

Approved:

Andrew L. Fish

ANDREW L. FISH
REED M. BRODSKY
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Assistant United States Attorneys

Before: HONORABLE THEODORE H. KATZ
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA	:	SEALED
	:	<u>COMPLAINT</u>
-v.-	:	Violations of
ZVI GOFFER,	:	18 U.S.C. § 371;
ARTHUR CUTILLO,	:	15 U.S.C. §§ 78j(b),
JASON GOLDFARB,	:	78ff; 17 C.F.R. §§
CRAIG DRIMAL,	:	240.10b-5, 240.10b5-
EMANUEL GOFFER,	:	2
MICHAEL KIMELMAN, and	:	
DAVID PLATE,	:	
	:	
Defendants.	:	COUNTY OF OFFENSE:
	:	NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

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

COUNT ONE
(Conspiracy)

1. From at least in or about April 2007 up to and including at least in or about May 2008, in the Southern District of New York and elsewhere, ZVI GOFFER; ARTHUR CUTILLO, JASON GOLDFARB, CRAIG DRIMAL, EMANUEL GOFFER, MICHAEL KIMELMAN, and DAVID PLATE, the defendants, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff,

and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

2. It was a part and an object of the conspiracy that ZVI GOFFER, ARTHUR CUTILLO, JASON GOLDFARB, CRAIG DRIMAL, EMANUEL GOFFER, MICHAEL KIMELMAN, and DAVID PLATE, the defendants, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Overt Acts

3. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about August 7, 2007, ZVI GOFFER, the defendant, caused the purchase of 75,000 shares of 3Com Corporation ("3Com") stock.

b. On or about August 7, 2007, CRAIG DRIMAL, the defendant, caused the purchase of 525,000 shares of 3Com stock.

c. On or about August 7, 2007, EMANUEL GOFFER, the defendant, caused the purchase of 30,000 shares of 3Com stock.

d. On or about August 7, 2007, MICHAEL KIMELMAN, the defendant, caused the purchase of 15,000 shares of 3Com stock.

e. On or about August 7, 2007, DAVID PLATE, the defendant, caused the purchase of 65,000 shares of 3Com stock.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH SIX

(Securities Fraud)

4. On or about the dates set forth below, in the Southern District of New York and elsewhere, the defendants set forth below unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, the defendants set forth below caused the listed securities transactions to be executed based on material, nonpublic information.

COUNT	DEFENDANT	DATE	TRANSACTION
TWO	ZVI GOFFER ARTHUR CUTILLO JASON GOLDFARB	8/7/2007	Purchase of 75,000 shares of 3Com stock
THREE	CRAIG DRIMAL	8/7/2007	Purchase of 525,000 shares of 3Com stock
FOUR	EMANUEL GOFFER	8/7/2007	Purchase of 30,000 shares of 3Com stock
FIVE	MICHAEL KIMELMAN	8/7/2007	Purchase of 15,000 shares of 3Com stock
SIX	DAVID PLATE	8/7/2007	Purchase of 65,000 shares of 3Com stock

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and Title 18, United States Code, Section 2.)

The basis for my knowledge and the foregoing charge is, in part, as follows:

5. I have been a Special Agent with the FBI for approximately seven years. I am currently assigned to a squad

responsible for investigating violations of the federal securities laws and related offenses. I have participated in numerous investigations of such offenses, and I have made and participated in making arrests of numerous individuals for participating in such offenses.

6. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including: (a) information provided to me by the United States Securities and Exchange Commission (the "SEC"); (b) business records and other documents obtained from various entities; (c) publicly available documents; (d) analysis of court authorized pen register records and telephone toll records; (e) information obtained from cooperating sources, including consensually recorded conversations between cooperating sources and others; (f) conversations with other FBI agents and my review of reports prepared by other FBI agents; and (g) court-authorized wiretaps on the following cellular telephones: (1) a cellular telephone used by CRAIG DRIMAL, the defendant (the "DRIMAL CELLPHONE"), over which wire communications were intercepted between on or about November 16, 2007, and on or about December 15, 2007; and between on or about December 17, 2007, and on or about January 15, 2008; (2) a cellular telephone used by ZVI GOFFER, the defendant (the "GOFFER CELLPHONE"), over which wire and electronic communications were intercepted between on or about December 11, 2007, and on or about January 9, 2008; between on or about January 10, 2008, and on or about February 8, 2008; between on or about February 11, 2008, and on or about April 9, 2008; and between on or about April 10, 2008, and on or about May 9, 2008; and (3) a cellular telephone used by JASON GOLDFARB, the defendant (the "GOLDFARB CELLPHONE"), over which wire communications were intercepted between on or about February 7, 2008, and on or about March 6, 2008. Because this affidavit is prepared for limited purposes, I have not set forth each and every fact I have learned in connection with this investigation. Where conversations and events are referred to herein, they are related in substance and in part. Where figures, calculations and dates are set forth herein, they are approximate.

Relevant Entities and Individuals

7. Based on information obtained from the SEC, documents publicly filed with the SEC, records obtained from the Financial Industry Regulatory Authority ("FINRA"), and information from certain cooperating sources, I am aware of the following:

- a. At all times relevant to this Complaint, The

Schottenfeld Group LLC ("Schottenfeld") was a broker dealer with offices in New York, New York.

b. At all times relevant to this Complaint, the Galleon Group ("Galleon"), based in New York, New York, operated a family of hedge funds.

c. ZVI GOFFER, the defendant, is an individual who worked at Schottenfeld from in or about January 2007 until in or about December 2007. From in or about January 2008 to in or about August 2008, ZVI GOFFER worked at Galleon. In or about 2008, ZVI GOFFER started operating a trading firm called Incremental Capital.

d. At all times relevant to this Complaint, ARTHUR CUTILLO, the defendant, was an attorney at the law firm of Ropes & Gray LLP ("Ropes & Gray"), in New York, New York.

e. At all times relevant to this Complaint, JASON GOLDFARB, the defendant, was an attorney who resided in New York, New York.

f. At all times relevant to this Complaint, CRAIG DRIMAL, the defendant, was an individual who worked in Galleon's office space, although he was not employed by Galleon.

g. EMANUEL GOFFER, the defendant, worked at Spectrum Trading LLC, a trading firm, from in or about January 2007, to in or about November 2007. EMANUEL GOFFER is currently associated with Incremental Capital.

h. MICHAEL KIMELMAN, the defendant, is an individual who is currently associated with Incremental Capital.

i. DAVID PLATE, the defendant, worked at Schottenfeld from in or about June 2006 through in or about March 2008. PLATE is currently associated with Incremental Capital.

j. CS-1 is an individual who, while working at a hedge fund, executed securities transactions based on material, nonpublic information. CS-1 has agreed to plead guilty to charges of conspiracy and securities fraud in connection with this conduct and to cooperate with the Government in the hope of receiving a reduced sentence. CS-1 has been cooperating with the FBI since in or about July 2007. The information CS-1 has provided has been corroborated by, among other things, trading records, pen register data, and telephone records.

General Overview

8. As set forth in more detail below, there is probable cause to believe that ZVI GOFFER, the defendant, operated an insider trading network, through which ZVI GOFFER would obtain material, nonpublic information (the "Inside Information") regarding certain public companies' planned merger and acquisition activity. This Inside Information had been disclosed in violation of duties of trust and confidence. ZVI GOFFER would then (1) use the information to execute profitable securities transactions and (2) provide the Inside Information to other conspirators so they could execute profitable securities transactions. There is probable cause to believe that ZVI GOFFER paid sources for Inside Information, and that ZVI GOFFER provided coconspirators with prepaid cellular telephones so that they could communicate in a manner that reduced the chances of detection by law enforcement.

9. There is probable cause to believe that ZVI GOFFER, the defendant, had several sources for Inside Information, including ARTHUR CUTILLO, the defendant. There is probable cause to believe that CUTILLO misappropriated material, nonpublic information from his employer, Ropes & Gray, regarding certain mergers and acquisition transactions in connection with which Ropes & Gray provided legal services. CUTILLO provided this Inside Information to JASON GOLDFARB, the defendant, who then provided the Inside Information to ZVI GOFFER. As set forth below, there is probable cause to believe that ZVI GOFFER and his coconspirators obtained and used for securities transactions Inside Information concerning mergers and acquisitions in which Ropes & Gray played a role, including the following:

a. The acquisition of Avaya, Inc. ("Avaya"), by Silver Lake and TPG Capital. On or about June 4, 2007, Avaya announced that it has entered into a definitive merger agreement to be acquired by Silver Lake and TPG Capital. The announcement stated that, under the terms of the transactions, "Avaya shareholders will receive \$17.50 in cash for each share of Avaya common stock they hold, representing a premium of approximately 28 percent over Avaya's closing share price of \$13.67 on May 25, 2007." According to the announcement, Ropes & Gray acted as legal advisor to Silver Lake and TPG Capital in connection with this transaction.

b. The acquisition of 3Com by Bain Capital Partners, LLC ("Bain Capital"). On or about September 28, 2007, 3Com announced that it had signed a definitive merger agreement to be acquired by affiliates of Bain Capital Partners, LLC. 3Com announced that "[u]nder the terms of the agreement, shareholders

will receive \$5.30 in cash for each share of 3Com common stock they hold. This represents a premium of approximately 44 percent over 3Com's closing price of \$3.68 on September 27, 2007." According to the announcement, Ropes & Gray acted as legal advisor to Bain Capital in connection with this transaction.

c. The acquisition of Axcan Pharma, Inc. ("Axcan"), by TPG Capital and its affiliates. On or about November 29, 2007, Axcan announced that it had entered into an agreement for Axcan to be acquired by TPG Capital and its affiliates in an all-cash transaction. The announcement stated that under "the terms of the transaction, TPG Capital and its affiliates will acquire all of the common shares of Axcan for an offer price of US \$23.35 per common share. The purchase price represents a 28 percent premium over the average trading price of Axcan's common shares on November 28, 2007" According to the announcement, Ropes & Gray provided legal advise to TPG Capital in connection with this transaction.

10. There is also probable cause to believe that ZVI GOFFER, the defendant, obtained from another individual ("CC-1") Inside Information concerning the following mergers and acquisitions, on the basis of which ZVI GOFFER and his conspirators engaged in securities trading:

a. The acquisition of Kronos, Inc. ("Kronos") by Hellman & Friedman Capital Partners VI, L.P. and its related funds. On or about March 23, 2007, Kronos announced that it had entered into a definitive agreement, under which Kronos shareholders would receive \$55.00 in cash for each share of Kronos common stock "representing a 34.4% premium over Kronos' closing share price from 20 trading days ago."

b. The acquisition of Hilton Hotels Corp. ("Hilton") by the Blackstone Group. On or about July 3, 2007, Hilton announced that it has entered into a definitive merger agreement with The Blackstone Group's real estate and corporate private equity funds in an all-cash transaction. The announcement stated that "[u]nder the terms of the agreement, Blackstone will acquire all the outstanding common stock of Hilton for \$47.50 per share. The price represents a premium of 40% over yesterday's closing stock price."

**ZVI GOFFER And CRAIG DRIMAL's Statements
To CS-1 About The 3Com Acquisition And
The Insider Trading Scheme**

11. On or about September 4, 2007, under the direction of other FBI agents and me, CS-1 met with CRAIG DRIMAL, the defendant, in New York, New York. Prior to the meeting, FBI agents equipped CS-1 with a recording device. In addition, FBI agents debriefed CS-1 after the meeting. During this meeting, DRIMAL gave CS-1 a piece of paper listing the stock symbols of four companies. DRIMAL told CS-1 that DRIMAL had a source who advised that the four companies were all acquisition targets. Subsequent investigation, as described in part below, revealed that this source was ZVI GOFFER, the defendant. DRIMAL told CS-1 that the same source advised that 3Com was an acquisition target. DRIMAL asked CS-1 to destroy the list, and DRIMAL cautioned CS-1 to be careful in trading the securities of one of the companies on the list, because there were no public rumors that the company was an acquisition target. DRIMAL told CS-1 that he had purchased 250,000 shares of 3Com stock and that he had provided the 3Com information to others. DRIMAL also stated that he was nervous about having too much success. DRIMAL stated that he had used his source's information to purchase stock of five or six companies that were subsequently acquired, and that DRIMAL's source had also traded in the same stocks.

12. On or about September 5, 2007, CS-1 placed a telephone call to CRAIG DRIMAL, the defendant. CS-1 asked DRIMAL about the four stocks that were on the list that DRIMAL had provided the prior day. DRIMAL commented, among other things, that he did not want to talk about it on the telephone and that it was "like shooting fish in a barrel."

13. On or about September 17, 2007, CS-1 met with CRAIG DRIMAL, the defendant, in New York, New York. FBI agents debriefed CS-1 after the meeting. During this meeting, DRIMAL stated that he had just met with his source, who provided details about a group of private equity firms' bid for 3Com. DRIMAL stated that his source was getting information from lawyers, and that DRIMAL was nervous that DRIMAL knew the information.

14. On or about September 18, 2007, under the direction of other FBI agents and me, CS-1 met with CRAIG DRIMAL, the defendant, in New York, New York. Prior to the meeting, FBI agents equipped CS-1 with a hidden recording device. In addition, FBI agents debriefed CS-1 after the meeting. During this meeting, DRIMAL told CS-1 that DRIMAL's source paid cash to the lawyer who was providing information. DRIMAL said he did not know who the

lawyer was and did not know why the lawyer was risking his career and possibly "jail" by providing such information.

15. On or about September 20, 2007, under the direction of other FBI agents and me, CS-1 met with CRAIG DRIMAL, the defendant, in New York, New York. Prior to the meeting, FBI agents equipped CS-1 with a hidden recording device. In addition, FBI agents debriefed CS-1 after the meeting. During this meeting, DRIMAL told CS-1 that 3Com would be bought out by Bain Capital and a Chinese private equity firm, that his friend was not wavering, and that the law firm was "Ropeson." DRIMAL said that this law firm was also involved in the Avaya and Alliance Data Systems acquisitions.

16. On or about September 26, 2007, under the direction of other FBI agents and me, CS-1 met with CRAIG DRIMAL, the defendant, in New York, New York. Prior to the meeting, FBI agents equipped CS-1 with a hidden recording device. In addition, FBI agents debriefed CS-1 after the meeting. During this meeting, DRIMAL stated that his source received information regarding some stocks, including information that Hilton would be acquired, from an individual with a certain nickname who is a co-conspirator not named as a defendant herein (CC-1).

17. On or about December 14, 2007, CS-1 met with ZVI GOFFER, the defendant, in New York, New York. ZVI GOFFER was attempting to recruit CS-1 to work at a firm that would eventually be called Incremental Capital. Prior to the meeting, FBI agents equipped CS-1 with a hidden recording device. In addition, FBI agents debriefed CS-1 after the meeting. During this meeting, ZVI GOFFER told CS-1 that his source gave him information about four deals that were all successful: the acquisitions of Alliance Data Systems, Avaya, 3Com and Axcan. During this meeting, ZVI GOFFER claimed that his source was a childhood friend in the construction industry. However, in an intercepted December 14, 2007 telephone conversation between ZVI GOFFER and CRAIG DRIMAL, the defendant, over the GOFFER CELLPHONE at approximately 5:13 p.m. (after GOFFER's meeting with CS-1), GOFFER told DRIMAL that GOFFER was leading CS-1 away from where GOFFER really got the information.

18. On or about December 27, 2007, CS-1 met with CRAIG DRIMAL, the defendant, in New York, New York. Prior to the meeting, FBI agents equipped CS-1 with a hidden recording device. In addition, other FBI agents debriefed CS-1 after the meeting. During this meeting, DRIMAL told CS-1 (1) that ZVI GOFFER, the defendant, had different sources in different places, (2) that one of these sources was CC-1, who provided information regarding the acquisitions of Hilton and Kronos, (3) that the source for

information about 3Com was a law firm that was working on the transaction, and (4) that, in some circumstances, ZVI GOFFER used prepaid cellular telephones to communicate with his sources.

**ZVI GOFFER Obtains And Distributes
Inside Information Regarding The Axcan Acquisition**

19. Based on the intercepted wire communications and other information described below, there is probable cause to believe that ZVI GOFFER, the defendant, provided CRAIG DRIMAL, the defendant, with Inside Information regarding the acquisition of Axcan.

20. The following conversations, among others, were intercepted over the DRIMAL CELLPHONE:¹

a. On or about November 20, 2007, at approximately 4:22 p.m., an outgoing call was intercepted in which CRAIG DRIMAL, the defendant, spoke with a coconspirator not named as a defendant herein ("CC-2"). DRIMAL asked CC-2 if he should keep the "A" thing to himself and not tell "G." DRIMAL expressed concern that "G" would be "pissed" if he saw that CC-2 was "long it." Based on other intercepted conversations, I believe the "'A' thing" is a reference to information that Axcan (stock symbol AXCA) was an acquisition target, and "G" is a reference to another individual. Based on my training and experience, I understand that the phrase "long it" refers to a long position, or net ownership, of a security. In other words, DRIMAL expressed concern that "G" would be "pissed" if he found out that CC-2 bought Axcan securities based on DRIMAL's information and DRIMAL had not told "G" about it.

b. On or about November 26, 2007, at approximately 3:25 p.m., an outgoing call was intercepted in which CRAIG DRIMAL, the defendant, spoke with ZVI GOFFER, the defendant. During this conversation, DRIMAL then asked, "How's the Apple doing?" ZVI GOFFER responded, "17.90; a ton of volume again today." Based on other intercepted conversations, I believe that "Apple" is a reference to Axcan, and that ZVI GOFFER was saying that Axcan was trading at \$17.90 per share. In addition, I have reviewed a publicly available database showing that on November 26, 2007, Axcan stock traded within the range of \$17.74 and \$18.10 per share.

¹The call descriptions included in this complaint are based on summary line sheets which are drafts and are subject to change.

c. On or about November 26, 2007, at approximately 3:30 p.m., an outgoing call was intercepted in which CRAIG DRIMAL spoke with another individual ("Individual 1"). During this conversation, Individual 1 told DRIMAL that "AXA" was at "17.88-17.89" (roughly the same price ZVI GOFFER provided for the "Apple").

d. On or about November 27, 2007, at approximately 4:30 p.m., an outgoing call was intercepted in which CRAIG DRIMAL spoke with ZVI GOFFER. During this conversation, DRIMAL asked ZVI GOFFER for an update regarding the "Apple." ZVI GOFFER said that the timing was imminent.

21. As noted above in paragraph 9(c), the Axcan acquisition was publicly announced on November 29, 2007.

22. I have reviewed trading records for an account in the name of CRAIG DRIMAL, the defendant. As described below in paragraph 39(b), these records show purchases of shares of Axcan stock between approximately October 26, 2007, and November 26, 2007. On or about November 29, 2007 (when the Axcan acquisition was announced), the account held approximately 565,523 shares of Axcan stock. On or about November 29, 2007, after the Axcan acquisition was announced, all the shares of Axcan stock in the account were sold, resulting in a profit of approximately \$1,974,235.

23. Following the announcement of the Axcan acquisition, the following conversations, among others, were intercepted over the DRIMAL CELLPHONE:

a. On or about November 29, 2007, at approximately 9:15 a.m., an incoming call that went into voicemail was intercepted. The voicemail message, which was from Individual 1, stated that Axcan "just opened" and is "trading up \$4.15."

b. On or about November 29, 2007, at approximately 4:15 p.m., an incoming call was intercepted in which CRAIG DRIMAL, the defendant, spoke with ZVI GOFFER, the defendant. DRIMAL said that an individual (CC-2) has "some cash lying around" and is "going to take care of me in that regard." DRIMAL told ZVI GOFFER, "I'll hook up with you tomorrow." DRIMAL asked ZVI GOFFER if he could call on "the other line," and GOFFER responded that he could.

c. On or about November 30, 2007, at approximately 1:46 p.m., an outgoing call was intercepted in which DRIMAL spoke with ZVI GOFFER. During this conversation, ZVI

GOFFER told DRIMAL that he would be on the corner of First Avenue and 63rd Street.

24. On or about November 30, 2007, at approximately 1:50 p.m., another FBI agent observed CRAIG DRIMAL, the defendant, arrive in a car at the corner of First Avenue and 63rd Street in Manhattan and then pull up to the next block. Another FBI agent observed ZVI GOFFER, the defendant, in DRIMAL's car between approximately 2 p.m. and 2:30 p.m. FBI agents saw ZVI GOFFER leave the car at approximately 2:30 p.m. After ZVI GOFFER left the car, FBI agents observed ZVI GOFFER carrying an item that appeared to be approximately the size of a VHS tape. Based on these observations and the intercepted conversations over the DRIMAL CELLPHONE, I believe that DRIMAL delivered cash to ZVI GOFFER.

25. On or about November 30, 2007, at approximately 5:30 p.m., other FBI agents saw ZVI GOFFER, the defendant, place a white bag into a car and drive to the vicinity of the residence of JASON GOLDFARB, the defendant. At approximately 5:45 p.m., FBI agents saw an individual who, based on a comparison to a New York Department of Motor Vehicles photograph, appeared to be JASON GOLDFARB, the defendant, get out of ZVI GOFFER's car. When GOLDFARB got out of the car, he was carrying a white bag that appeared to be the bag that ZVI GOFFER had placed into the car. Other FBI agents saw GOLDFARB go into the building in which telephone subscriber information shows that GOLDFARB resides. Based on these observations and the intercepted conversations over the DRIMAL CELLPHONE, I believe that ZVI GOFFER delivered cash to GOLDFARB.

**The Transmittal Of Inside Information Regarding 3Com
and Axcan From ARTHUR CUTILLO To JASON GOLDFARB To ZVI GOFFER**

26. There is probable cause to believe (1) that JASON GOLDFARB, the defendant, obtained from ARTHUR CUTILLO, the defendant, Inside Information regarding the 3Com and Axcan acquisitions, which CUTILLO obtained from his employer - Ropes & Gray - and disclosed in violation of CUTILLO's duties of trust and confidence to Ropes & Gray and its clients; and (2) that GOLDFARB then transmitted this Inside Information to ZVI GOFFER. This conclusion is based on, among other things, the meeting on or about November 30, 2007, between ZVI GOFFER and GOLDFARB described in paragraph 25, and on the information contained below.

27. As noted above in paragraph 15, on or about September 20, 2007, CRAIG DRIMAL, the defendant, told CS-1 that 3Com would be bought out by Bain Capital and a Chinese private

equity firm, that his friend was not wavering, and that the law firm was "Ropeson" (ph). In addition, as noted above in paragraph 18, DRIMAL later told CS-1 that the source of information about 3Com was a law firm that was working on the transaction. Further, as noted above in paragraph 17, ZVI GOFFER, the defendant, told CS-1 that the same source provided him with Inside Information regarding the acquisitions of Alliance Data Systems, Avaya, 3Com and Axcan.

28. As noted above in paragraphs 9(b) and 9(c), Ropes & Gray served as a legal advisor to Bain Capital Partners, LLC in connection with the 3Com acquisition and as a legal advisor to TPG Capital in connection with the Axcan acquisition.

29. I know from a review of the Ropes & Gray website that ARTHUR CUTILLO, the defendant, is an attorney who works at Ropes & Gray in its offices in New York, New York.

30. Toll records and pen register data show frequent telephone contact between telephones used by ARTHUR CUTILLO, the defendant, and a telephone used by JASON GOLDFARB, the defendant, including, as set forth in subparagraphs 30(g) and (i) below, specific contacts on days of significance relating to the 3Com tip. I have reviewed toll records and pen register data for the GOLDFARB CELLPHONE, for the period from June 1, 2007, through October 9, 2007. The toll records and pen register data, along with the trading records described in paragraph 30(f) below, show the following:

a. Approximately four incoming calls to and one outgoing call from the GOLDFARB CELLPHONE to telephone number (212) 596-9000, which is the main extension for Ropes & Gray in New York, New York.

b. Approximately 14 outgoing calls from the GOLDFARB CELLPHONE to telephone number (212) 596-9145 (the "CUTILLO WORK PHONE"), which was ARTHUR CUTILLO's telephone number at Ropes & Gray in New York, New York.

c. Approximately 24 incoming calls from and 49 outgoing calls to a cellular telephone number listed in the name of ARTHUR CUTILLO (the "CUTILLO CELLPHONE").

d. Approximately two incoming text messages from and 19 outgoing text messages to the CUTILLO CELLPHONE.

e. Approximately four incoming calls from and four outgoing calls to a telephone number listed in the name of an

individual with the last name "Cutillo" and associated with ARTHUR CUTILLO in a commercial database that I have reviewed.

f. I know from a review of records obtained by the SEC that, on or about August 7, 2007, various Schottenfeld accounts, including ZVI GOFFER's proprietary account, began acquiring 3Com stock. Some of these acquisitions are described below in paragraphs 38(d) and 42(d).

g. On or about August 6, 2007 - the day before the Schottenfeld 3Com trading began - toll records and pen register data reveal the following contacts between CUTILLO and GOLDFARB: approximately five calls from the CUTILLO CELLPHONE to the GOLDFARB CELLPHONE (including one call at approximately 5:31 p.m.), approximately one call from the GOLDFARB CELLPHONE to the CUTILLO WORK PHONE, and approximately one text message from the GOLDFARB CELLPHONE to the CUTILLO CELLPHONE.

h. On or about August 6, 2007 - the day before the Schottenfeld 3Com trading began - toll records and pen register data reveal the following contacts between ZVI GOFFER and JASON GOLDFARB: approximately three calls from the GOFFER CELLPHONE to the GOLDFARB CELLPHONE, approximately one text message from the GOFFER CELLPHONE to the GOLDFARB CELLPHONE, and approximately one call (at approximately 5:32 p.m.) from the GOLDFARB CELLPHONE to the GOFFER CELLPHONE.

i. On or about September 28, 2007 (the day the 3Com acquisition was announced), toll records and pen register data reveal that there was approximately one call from the GOLDFARB CELLPHONE to the CUTILLO WORK PHONE and one call from the Ropes & Gray main telephone number to the GOLDFARB CELLPHONE.

**Certain Intercepted Wire Communications
Of JASON GOLDFARB And ARTHUR CUTILLO**

31. The following wire communications, among others, were intercepted over the GOFFER CELLPHONE:

a. On or about December 18, 2007, at approximately 11:02 a.m., an incoming call was intercepted in which ZVI GOFFER, the defendant, spoke with JASON GOLDFARB, the defendant. During this conversation, GOLDFARB said that "everything has been slow lately," but that he read that two private equity firms (which he mentioned by name) had raised billions for next year. Based on my training and experience and my knowledge of this investigation, I understand this to mean that there was not much acquisition activity, but the two private

equity firms had raised significant capital for transactions in 2008. GOLDFARB said that it would be like "shotgun" next year as soon as it starts up. GOFFER responded, "All it takes is one big one to get the ball rolling again." GOFFER also said, "It will happen, it [is] just, which deal it is going to be."

b. On or about December 30, 2007, at approximately 2:00 p.m., an incoming call was intercepted in which ZVI GOFFER spoke with GOLDFARB. During this conversation, GOFFER told GOLDFARB that he was going to a new firm that agreed to "double his size." Based on my training and experience and my knowledge of this investigation, I understand that ZVI GOFFER was referring to a doubling of the amount of capital he would be managing. GOLDFARB said that, in that event, what they did could be tripled. GOFFER said that what they made on the "main one" could be quadrupled, because he didn't even play it big. GOLDFARB said they would "make a fortune" in 2008, because the "names we know" have raised billions. Based on my training and experience and my knowledge of this investigation, I understand GOLDFARB to be referring to private equity firms. GOFFER said that "if we get another one like the first one," the pay day would be "three times what it was." GOFFER said it could be "500 in a bag." GOFFER told GOLDFARB that he was going to go to the "guy" at the new firm, present his profit and loss statement for the calendar year, and say, "What are you going to offer me?" GOFFER said that it [the profit and loss statement] was great "partly thanks to you." GOFFER said that "if Wall Street is normal "we'll have our pick of between 10 to 20 of them, and we'll probably do like 10 or something like that." GOFFER also observed that, during the past year, they had "four" with "two in the last three months of the year."

c. On or about January 2, 2008, at approximately 3:14 p.m., an incoming call was intercepted in which ZVI GOFFER spoke with GOLDFARB. During this conversation, GOLDFARB said that he had a meeting with the "boys" tomorrow and wanted to know how to handle it. GOLDFARB said they were "nervous nellies." GOFFER said to tell them that he was at a bigger fund, and it makes "hiding things so much easier." GOFFER also said that at Galleon his buying power was "more than three times bigger." GOFFER told GOLDFARB, "We are gonna do things the same way but on a bigger scale." GOFFER continued that if he had to give out "300 or whatever" it might take "a month or a month and a half . . . to get the total pay." GOFFER told GOLDFARB to tell "our friends" "to follow that 3Com one very closely because there is money to be made either way." Based on my training and experience and my knowledge of this investigation, I understand that GOFFER asked GOLDFARB for Inside Information regarding whether the 3Com

acquisition would close. GOLDFARB said that he was "pissed" because they should have had "two more in the [expletive] bag." GOFFER said that "Chiarulli did that," and GOLDFARB agreed that "he spooked Artie." Based on my knowledge of this investigation, I understand "Artie" to be a reference to ARTHUR CUTILLO, the defendant. GOLDFARB said that "they're also hungry," because one guy spent his "whole chunk of change . . . from the first one" on his honeymoon, and the "other guy" "bought a new kitchen." GOFFER then observed that he was "responsible for a honeymoon and a kitchen." GOLDFARB said that "now they're, they're ready to replenish, and that's what we're going to do." GOLDFARB said that he needed new numbers for the all the cards - "mine and theirs." Based on my training and experience and my knowledge of this investigation, I understand GOLDFARB to be referring to a need to add minutes to prepaid cellular telephones used by GOLDFARB, CUTILLO, and another co-conspirator. GOFFER said that he had the numbers at home and would have to call later with them. GOLDFARB said that GOFFER should call later with the numbers, because he couldn't get in touch with the other guy, because his [cellphone] was "dead" and GOLDFARB's [cellphone] only had a minute left. Based on my training and experience and my knowledge of this investigation, I understand this to be a reference to minutes on prepaid cellular telephones.

d. On or about January 3, 2008, at approximately 2:47 p.m., an incoming call was intercepted in which ZVI GOFFER spoke with GOLDFARB. During this conversation, GOLDFARB said that he needed three new phones, because one of the guys was not thinking. GOLDFARB explained that "Art" had used his phone to call GOLDFARB's cellular telephone. Based on my knowledge of this investigation, I understand "Art" to be a reference to CUTILLO. GOFFER said that he would get three new phones this weekend and get them "loaded up."

e. On or about January 17, 2008, at approximately 9:04 p.m., an incoming call was intercepted in which ZVI GOFFER, the defendant, spoke with GOLDFARB. During this conversation, GOLDFARB told GOFFER to call back on the other line. GOFFER said that he would call back in two minutes.

32. The following wire communications, among others, were intercepted over the GOLDFARB CELLPHONE, and also show that ZVI GOFFER, JASON GOLDFARB, and ARTHUR CUTILLO, the defendants, as well as others, used prepaid cellular telephones to avoid detection by law enforcement:

a. On or about February 8, 2008, at approximately 3:08 p.m., an outgoing call was intercepted in which GOLDFARB

spoke with CUTILLO. During this conversation, GOLDFARB said that he was trying to call on the other lines and asked if they were dead. CUTILLO said no, but that nothing has been going on. GOLDFARB said that he had some numbers for "you guys" and asked if he should call back on the other line. CUTILLO said yes.

b. On or about February 17, 2008, at approximately 12:53 p.m., an incoming call was intercepted in which CUTILLO spoke with GOLDFARB. CUTILLO told GOLDFARB that he was skiing in the Berkshires. GOLDFARB told CUTILLO to call him "later from the other line." CUTILLO said that he would and said that they would meet on Tuesday.

c. On or about February 20, 2008, at approximately 12:55 p.m., an outgoing call was intercepted in which GOLDFARB called ZVI GOFFER. During this conversation, GOFFER confirmed that GOLDFARB was not "buying it" himself, and then told GOLDFARB that somebody had bought 800 call options² of "the March 35s" for a stock then trading at 28. Based on my training and experience and my knowledge of this investigation, I understand that ZVI GOFFER said that someone had purchased options to purchase a stock at \$35 per share that would expire the next month, even though the stock was now trading at \$28 per share. GOFFER said, "they paid a nickel for them." Based on my training and experience and my knowledge of this investigation, I understand that GOFFER was saying that they paid five cents per option. GOFFER continued, "You know what that means? Someone's going to jail, going directly to jail so don't let it be you, okay?" Later, GOFFER reiterated, "That's a ticket right to the [expletive] big house." GOLDFARB again confirmed that he had not purchased the options. GOFFER responded, "Good, better that way. Better that way. Perfect. All right then, you know what? All it does is give me more cover."

² Based on my training and experience, I know that a "call option" gives the purchaser the right to buy a certain number of shares (typically 100 shares) of an underlying security at a specified price, until the specified expiration date of the call option (typically the third Friday of a specified month). Thus, a "March 35" call option gives the purchaser of the option the right to buy 100 shares of the specified stock from the seller of the option at a price of \$35 per share, until the third Friday of March.

Certain Statements Of ZVI GOFFER, EMMANUEL GOFFER And MICHAEL
KIMELMAN Relating To The Conspiracy

33. As discussed above in paragraph 17, on or about December 14, 2007, CS-1 met with ZVI GOFFER, the defendant, in New York, New York. During this meeting, ZVI GOFFER told CS-1 that "we get ideas and keep them close." ZVI GOFFER also told CS-1 that EMMANUEL GOFFER, the defendant, made \$2 million on 3Com and \$2 million on Hilton.

34. The following wire communications, among others, were intercepted over the GOFFER CELLPHONE:

a. On or about February 18, 2008, at approximately 6:36 p.m., an outgoing call was intercepted in which ZVI GOFFER, the defendant, spoke with MICHAEL KIMELMAN, the defendant. During this conversation, ZVI GOFFER discussed collecting research reports on various stocks. ZVI GOFFER said, "PF Changs just had earnings and they all put out research reports the next day. There's like eight of them out there So you know you print all those out . . . get everything printed out, because if we're going to make a big trade and make a big bet and it works . . . it's always good to have on file why you did it." Based on my training and experience and my knowledge of this investigation, I understand GOFFER to be suggesting that they collect research reports so that they could later claim that research reports, and not Inside Information, were the basis for their trading decisions. KIMELMAN responded, "Absolutely."

b. On or about February 26, 2008, at approximately 8:45 p.m., an incoming call was intercepted in which ZVI GOFFER, spoke with KIMELMAN. During this conversation, ZVI GOFFER said that at a certain point "you have to decide how much of a magnifying glass you want on you." GOFFER expressed concern that if CRAIG DRIMAL, the defendant, registered with SMH (a firm that ZVI GOFFER's trading business planned to use for brokerage services), "You don't want SMH blowing the whistle on him, saying, listen, we got a guy hitting these takeovers." Based on my training and experience and my knowledge of this investigation, I understand KIMELMAN to have been expressing concern that SMH would report that DRIMAL appeared to be trading based on Inside Information regarding upcoming corporate acquisitions. ZVI GOFFER said, "We have become so paranoid for no reason," and KIMELMAN responded that there was always a reason to be paranoid. GOFFER suggested that they talk at the gym.

c. On or about March 2, 2008, at approximately 7:50 p.m., an incoming call was intercepted in which EMANUEL

GOFFER, the defendant, spoke with ZVI GOFFER. During this conversation, EMANUEL GOFFER said that every time they put up a position they lose money. ZVI GOFFER said it might take a few weeks, but they needed to "fight the power." ZVI GOFFER said that the only source he felt comfortable with was the current one, because the source has been "spot on, two for two." Based on my training and experience and my knowledge of this investigation, I understand that ZVI GOFFER was saying that this source of Inside Information has been accurate twice. They discussed two individuals earning a total of \$800,000 when "Hilton hit." Based on my training and experience and my knowledge of this investigation, I understand that they were discussing profits earned when the Hilton Hotels Corp. acquisition was announced. ZVI GOFFER said that they now had a situation that, if it hit, would cause their account to go from "1.2 to 3.2." Based on my training and experience and my knowledge of this investigation, I understand GOFFER to be saying that their account would increase from \$1.2 million to \$3.2 million if an acquisition was announced.

d. On or about March 27, 2008, at approximately 9:45 a.m., an incoming call was intercepted in which EMANUEL GOFFER spoke with ZVI GOFFER. During this conversation, EMANUEL GOFFER said, "You know the number I have been calling from the last couple days?" EMANUEL GOFFER said that it was the "Greek" and told ZVI GOFFER to call him and find out what he wants. EMANUEL GOFFER said that he didn't "have the minutes." ZVI GOFFER asked if EMANUEL GOFFER knew how to "load up the minutes" and then said that he would call him and then call EMANUEL GOFFER back.

35. On or about August 4, 2009, CS-1 met with CRAIG DRIMAL, ZVI GOFFER, EMANUEL GOFFER, and MICHAEL KIMELMAN, the defendants, at the offices of Incremental Capital in New York, New York. Prior to the meeting, FBI agents equipped CS-1 with a hidden recording device. In addition, FBI agents debriefed CS-1 after the meeting. During this meeting, CS-1 said that he was considering joining Incremental Capital, but that he was turned off by ZVI GOFFER's claim that he was getting information from a guy in the construction business. CS-1 said that he was not born yesterday, and if CS-1 was going to invest millions of dollars in a stock, CS-1 needed to know the source of the information. ZVI GOFFER told CS-1 that CS-1 did not need to know and did not want to know the source of the information. ZVI GOFFER added that, if someone from the Government ever asks where CS-1 got the information, CS-1 would be better off being able to say, "I don't know." ZVI GOFFER said that was "better for everybody." KIMELMAN then joked about the information coming from a guy fixing a pothole. CS-1 asked how selective ZVI GOFFER, EMANUEL GOFFER, and KIMELMAN would be with sharing information with others in the

trading room. KIMELMAN said that they would be selective with what they share.

Certain Statements Of DAVID PLATE Relating To The Conspiracy

36. The following wire communications, among others, were intercepted over the GOFFER CELLPHONE:

a. On or about December 13, 2007, at approximately 7:44 p.m., an outgoing call was intercepted in which DAVID PLATE, the defendant, spoke with ZVI GOFFER, the defendant. During this conversation, PLATE said, among other things, that the majority of his money was held in his sister's name.

b. On or about February 24, 2008, at approximately 6:00 p.m., an outgoing call was intercepted in which PLATE spoke with ZVI GOFFER, the defendant. During this conversation, ZVI GOFFER said that he was wondering if CC-1 was a "rat," but ZVI GOFFER and PLATE agreed that CC-1 was probably not a "rat." PLATE speculated that CC-1 had a source on the buy side of transactions who allowed CC-1 to eavesdrop on conference calls. ZVI GOFFER said that he did not want to know the identity of CC-1's source. ZVI GOFFER said that he had a "wacky" conversation with CC-1 where he felt that CC-1 was trying to get him to "say stuff." Based on my training and experience and my knowledge of this investigation, I understand ZVI GOFFER to be saying that he was concerned that CC-1 was trying to get ZVI GOFFER to make incriminating statements.

c. On or about March 19, 2008, at approximately 7:25 p.m., an incoming call was intercepted in which PLATE spoke with ZVI GOFFER. During this conversation, PLATE said he need to talk to ZVI GOFFER about a few things and asked GOFFER to call on the "bat phone." Based on my training and experience and my knowledge of this investigation, I understand this to be a reference to a prepaid cellular telephone. ZVI GOFFER asked if they needed to meet in person, and PLATE said that they did. PLATE said that he may need a new card. Based on my training and experience and my knowledge of this investigation, I understand PLATE to be referring to a need for a new card to get additional minutes on the prepaid cellular telephone. ZVI GOFFER said that he would call PLATE from a pay telephone in an hour.

Certain Trading Activities Of The Defendants

37. I have reviewed certain trading records, bluesheet data, and trading summaries provided to me by the SEC. These records and summaries reveal the information contained in the

paragraphs below.

38. The following trading occurred in an account of ZVI GOFFER, the defendant, at Schottenfeld:

a. Between approximately March 19, 2007, and March 22, 2007, shares of Kronos stock were purchased. On or about March 23, 2007 (when the Kronos acquisition was announced), the account held approximately 19,000 shares of Kronos stock. On or about March 26, 2007, all of the shares of Kronos stock in the account were sold, resulting in a profit of approximately \$156,370.

b. On or about June 1, 2007, approximately 300 Avaya call options were purchased. On or about June 5, 2007, all the Avaya call options were sold, resulting in a profit of approximately \$20,400.

c. Between approximately July 2, 2007, and July 3, 2007, approximately 56,100 shares of Hilton stock and approximately 512 Hilton call options were purchased. On July 5, 2007 (the next business day after the Hilton acquisition was announced), all the shares of Hilton stock and call options in the account were sold, resulting in a profit of approximately \$354,612.

d. Between approximately August 7, 2007, and September 27, 2007, shares of 3Com stock were purchased. On or about September 28, 2007 (when the 3Com acquisition was announced), the account held approximately 260,000 shares of 3Com stock. On or about September 28, 2007, after the 3Com acquisition was announced, the shares of 3Com stock in the account were sold, resulting in a profit of approximately \$378,608.

39. The following trading occurred in an account of CRAIG DRIMAL, the defendant:

a. Between approximately August 7, 2007, and September 21, 2007, shares of 3Com stock were purchased. On or about September 28, 2007 (when the 3Com acquisition was announced), the account held approximately 3,261,386 shares of 3Com stock. On or about September 28, 2007, after the 3Com acquisition was announced, all the shares of 3Com stock in the account were sold, resulting in a profit of approximately \$4,499,495.

b. Between approximately October 26, 2007, and November 26, 2007, shares of Axcan stock were purchased. On or

about November 29, 2007 (when the Axcan acquisition was announced), the account held approximately 565,523 shares of Axcan stock. On or about November 29, 2007, after the Axcan acquisition was announced, the shares of Axcan stock in the account were sold, resulting in a profit of approximately \$1,974,235.

40. The following trading occurred in accounts of EMMANUEL GOFFER, the defendant:

a. Between approximately March 19, 2007, and March 22, 2007, shares of Kronos stock were purchased. On or about March 23, 2007 (when the Kronos acquisition was announced), the accounts held approximately 30,500 shares of Kronos stock. On or about March 23, 2007, after the Kronos acquisition was announced, all the shares of Kronos stock in the accounts were sold, resulting in a profit of approximately \$352,681.

b. Between approximately July 2, 2007, and July 3, 2007, shares of Hilton stock were purchased. On July 3, 2007 (the day the Hilton acquisition was announced), the accounts held approximately 135,900 shares of Hilton stock. On or about July 5, 2007, all the shares of Hilton stock in the accounts were sold, resulting in a profit of approximately \$1,671,129.

c. Between approximately August 7, 2007, and September 27, 2007, shares of 3Com stock were purchased. On or about September 28, 2007 (when the 3Com acquisition was announced), the accounts held approximately 512,200 shares of 3Com stock. On or about September 28, 2007, after the 3Com acquisition was announced, all the shares of 3Com stock in the accounts were sold, resulting in a profit of approximately \$723,523.

41. The following trading occurred in an account of MICHAEL KIMELMAN, the defendant:

a. Between approximately August 7, 2007, and September 27, 2007, shares of 3Com stock were purchased. On or about September 28, 2007 (when the 3Com acquisition was announced), the account held approximately 10,000 shares of 3Com stock. On or about September 28, 2007, after the 3Com acquisition was announced, all the shares of 3Com stock in the account were sold, resulting in a profit of approximately \$16,657.

42. The following trading occurred in an account of DAVID PLATE, the defendant, at Schottenfeld:

a. Between approximately March 20, 2007, and March 22, 2007, shares of Kronos stock were purchased. On or

about March 23, 2007 (when the Kronos acquisition was announced), the account held approximately 10,000 shares of Kronos stock. On or about March 26, 2007, all the shares of Kronos stock in the account were sold, resulting in a profit of approximately \$91,555.

b. Between approximately May 29, 2007, and June 1, 2007, shares of Avaya stock were purchased. At the time the Avaya acquisition was announced on or about June 4, 2007, the account held approximately 15,000 shares of Avaya stock. On or about June 5, 2007, all the shares of Avaya stock were sold, resulting in a profit of approximately \$10,870.

c. On or about July 3, 2007, shares of Hilton stock were purchased. At the time the Hilton acquisition was announced on July 3, 2007, the account held approximately 10,000 shares of Hilton stock. On or about July 5, 2007, all the Hilton shares in the account were sold, resulting in a profit of approximately \$94,900.

d. Between approximately August 7, 2007, and September 27, 2007, shares of 3Com stock were purchased. On or about September 28, 2007 (when the 3Com acquisition was announced), the account held approximately 365,000 shares of 3Com stock. On or about September 28, 2007, after the 3Com acquisition was announced, all the shares of 3Com stock were sold, resulting in a profit of approximately \$435,290.

e. Between approximately November 21, 2007, and November 28, 2007, shares of Axcan stock were purchased. On or about November 29, 2007 (when the Axcan acquisition was announced), the account held approximately 47,000 shares of Axcan stock. On or about November 29, 2007, after the Axcan acquisition was announced, all the shares of Axcan stock in the account were sold, resulting in a profit of approximately \$227,900.

43. The following trading occurred in an account in the name of a relative of DAVID PLATE, the defendant, at E-Trade Securities:

a. Between approximately March 20, 2007, and March 22, 2007, shares of Kronos stock were purchased. On or about March 23, 2007 (when the Kronos acquisition was announced), the account held approximately 1,000 shares of Kronos stock. On or about March 26, 2007, all the shares of Kronos stock in the account were sold, resulting in a profit of approximately \$10,593.

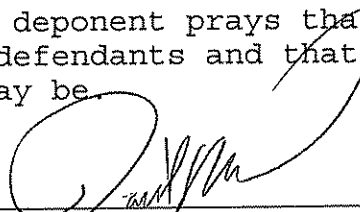
b. Between approximately August 7, 2007, and September 27, 2007, shares of 3Com stock were purchased. On or

about September 28, 2007 (when the 3Com acquisition was announced), the account held approximately 45,000 shares of 3Com stock. On or about September 28, 2007, after the 3Com acquisition was announced, all the shares of 3Com stock were sold, resulting in a profit of approximately \$63,244.

c. Between approximately October 26, 2007, and November 28, 2007, shares of Axcan stock were purchased. On or about November 29, 2007 (when the Axcan acquisition was announced), the account held approximately 4,700 shares of Axcan stock. On or about November 29, 2007, after the Axcan acquisition was announced, all the shares of Axcan stock in the account were sold, resulting in a profit of approximately \$23,665.

44. The total profits for the transactions described in paragraphs 38 to 43 were approximately at least \$11 million.

WHEREFORE, deponent prays that arrest warrants be issued for the above-named defendants and that they be imprisoned or bailed as the case may be.



DAVID MAKOL
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

NOV 04 2009

Sworn to before me this
____ day of November, 2009



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK