

MAR -4 2010

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McDERMOTT, CLERK
By: [Signature]
DEP. CLERK

UNITED STATES OF AMERICA

4:10CR 00044 BSM

v.

18 U.S.C. § 1349

18 U.S.C. § 1344

ALEXANDER "LEX" MARTINEZ

18 U.S.C. § 1014

18 U.S.C. § 2

INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT ONE

A. At all times material herein:

1. ALEXANDER "LEX" MARTINEZ was hired on or about February 8, 2005, to manage the Accounting Department of Affiliated Foods Southwest, Inc. ALEXANDER "LEX" MARTINEZ was promoted to the position of Chief Financial Officer on or before June 11, 2005, and held that position until Affiliated Foods Southwest, Inc. ceased operations on July 17, 2009.

2. John Mills was the President, Chief Executive Officer, and Chairman of the Board for Affiliated Foods Southwest, Inc. from 2004 until March 2009. Prior to his appointment as President, John Mills held a number of other positions at Affiliated Foods Southwest, Inc., to include, Executive Vice President, Chief Administrative Officer, and Chief Financial Officer.

3. Affiliated Foods Southwest, Inc. (AFS) was a privately held wholesale food distribution company which was headquartered in Little Rock, Arkansas. AFS provided products to hundreds of independently owned grocery stores in Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas. These grocery stores were known as co-op members. AFS

also owned approximately forty-five (45) retail grocery stores in Arkansas and Texas including Harvest Foods, Sav-Mart, and Piggly-Wiggly stores. AFS ceased operations on July 17, 2009. While in operation, AFS's fiscal year ran from approximately July 1 through June 30. For accounting purposes, the year was divided into thirteen (13) periods, each period being four weeks in length. AFS had a Board of Directors which consisted of approximately fourteen (14) persons. Thirteen of the Board members were co-op members while the other individual was a non-co-op member.

4. The Board of Directors generally met on a monthly basis. At a majority of the Board of Directors' meetings, ALEXANDER "LEX" MARTINEZ and John Mills would present to the Board a one-page financial statement entitled, "Comparative Sales and Income" report which purported to show the total sales and net income (financial condition) of AFS and its related entities. The report reflected the operations of the parent company AFS, which provided groceries and services to its co-op members, and all of AFS' related entities, which included Shur-Valu, and Shur-Valu's various department operations and subsidiaries. Shur-Valu's departments included Shur Valu Stamps, Associated Investment Trust(AIT) & Leasing, Conservation Fiber Compress (CFC), Pre Pak, Reclamation, and Petro Pete. Shur-Valu's subsidiaries included Mechanical Refrigeration & A/C (MRAC), Small Business Investment Capital, Inc. (SBIC), Supermarket Developers, Southwest Grocers Services. Inc. (SWIGS), Consolidated Warehousing, Convenience Store Supply Inc. (CSSI) and Supermarket Investors, Inc (SII).

5. Shur-Valu Stamps, Inc. (Shur-Valu) was a subsidiary of AFS which managed all of AFS' operations other than the wholesale operations of providing groceries and technical assistance to AFS' co-op members.

6. Supermarket Investor's Inc. (SII) was a subsidiary of Shur-Valu. SII would purchase inventory from AFS and sell those products to the retail stores owned by AFS that were previously referenced in paragraph 3 of this indictment.

7. Convenience Store Supply Inc. (CSSI) was a subsidiary of Shur-Valu. CSSI would purchase inventory from AFS and sell those products to convenience retail stores that were not co-op members.

8. AFS had a \$70 million loan with U.S. Bank, the lead lender, and three other participating banks: Fifth Third, First Bank Business Capital, and National Cooperative Bank. The \$70 million loan commitment consisted of a \$50 million revolving line of credit and a \$20 million note receivable line. U.S. Bank, Fifth Third, First Bank Business Capital, and National Cooperative Bank were financial institutions whose deposits are insured by the Federal Deposit Insurance Corporation. The maximum amount AFS could borrow against the line of credit was based upon a percentage of their accounts receivables, inventory, and notes receivables. These numbers were presented to U.S. Bank on a weekly basis. As part of the loan covenants, AFS was to provide U.S. Bank with quarterly consolidated financial statements and a financial ratio referred to as the "fixed charge coverage ratio." The referenced ratio evaluates a company's cash flow and debts to determine if it is generating sufficient cash flow to cover the company's debt obligations. If the ratio fell below a certain amount, U.S. Bank could declare the loan in default allowing the bank to take certain actions to protect its collateral position.

9. A check kiting scheme is the systematic depositing of non-sufficient checks between various bank accounts to artificially inflate the bank balances.

B. Beginning in or about February 2005 and continuing through in or about March 2009 in the Eastern District of Arkansas and elsewhere, the defendant,

ALEXANDER "LEX" MARTINEZ,

conspired with John Mills and with others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is to defraud a financial institution and to obtain moneys, funds, and credits owned by or under the custody and control of a financial institution by means of false and fraudulent pretenses, representations, and promises in violation of Title 18, United States Code, Section 1344.

OBJECTS OF THE CONSPIRACY

C. It was part of the conspiracy that:

1. ALEXANDER "LEX" MARTINEZ and John Mills would cause Comparative Sales and Income reports which did not accurately reflect AFS' trial balance numbers to be created. Those Comparative Sales and Income reports would be presented to the Board of Directors for AFS on a monthly basis. Those reports were used to create the quarterly consolidated financial statements.

2. ALEXANDER "LEX" MARTINEZ and John Mills would cause quarterly consolidated financial statements to be presented to U.S. Bank which did not accurately reflect AFS' trial balance numbers.

3. ALEXANDER "LEX" MARTINEZ and John Mills would cause false information to be supplied to members of the Board of Directors and ultimately to U.S. Bank concerning a 2008 transaction purportedly involving the sale of five AFS owned grocery stores.

4. ALEXANDER "LEX" MARTINEZ and John Mills would cause non-sufficient checks to be issued from SII and CSSI to AFS on a daily basis. This was done in an effort to cover AFS's daily cash flow obligations. The following day, AFS would then draw funds from their U.S. Bank line of credit to cover those non-sufficient checks. Because of AFS's continuing cash flow need, the dollar amount of the non-sufficient checks increased over a period of months until it was discovered by U.S. Bank auditors.

OVERT ACTS

D. In furtherance of the conspiracy and to effectuate the objects of it, one or both of the conspirators committed one or more of the following overt acts in the Eastern District of Arkansas and elsewhere:

Comparative Sales and Income Report

1. Approximately a week prior to the Board of Directors' meetings, ALEXANDER "LEX" MARTINEZ and John Mills made handwritten entries on the initial draft of the Comparative Sales and Income report which had been prepared by AFS Internal Accountant #1 based on trial balance numbers provided by accountants for the AFS entities listed. Those handwritten entries changed the net income numbers for most of the listed entities. In most cases, the adjustments resulted in a significantly larger consolidated income figure for AFS and related entities and shifted income from more profitable entities to entities with less profit (i.e., CSSI and SII).

2. ALEXANDER "LEX" MARTINEZ and John Mills' changes to the Comparative Sales and Income report were returned to AFS Internal Accountant #1 who would then make the requested changes without question. The original and updated reports were then either provided

in a hard copy or through an e-mail to ALEXANDER “LEX” MARTINEZ, with some e-mails copied to John Mills. The following descriptions were used to describe the two charts:

- a) “Before” and “After”
- b) “As Received” and “As Altered”
- c) “As Received” and “As Revised”

3. At the monthly Board of Directors’ meetings, where John Mills served as the Chairman of the Board, ALEXANDER “LEX” MARTINEZ presented the income figures listed on the Comparative Sales and Income report to the Board members. Board members were not informed that the net income figures presented were larger than the trial balance figures.

4. During the January 15, 2009, Board of Directors' meeting, ALEXANDER “LEX” MARTINEZ and John Mills presented a Comparative Sales and Income report which reflected that from July 1, 2008 to December 13, 2008, the consolidated income for AFS and its related entities was a net loss of \$178,514. ALEXANDER “LEX” MARTINEZ and John Mills failed to disclose to the Board members that the actual consolidated trial balance net income figure was a net loss of \$9,651,956.

5. During the February 19, 2009 Board of Directors' meeting, ALEXANDER “LEX” MARTINEZ and John Mills presented a Comparative Sales and Income report which reflected that from July 1, 2008 to January 10, 2009, the consolidated income for AFS and its related entities was a net loss of \$359,814. MARTINEZ and MILLS failed to disclose to the Board members that the actual consolidated trial balance net income figure was a net loss of \$11,778,511.

Consolidated Financial Statements

6. The terms of U.S. Bank's loan agreement with AFS required AFS to submit quarterly consolidated financial statements. AFS' quarterly consolidated financial statements were prepared by AFS Internal Accountant #2. ALEXANDER "LEX" MARTINEZ informed AFS Internal Accountant #2 that the consolidated financial statements should be the inflated financial figures presented to the Board of Directors and not the actual trial balance figures for AFS and its related entities.

7. On a quarterly basis, ALEXANDER "LEX" MARTINEZ provided the Comparative Sales and Income Reports to AFS Internal Accountant #2 so that the income figures listed in the report could be used to prepare the Consolidated Financial Statements.

8. After the Consolidated Financial Statements were prepared, ALEXANDER "LEX" MARTINEZ and John Mills reviewed the statements and caused them to be forwarded to U.S. Bank.

9-10. For the time periods listed below, ALEXANDER "LEX" MARTINEZ and John Mills presented the following information to AFS' Board of Directors and/or U.S. Bank which did not accurately reflect the trial balance figures:

Overt Act	Time period	Net Income from Trial Balance	Net Income presented to AFS Board of Directors	Net Income presented to U.S. Bank	Difference Between Trial Balance and Numbers presented to U.S. Bank
9	3 months ending 9/20/2008	(6,165,686)	No Board Meeting	401,000	6,566,686
10	6 months ending 12/13/2008	(9,651,956)	(178,514)	(1,580,000)	8,071,956

Check Kite

11. In or about the Fall of 2008 when AFS began having cash flow issues, ALEXANDER "LEX" MARTINEZ and John Mills developed a check kite scheme to cover the daily cash shortage through the use of checks from SII and CSSI that were made payable to AFS.

12. ALEXANDER "LEX" MARTINEZ would hand-deliver a daily cash needs report which had been prepared by AFS Accountant #3 showing the cash shortfall based on the anticipated deposit items versus the anticipated clearing items to John Mills and the two would engage in discussions.

13. ALEXANDER "LEX" MARTINEZ would then tell AFS Internal Accountant #3 the dollar amounts the kited checks needed to be from SII and CSSI to cover the anticipated cash shortage.

14. At ALEXANDER "LEX" MARTINEZ's direction, Internal Accountant #3 contacted the accountants at SII and CSSI and had them prepare checks made payable to AFS in the amounts determined by ALEXANDER "LEX" MARTINEZ and John Mills knowing that SII and CSSI did not have sufficient funds in their bank accounts to cover the requested checks.

15-108. On or about the dates set forth below, the following checks supporting the check kite were prepared, processed and deposited into AFS' bank account prior to 2 P.M., thereby allowing AFS to obtain same day credit:

Overt Act	Date of Check	Day of the Week	Convenience Store Supply	Supermarket Investors, Inc.	Daily Kite Total
15	9/29/2008	Mon	500,000.00	1,000,000.00	1,500,000.00
16	9/30/2008	Tues	300,000.00		300,000.00
17	10/1/2008	Weds		1,600,000.00	1,600,000.00
18	10/2/2008	Thurs	900,000.00	1,800,000.00	2,700,000.00
19	10/3/2008	Fri	700,000.00	800,000.00	1,500,000.00
20	10/6/2008	Mon	1,000,000.00	2,200,000.00	3,200,000.00
21	10/7/2008	Tues	1,000,000.00		1,000,000.00

Overt Act	Date of Check	Day of the Week	Convenience Store Supply	Supermarket Investors, Inc.	Daily Kite Total
22	10/8/2008	Weds		1,300,000.00	1,300,000.00
23	10/9/2008	Thurs	1,300,000.00		1,300,000.00
24	10/10/2008	Fri	800,000.00		800,000.00
25	10/15/2008	Weds	1,100,000.00		1,100,000.00
26	10/16/2008	Thurs	500,000.00	1,000,000.00	1,500,000.00
27	10/20/2008	Mon	800,000.00	1,000,000.00	1,800,000.00
28	10/21/2008	Tues		1,300,000.00	1,300,000.00
29	10/22/2008	Weds		1,300,000.00	1,300,000.00
30	10/23/2008	Thurs	2,100,000.00		2,100,000.00
31	10/24/2008	Fri		1,400,000.00	1,400,000.00
32	10/27/2008	Mon	1,100,000.00	1,800,000.00	2,900,000.00
33	10/28/2008	Tues	800,000.00	1,400,000.00	2,200,000.00
34	10/29/2008	Weds	1,200,000.00		1,200,000.00
35	10/30/2008	Thurs	800,000.00	1,500,000.00	2,300,000.00
36	10/31/2008	Fri	300,000.00		300,000.00
37	11/5/2008	Weds	600,000.00		600,000.00
38	11/13/2008	Thurs	400,000.00		400,000.00
39	11/17/2008	Mon	1,300,000.00	1,500,000.00	2,800,000.00
40	11/18/2008	Tues	700,000.00	700,000.00	1,400,000.00
41	11/19/2008	Weds	700,000.00	1,200,000.00	1,900,000.00
42	11/20/2008	Thurs	800,000.00	1,800,000.00	2,600,000.00
43	11/21/2008	Fri	500,000.00	800,000.00	1,300,000.00
44	11/24/2008	Mon	1,400,000.00	2,500,000.00	3,900,000.00
45	11/25/2008	Tues	1,000,000.00	2,200,000.00	3,200,000.00
46	11/26/2008	Weds	1,000,000.00	1,300,000.00	2,300,000.00
47	11/28/2008	Fri	400,000.00		400,000.00
48	12/1/2008	Mon	1,200,000.00	2,400,000.00	3,600,000.00
49	12/2/2008	Tues	1,300,000.00	2,000,000.00	3,300,000.00
50	12/3/2008	Weds	1,500,000.00	2,500,000.00	4,000,000.00
51	12/4/2008	Thurs	1,800,000.00	2,900,000.00	4,700,000.00
52	12/5/2008	Fri	2,200,000.00	2,900,000.00	5,100,000.00
53	12/8/2008	Mon	2,700,000.00	3,400,000.00	6,100,000.00
54	12/9/2008	Tues	1,000,000.00	3,400,000.00	4,400,000.00
55	12/10/2008	Weds	2,100,000.00	2,900,000.00	5,000,000.00
56	12/11/2008	Thurs	2,000,000.00	3,200,000.00	5,200,000.00
57	12/12/2008	Fri	1,900,000.00	2,200,000.00	4,100,000.00
58	12/15/2008	Mon	2,900,000.00	3,400,000.00	6,300,000.00
59	12/16/2008	Tues	2,400,000.00	3,400,000.00	5,800,000.00
60	12/17/2008	Weds	2,300,000.00	3,000,000.00	5,300,000.00
61	12/18/2008	Thurs	2,300,000.00	3,400,000.00	5,700,000.00
62	12/19/2008	Fri	1,900,000.00	2,400,000.00	4,300,000.00
63	12/22/2008	Mon	3,300,000.00	3,600,000.00	6,900,000.00

Overt Act	Date of Check	Day of the Week	Convenience Store Supply	Supermarket Investors, Inc.	Daily Kite Total
64	12/23/2008	Tues	2,300,000.00	3,400,000.00	5,700,000.00
65	12/24/2008	Weds	700,000.00	3,400,000.00	4,100,000.00
66	12/26/2008	Fri	1,100,000.00	3,400,000.00	4,500,000.00
67	12/29/2008	Mon	2,600,000.00	3,000,000.00	5,600,000.00
68	12/30/2008	Tues	1,900,000.00	3,100,000.00	5,000,000.00
69	12/31/2008	Weds	1,900,000.00	3,300,000.00	5,200,000.00
70	1/2/2009	Fri	1,600,000.00	3,200,000.00	4,800,000.00
71	1/5/2009	Mon	3,500,000.00	5,100,000.00	8,600,000.00
72	1/6/2009	Tues	3,000,000.00	3,800,000.00	6,800,000.00
73	1/7/2009	Weds	2,600,000.00	3,400,000.00	6,000,000.00
74	1/8/2009	Thurs	3,100,000.00	3,800,000.00	6,900,000.00
75	1/9/2009	Fri	2,800,000.00	3,400,000.00	6,200,000.00
76	1/12/2009	Mon	3,200,000.00	3,800,000.00	7,000,000.00
77	1/13/2009	Tues	3,300,000.00	3,900,000.00	7,200,000.00
78	1/14/2009	Weds	3,000,000.00	3,600,000.00	6,600,000.00
79	1/15/2009	Thurs	3,600,000.00	3,900,000.00	7,500,000.00
80	1/16/2009	Fri	3,300,000.00	3,400,000.00	6,700,000.00
81	1/20/2009	Tues	2,300,000.00	3,400,000.00	5,700,000.00
82	1/21/2009	Weds	3,000,000.00	3,600,000.00	6,600,000.00
83	1/22/2009	Thurs	3,400,000.00	3,700,000.00	7,100,000.00
84	1/23/2009	Fri	3,600,000.00	4,000,000.00	7,600,000.00
85	1/26/2009	Mon	4,300,000.00	4,600,000.00	8,900,000.00
86	1/27/2009	Tues	3,600,000.00	4,200,000.00	7,800,000.00
87	1/28/2009	Weds	2,900,000.00	4,100,000.00	7,000,000.00
88	1/29/2009	Thurs	3,600,000.00	4,700,000.00	8,300,000.00
89	1/30/2009	Fri	2,900,000.00	4,200,000.00	7,100,000.00
90	2/2/2009	Mon	4,700,000.00	5,500,000.00	10,200,000.00
91	2/3/2009	Tues	4,400,000.00	5,000,000.00	9,400,000.00
92	2/4/2009	Weds	4,100,000.00	5,000,000.00	9,100,000.00
93	2/5/2009	Thurs	4,900,000.00	5,400,000.00	10,300,000.00
94	2/6/2009	Fri	3,800,000.00	4,500,000.00	8,300,000.00
95	2/9/2009	Mon	4,700,000.00	5,000,000.00	9,700,000.00
96	2/10/2009	Tues	4,000,000.00	4,600,000.00	8,600,000.00
97	2/11/2009	Weds	4,000,000.00	4,500,000.00	8,500,000.00
98	2/12/2009	Thurs	4,200,000.00	5,000,000.00	9,200,000.00
99	2/13/2009	Fri	4,000,000.00	5,000,000.00	9,000,000.00
100	2/17/2009	Tues	3,200,000.00	3,700,000.00	6,900,000.00
101	2/18/2009	Weds	3,400,000.00	3,800,000.00	7,200,000.00
102	2/19/2009	Thurs	4,000,000.00	4,600,000.00	8,600,000.00
103	2/20/2009	Fri	3,600,000.00	4,200,000.00	7,800,000.00
104	2/23/2009	Mon	4,600,000.00	5,500,000.00	10,100,000.00
105	2/24/2009	Tues	4,000,000.00	5,000,000.00	9,000,000.00

Overt Act	Date of Check	Day of the Week	Convenience Store Supply	Supermarket Investors, Inc.	Daily Kite Total
106	2/25/2009	Weds	4,900,000.00	5,400,000.00	10,300,000.00
107	2/26/2009	Thurs	5,500,000.00	6,100,000.00	11,600,000.00
108	2/27/2009	Fri	5,300,000.00		5,300,000.00

Real Property Transaction

109. On or about May 13, 2008, ALEXANDER "LEX" MARTINEZ, as AFS's CFO, signed a Letter of Intent with a Little Rock real estate company to sell nine AFS owned stores. One of the conditions of the agreement was that the real estate company would be able to obtain financing that contained financing terms that were acceptable to the real estate company. In order for AFS to be able to record the gain on the sale of the property by the end of AFS' fiscal year (June 28, 2008), AFS would have to receive 10% of the sales price from the purchaser (the real estate company) when the contract was executed.

110. On or about August 8, 2008, ALEXANDER "LEX" MARTINEZ informed AFS's outside accountants that sale documents for the sale of the stores were executed on or about June 28, 2008.

111. Because ALEXANDER "LEX" MARTINEZ and John Mills led the outside accountants to believe the sale documents had been signed and the 10% down payment had been received, the accounting firm prepared a draft annual report that recognized approximately \$3.5 million in gains from the sale.

112. On or about October 9, 2008, ALEXANDER "LEX" MARTINEZ contacted an official from the real estate company and advised him that in order for AFS to record the sale of the stores in AFS's prior fiscal year financials, AFS had to reflect on their accounting books that there was a down payment and four monthly lease and rent payments between AFS and the real

estate company for the months of July, August, September and October 2008. ALEXANDER "LEX" MARTINEZ requested an exchange of checks between the companies for the same dollar amount so that AFS could be allowed to recognize the gain. Since the dollar amount of the checks to be exchanged were the same, the real estate company agreed to exchange the checks.

113. On or about October 9, 2008, ALEXANDER "LEX" MARTINEZ caused to be issued an AFS check made payable to the real estate company in the amount of \$1,245,000. On the same day, the real estate company wrote AFS a check for the same amount which was for the reported 10% down payment. Although ALEXANDER "LEX" MARTINEZ informed AFS's outside accounting firm and AFS's Board of Directors that the real estate company had provided the 10% down payment, he failed to disclose to them that the down payment was 100% funded by a loan from AFS.

114. On or about October 9, 2008, ALEXANDER "LEX" MARTINEZ caused to be issued four AFS checks made payable to the real estate company in the amounts of \$72,625 each. On the check stubs of the four checks it reflected that the payments were for the rent payments for the months of July, August, September, and October 2008. On the same day, the real estate company issued four consecutive checks to AFS in the amounts of \$72,625 each. These checks were for the four months of loan payments towards the assumed loans.

115. From in or about September 2008 through in or about February 2009, ALEXANDER "LEX" MARTINEZ and John Mills led AFS' Board of Directors to believe that the real estate firm was bound by the agreement and could not back out of the deal. ALEXANDER "LEX" MARTINEZ and John Mills failed to disclose to the Board that the real estate company was not bound and the agreement was subject to the real estate company obtaining financing that contained terms that were acceptable to the real estate company.

116. During a December 2, 2008 meeting involving four AFS Board members, ALEXANDER "LEX" MARTINEZ, John Mills, and two of the outside accountants, one of the Board members asked if the real estate company had an out, meaning could they get out of the agreement. ALEXANDER "LEX" MARTINEZ responded that the real estate company was obligated. Another Board member asked that since the gain on the sale was such a large portion of their income for 2008, did they anticipate any changes before the audit report was finalized. ALEXANDER "LEX" MARTINEZ and John Mills responded, "No," even though they knew 1) the 10% down payment was funded by AFS and was not the real estate company's own money and 2) AFS's banks were unlikely to approve the real estate company's assumption of the loan notes. The purchase agreement between the two companies was never finalized.

All in violation of Title 18, United States Code, Section 1349.

COUNT TWO

A. The Grand Jury hereby re-alleges Paragraphs A1-A9 and D11-D108 of Count One and incorporates them herein by reference.

B. On a daily basis, all AFS deposit items were withdrawn by U.S. Bank in a process commonly referred to as "sweeping" the account and were used to reduce the outstanding balance on AFS' line of credit. By including the kited checks to artificially reduce their outstanding line of credit balance, AFS was then allowed to withdraw more money from their line of credit than they would have been allowed to had the kited checks not been deposited. The additional funds allowed AFS to cover the anticipated clearing items (ie, third party checks) which AFS would not have been able to cover had they not deposited the kited checks. This resulted in a one day float of additional cash. The following day, AFS drew funds from the line credit and deposited those

funds in CSSI and SII's account to cover the kited checks issued the previous day. In addition, new kited checks were issued by CSSI and SII based on that day's cash needs.

C. From on or about September 29, 2008 until on or about February 27, 2009 in the Eastern District of Arkansas and elsewhere,

ALEXANDER "LEX" MARTINEZ

aided and abetted by John Mills and others known and unknown to the Grand Jury, did knowingly execute and attempt to execute a scheme and artifice to defraud U.S. Bank, a financial institution, by engaging in a check kiting scheme.

All in violation of Title 18, United States Code, Sections 1344 and 2.

COUNT THREE

A. The Grand Jury hereby re-alleges Paragraphs A1-A9 and D6-D10 of Count One and incorporates them herein by reference.

B. On or about February 19, 2009, in the Eastern District of Arkansas and elsewhere,

ALEXANDER "LEX" MARTINEZ

aided and abetted by John Mills and others known and unknown to the Grand Jury, knowingly made a false statement and report for the purpose of influencing in any way the action of U.S. Bank, a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation, upon any commitment and loan, and any change and extension of the same; to wit, a false consolidated financial statement for the time period June 29, 2008 through December 13, 2008 was presented to U.S. Bank for determination of whether AFS was meeting its loan covenants.

All in violation of Title 18, United States Code, Sections 1014 and 2.

(END OF TEXT. SIGNATURE PAGE ATTACHED.)