLC and Silver Hill Financial LLC to make mortgage loans to CC-1 and CC-2, at terms that they otherwise would not have funded, through misrepresentations regarding the transactions with Victim-1 and Victim-2.

Fraud in the Sale of  
2538 Creston Avenue, Bronx, New York, 10468

7. From conversations with Victim-1, as corroborated by my review of public property records, I have learned the following:

a. In or about 1991, Victim-1 purchased a building located at 2538 Creston Avenue, Bronx, New York, 10468, (the "Creston Property") for approximately \$200,000.

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<sup>1</sup>Based upon my review of publicly available documents, together with credit card applications of the defendant and CC-1, I learned that HUGH ZUBER, the defendant, is the brother of CC-1. I further learned that ZUBER is currently employed as an attorney in the Office of the Corporation Counsel for the City of New York.

The Creston Property contained approximately 11 rental units, and Victim-1 intended to use it for investment purposes.

b. In or about 2006, Victim-1 was interested in selling the Creston Property, which he believed was then worth close to \$1 million, in order to fund his planned retirement. Accordingly, Victim-1 retained HUGH ZUBER, the defendant, who had represented Victim-1 in a prior legal matter,<sup>2</sup> to act as his lawyer in facilitating the sale.

c. Shortly thereafter, ZUBER informed Victim-1 that he had identified an interested purchaser of the property, Alana Property Management LLC ("Alana").

8. Based on my review of incorporation records obtained from New York State, I learned that Alana was formed in or about April 2006, and that CC-1, who is ZUBER's sister, was its managing member. I further learned that HUGH ZUBER, the defendant, prepared the Articles of Organization for Alana.

9. According to Victim-1, ZUBER never disclosed to Victim-1 either the fact that he was related to CC-1, or that he had a business interest in Alana. To the contrary, ZUBER made it appear to Victim-1 as though his relationship with Alana was arms-length.

10. From further conversations with Victim-1, and from reviewing documents provided to me by Victim-1 and documents obtained through public database searches, I learned the following:

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<sup>2</sup>According to Victim-1, and as corroborated by documents provided to me by Victim-1, in or about 2005, Victim-1 retained HUGH ZUBER, the defendant, to act as his attorney in connection with a civil lawsuit between Victim-1 and a then-tenant of the Creston Property (the "Tenant"). In or about April 2006, Victim-1 and the Tenant reached a negotiated settlement of the outstanding lawsuit, whereby the Tenant agreed to pay \$104,000 to Victim-1 in full satisfaction of all claims. From a review of bank records for an account maintained by ZUBER in the name "Hugh A Zuber PC," I have learned that on or about April 21, 2006, ZUBER deposited into his account a \$104,000 check from the Tenant. From a further review of those bank records, and according to Victim-1, I have learned that those funds were not subsequently provided by ZUBER to Victim-1 as expected, but, rather, were used by ZUBER to pay other individuals.

a. On or about May 31, 2006, Victim-1 signed a contract of sale with Alana, which was signed by CC-1, in which Victim-1 agreed to sell the Creston Property to Alana for approximately \$950,000.

b. Sometime thereafter, HUGH ZUBER, the defendant, proposed to Victim-1 that, rather than sell the Creston Property for the entire \$950,000 up front, at the time of closing, Victim-1 could accept a portion of that sum plus an interest bearing note for the difference. Specifically, ZUBER proposed to Victim-1 that Alana pay for the Creston Property by providing at closing \$400,000 in cash, plus a 10-year note for the balance (\$550,000), which would pay Victim-1 an interest rate of 8% per year.

c. Based in part on ZUBER's representations to Victim-1 that this was a good deal, Victim-1 agreed to ZUBER's proposal.

d. Victim-1 sold the Creston Property to Alana on or about February 22, 2007.

e. At the time of closing, Victim-1 understood that he was to receive approximately \$400,000, plus monthly payments of nearly \$7,000 for the next ten years, representing payments on his 10-year note to Alana.

11. At or around the time of closing, ZUBER provided Victim-1 with a "Mortgage and Security Agreement" between Alana and Victim-1, among other documents, which appeared to have been executed on Alana's behalf by CC-1. Victim-1 explained that he understood these documents to identify the outstanding balance he was owed by Alana for Victim-1's sale of the Creston Property. Indeed, based on my review of these documents, which were provided to me by Victim-1, they purport to represent a 10-year, \$550,000 note payable by Alana to Victim-1, to be secured by a mortgage on the Creston Property. However, when I conducted a search of public databases for the City of New York, I could find no such lien recorded against the title of the Creston Property.

12. Based upon my review of bank documents, I have learned that, in order to fund its February 22, 2007 purchase of the Creston Property from Victim-1, Alana obtained a mortgage loan from Interbay Funding LLC for \$705,000. From my review of the mortgage file maintained by the lender in connection with that loan, I have learned the following:

a. According to the mortgage application, Alana was planning to purchase the Creston Property from Victim-1 for \$955,000, which purchase was to be funded, in part, by the \$705,000 mortgage from Interbay Funding LLC and, in part, by \$238,750 in "earnest money" (i.e., a down payment).

b. According to the settlement statement completed in connection with the closing of that loan, after closing and other costs had been accounted for, Victim-1 was to receive \$881,702.25 in cash at the closing, in exchange for the Creston Property.

c. The mortgage application and settlement statement submitted to Interbay Funding contain numerous false statements and material omissions. For example, the application and settlement statement failed to disclose that Alana was only planning to pay Victim-1 \$400,000 in cash at closing. The mortgage application and settlement statement falsely indicated the actual amount of money going to the seller, Victim-1, in that it stated that Victim-1 is to receive the entirety of the mortgage loan funds, when, in fact, Alana had purportedly agreed with Victim-1 to pay Victim-1 only \$400,000 up front plus a 10-year note secured by the Creston Property. Moreover, the mortgage application and settlement statement also falsely stated that \$238,750 was paid in a down payment to Victim-1 separate and independent of the mortgage funds being provided by Interbay.

13. In the course of my investigation, I have reviewed bank records for the individual that served as settlement agent for the \$705,000 mortgage loan obtained by Alana in connection with its purchase of the Creston Property. Based upon my review of those records, I have learned that on or about February 23, 2007, the settlement agent received an interstate wire transfer in the amount of \$700,241.02, representing funding for the mortgage, less certain costs. From those funds, the settlement agent issued only one check to Victim-1, in the amount of \$396,770.34.<sup>3</sup> However, in addition to several checks issued to pay closing costs that were reflected on the settlement statement, the settlement agent issued the following three checks, representing costs not reflected on the settlement

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<sup>3</sup>From a review of Victim-1's bank records, I have learned that, out of these funds, Victim-1 paid HUGH ZUBER, the defendant, approximately \$55,000 in attorney's fees in or about March 2007.

statement and not disclosed to either Victim-1 or Interbay Funding: (1) a \$124,000 to USAA with CC-1's name in the memo line (the "USAA Check"); (2) a \$37,333.63 check to Home Depot with CC-1's name in the memo line (the "Home Depot Check"); and (3) a \$53,750 check to Bank of America with CC-1's name in the memo line (the "Bank of America Check").

14. From my review of bank records and my conversations with bank representatives, I have learned that the USAA Check and the Bank of America Check were each deposited into an account in the name of CC-1 to satisfy debts owed by CC-1.

15. Based upon my conversations with Victim-1 and from my review of bank documents, I learned the following regarding events that took place after Victim-1's sale of the Creston Property to Alana:

a. Following the February 22, 2007 closing, and despite the fact that he had been Victim-1's attorney in the Creston Property sale, HUGH ZUBER, the defendant, began to make payments of approximately \$6,673 per month to Victim-1, purportedly in satisfaction of Alana's mortgage owed to Victim-1. These monthly payments continued for approximately six months. At the same time, HUGH ZUBER, the defendant, made multiple mortgage payments to Interbay Funding LLC, on Alana's behalf, from a bank account held in the name "Hugh Zuber PC."

b. In or about late 2007 and/or early 2008, after the payments to Victim-1 had stopped, Victim-1 confronted HUGH ZUBER, the defendant, and demanded an explanation for why Victim-1 was no longer receiving payments on the \$550,000 debt Victim-1 believed he was owed by Alana.

16. According to Victim-1, and as corroborated by documents provided to me by Victim-1, when confronted with the failure to make payments, HUGH ZUBER, the defendant, took fraudulent steps on several occasions throughout 2008 to make it appear as though he and Alana would continue to make the required payments and to lull Victim-1 into a false sense of security. For example:

a. ZUBER told Victim-1 that he would file suit on Victim-1's behalf against Alana. As evidence, ZUBER provided Victim-1 with numerous documents, purporting to be court documents from the New York State Supreme Court, Bronx County, reflecting a summons and complaint filed on Victim-

1's behalf against Alana and others. These documents were dated February 2008.

b. ZUBER told Victim-1 that the payments had ceased because Alana had filed for bankruptcy. As evidence, in a meeting with ZUBER in the Corporation Counsel's office for the City of New York at 100 Church Street, New York, New York, ZUBER provided Victim-1 with numerous documents which purported to be court documents from Alana's bankruptcy filings with United States Bankruptcy Court for the Eastern District of New York. Among other things, these court documents purported to show that Alana had filed for bankruptcy in or about April 2008, and that a revised payment schedule had been established by the court for the payments owing to Victim-1 from Alana. In particular, one such document was titled an "Order Confirming Plan," and bore the purported electronic signature of United States Bankruptcy Judge Carla E. Craig. This document, which was dated May 5, 2008, purported to confirm a plan whereby Alana would be required to pay specified amounts to Victim-1, in full satisfaction of its debt, notwithstanding that these amounts were significantly less than the \$6,673 per month that Victim-1 was initially due to receive.

17. Based upon a review of court records, I have learned the following:

a. HUGH ZUBER, the defendant, did not file suit on behalf of Victim-1 against Alana in or about February 2008. To the contrary, the documents ZUBER provided Victim-1 appear to have been fraudulently created. Indeed, I have examined the case number on the purported summons and complaint, and learned that the case number is associated with a different case in New York State Supreme Court. I have examined certain filings from that case, and learned that the language in the text of the documents provided to Victim-1 is nearly identical to the language in the filings from the actual case.

b. Alana never filed for bankruptcy in United States Bankruptcy Court for the Eastern District of New York. To the contrary, the documents ZUBER provided Victim-1 appear to have been fraudulently created. Indeed, I have examined the case number listed on the purported "Order Confirming Plan." I have learned that the case number reflects an actual bankruptcy case, before the Honorable Carla E. Craig, wherein Judge Craig executed an "Order Confirming Plan" on October 23, 2003 (the "Actual Bankruptcy

Order"). The language in the text of the "Order Confirming Plan" that ZUBER provided to Victim-1 is nearly identical to that of the Actual Bankruptcy Order, and both bear an electronic signature for Judge Craig.

18. According to Victim-1, in or about summer of 2008, Victim-1 personally went to the United States Bankruptcy Court for the Eastern District of New York and learned that the bankruptcy documents that HUGH ZUBER, the defendant, had provided to Victim-1 were fraudulent. Victim-1 then confronted ZUBER with that fact, and ZUBER indicated that he was surprised. ZUBER further told Victim-1 that he had simply received the bankruptcy documents from Alana's lawyer.

19. On or about December 22, 2008, at the direction of FBI agents, Victim-1 met with HUGH ZUBER, the defendant, for approximately 30 minutes, and recorded the meeting. Based upon my review of the recording of that meeting, I learned the following, among other things:

a. Victim-1 told ZUBER that he wanted an explanation for all that had gone wrong with his sale of the Creston Property.

b. ZUBER told Victim-1: "I should have just [done] your transaction, and then let you go do the real estate on your own. Okay? I should have, and I didn't. And that was my mistake." He continued: "I didn't tell you any of this before, I'm just going to tell you the truth. . . about four years ago, in 2004, I had a gambling problem. . . during that time, you came into my life. . . ."

c. ZUBER then told Victim-1, in sum and substance, that he had "permitted" the buyer of the Creston Property to deduct \$300,000 from the sales price of the home, without informing Victim-1. Specifically, he stated: "The people who were buying the place, they said they had to do repair work [to the property]. . . . That money was taken off from the closing price."

d. ZUBER further told Victim-1 that because he had "permitted" Alana to "deduct" money from the amount it was paying Victim-1, the money he was paying Victim-1 after the closing was coming directly from ZUBER, rather than from Alana. He explained, "I have no interest in the building. . . I was paying you the money because I made the mistake early on."

e. ZUBER further told Victim-1 that he was paying the money Alana had promised to pay Victim-1 up until he lost his job at the law firm where he previously worked, and that he would try to make continued payments to Victim-1.

f. At no point during the meeting did ZUBER disclose to Victim-1 his relationship with Alana, or the fact that in excess of \$210,000 at closing had been diverted to paying outstanding debts held by CC-1, rather than to pay for any repair work on the Creston Property.

Fraud in the Sale of  
35 Rose Avenue, Spring Valley, New York 10977

20. From conversations with Victim-2, as corroborated by my review of public property records, I have learned the following:

a. In or about 1973, Victim-2 purchased a building located at 35 Rose Avenue, Spring Valley, New York 10977 (the "Rose Avenue Property") for approximately \$18,000. In or about 2006, Victim-2 was using the Rose Avenue Property as a six-unit rental property.

b. In or November 2006, Victim-2 became interested in selling the Rose Avenue Property, which he believed was then worth significantly more than he had paid for it. Accordingly, Victim-2 retained HUGH ZUBER, the defendant, to act as his lawyer in facilitating the sale.

c. Shortly thereafter, ZUBER informed Victim-2 that he had identified an interested purchaser of the property, a co-conspirator not named as a defendant herein ("CC-2").

21. Based upon my review of documents provided to me by Victim-2, I learned that Victim-2 executed a contract of sale (dated January 2007) to sell the Rose Avenue Property to CC-2 for \$625,000 (with \$62,500 due at the time of contract, and the balance of \$562,500 due at closing). According to Victim-2, HUGH ZUBER, the defendant, assisted in negotiating the sale on Victim-2's behalf. However, the closing of the transaction did not occur until in or about July 2007.

22. Based on my review of bank records, I have learned that in or about June 2007, HUGH ZUBER, the defendant, and CC-2 opened a bank account as co-signers at HSBC bank in the name "Rose Avenue LLC." According to Victim-2, however, prior to

closing, ZUBER never disclosed to Victim-2 the fact that he had a business relationship with CC-2. To the contrary, ZUBER made it appear to Victim-2 as though his relationship with CC-2 was arms-length.

23. From further conversations with Victim-2, and from reviewing documents provided to me by Victim-2 and documents obtained through public database searches, I have learned the following:

a. Sometime before the scheduled closing of Victim-2's sale of the Rose Avenue Property, HUGH ZUBER, the defendant, proposed to Victim-2 that, rather than sell the house for the entire \$625,000 up front, at the time of closing, Victim-2 could accept a portion of that sum plus an interest bearing note. Specifically, ZUBER informed Victim-2 that CC-2 had been unable to secure the full financing required to purchase the Rose Avenue Property, but would be able to pay for it by providing to Victim-2 a five-year note for \$200,000, which would pay interest of 6.5% per year, with the balance of the purchase price due to Victim-2 at closing.

b. Victim-2 agreed to ZUBER's proposal, and sold the Rose Avenue Property to CC-2 on or about July 17, 2007.<sup>4</sup>

c. At the time of closing, Victim-2 understood that he was to receive approximately \$425,000 (less closing costs), plus monthly payments representing payments on his five-year note to CC-2.

24. Based upon my review of bank documents, I have learned that, in order to fund his July 17, 2007 purchase of the

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<sup>4</sup>At or around the time of closing, ZUBER provided Victim-2 with a Note, among other documents, which appeared to have been executed by CC-2. Victim-2 explained to me that he understood these documents to represent the outstanding balance he was owed by CC-2 for his sale of the Rose Avenue Property. Indeed, based on my review of these documents, they purport to represent a five-year \$200,000 note payable by CC-2 to Victim-2, to be secured by the Rose Avenue Property. Victim-2 provided me with one document, executed by ZUBER as a notary, purporting to record the mortgage against the Rose Avenue Property. However, when I conducted a search of public databases for the State of New York, I could find no such lien recorded against the title of the Rose Avenue Property.

Rose Avenue Property from Victim-2, CC-2 obtained a mortgage loan from Silver Hill Financial LLC for \$500,000. From my review of the mortgage file maintained by the lender in connection with that loan, I have learned that the fact that CC-2 was, in fact, only planning to pay Victim-2 a portion of the purchase price at closing was not disclosed in the mortgage application to Silver Hill Financial LLC; nor was the fact that CC-2 was purportedly agreeing with Victim-2 to fund a 5-year note in connection with its purchase.

25. In the course of my investigation, I have reviewed copies of checks written by the settlement agent for the July 17, 2007 transaction involving the disbursement of the proceeds of the \$500,000 mortgage obtained by CC-2 in connection with his purchase of the Rose Avenue Property. Based upon my review of those records, I have learned that on or about July 17, 2007, the settlement agent issued only one check to Victim-2, in the amount of \$378,181.01. However, the settlement agent also issued the following two checks, among others: (1) a \$31,250 check to Zuber Realty Corp.; and (2) a \$40,000 check to 35 Rose Avenue, LLC.

26. Based upon my conversations with Victim-2 and from my review of letters and checks provided to me by Victim-2, I learned the following regarding events that took place after Victim-2's sale of the Rose Avenue Property to CC-2:

a. Following the July 17, 2007 closing, HUGH ZUBER, the defendant, began to make payments of approximately \$1,000 per month to Victim-2, purportedly in satisfaction of CC-2's mortgage owed to Victim-2. These monthly payments continued for approximately eight months, between September 2007 and May 2008, and then ceased.<sup>5</sup> ZUBER made these payments by sending checks and money orders to Victim-2 primarily via the United Parcel Service, a private commercial mail carrier.

b. In or about September 2008, after payments from ZUBER had ceased, Victim-2 notified CC-2 by letter that CC-2 was in default on his mortgage owed to Victim-2, and requested payment of approximately \$8,000 in past-due payments.

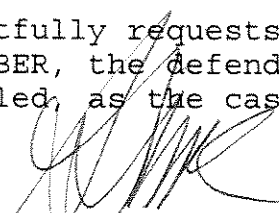
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<sup>5</sup>At the same time, multiple mortgage payments were made to Silver Hill Financial LLC, on CC-2's behalf, from a bank account held in the name "35 Rose Ave," on which HUGH ZUBER, the defendant, was a co-signer with CC-2.


c. In or about September 2008, Victim-2 received a letter in response from CC-2, denying that he had any mortgage with Victim-2 or that he owed CC-2 any money.

27. Victim-2 informed me that, shortly after he received CC-2's letter claiming that he owed no mortgage to Victim-2, HUGH ZUBER, the defendant, contacted Victim-2. According to Victim-2, ZUBER stated, in sum and substance, and in part, that ZUBER had "messed up" and that CC-2 knew nothing about the \$200,000 mortgage owed to Victim-2. According to Victim-2, ZUBER also stated that he would try to make it up to Victim-2 by making payments and/or providing property in place of the money that Victim-2 was owed. According to Victim-2, no such subsequent payments have been made.

WHEREFORE, deponent respectfully requests that a warrant issue for the arrest of HUGH ZUBER, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.

  
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STEVEN WINTONICK  
SPECIAL AGENT  
FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this  
29th day of May, 2009

  
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HONORABLE FRANK MAAS  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK