

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No. 08-629 (S-1)(GEB)
	:	
v.	:	18 U.S.C. §§ 1349, 1343, 1341, 1344,
	:	1028A; and 18 U.S.C. § 2
ROBERT SACKS and	:	
DIEGO HERNANDEZ,	:	
	:	
Defendants	:	<u>SUPERCEDING INDICTMENT</u>

The Grand Jury in and for the District of New Jersey, sitting at Trenton, charges:

COUNT ONE

(Conspiracy to Commit Mail and Wire Fraud)

Overview of the Scheme to Defraud

1. Beginning as early as in or about July 2004, the Defendants ROBERT SACKS and DIEGO HERNANDEZ, and other co-conspirators, under the fraudulent pretext of operating a telemarketing business, engaged in an elaborate scheme to defraud and attempt to defraud dozens of financial institutions and tens of thousands of their account holders out of tens of millions of dollars by debiting or attempting to debit tens of thousands of bank accounts throughout the United States without the knowledge, authorization or permission of the account holders.

**I. The Defendants**

2. At all times relevant to this Superseding Indictment:

a. Defendant ROBERT SACKS was a U.S. citizen residing in Miami-Dade County, Florida. Defendant SACKS organized and managed this fraudulent scheme; he was the primary point of contact for the Canadian co-conspirators who provided the false and fraudulent bank account information, and he recruited multiple co-conspirators to participate in this scheme,

including but not limited to Defendant HERNANDEZ. Defendant SACKS also incorporated or caused to be incorporated corporations, or used or caused to be used existing corporations, that were used to open bank accounts into which he deposited or caused to be deposited false and fraudulent checks or electronic debits, and out of which he transferred or caused to be transferred ill-gotten proceeds to himself and other co-conspirators.

b. Defendant DIEGO HERNANDEZ was a Venezuelan citizen residing in Miami-Dade County, Florida. Defendant HERNANDEZ also incorporated or caused to be incorporated corporations that were used to open bank accounts into which Defendant HERNANDEZ deposited or caused to be deposited false and fraudulent checks or electronic debits, and out of which Defendant HERNANDEZ transferred or caused to be transferred ill-gotten proceeds to himself and other co-conspirators. Defendant HERNANDEZ also recruited others to do the same.

## **II. Co-Conspirators**

3. At all times relevant to this Superceding Indictment:

a. Co-Conspirator Jan Ludvik and Co-Conspirator Siamek Saleki resided in Montreal, Canada. Co-conspirators Ludvik and Saleki provided or caused to be provided lists of individuals' bank account information (otherwise known as "full data" customer account lists) to their co-conspirators in the United States, including but not limited to Defendants SACKS and HERNANDEZ, to be processed for payment in the United States knowing that the individuals whose account information was included on these lists did not order a product associated with this debit, or authorize this debit from their accounts. Co-Conspirator Saleki also performed purported "customer service" by: (i) fielding complaints from aggrieved consumer-victims who

discovered the unauthorized charge and, on occasion, authorizing a refund to the complaining consumer-victim; and (ii) shipping, on rare occasion, a product to consumer-victims whose account had been debited and who had not ordered the product, for purposes of creating plausible deniability. Co-conspirators Ludvik and Saleki received proceeds from the false and fraudulent debit of these bank accounts.

b. Co-Conspirator Kim Nichols was a U.S. citizen residing in Sarasota County, Florida. Co-Conspirator Nichols incorporated or caused to be incorporated corporations or used or caused to be used existing corporations that were used to open bank accounts into which Co-Conspirator Nichols deposited or caused to be deposited false and fraudulent checks or electronic debits, and out of which Co-Conspirator Nichols transferred or caused to be transferred ill-gotten proceeds to herself and other co-conspirators. Co-Conspirator Nichols also received full data customer account lists from Co-Conspirators Ludvik and Saleki, and others, which Co-Conspirator Nichols used to print demand drafts for deposit into a bank account, or to format the list for electronic debiting by a payment processor.

c. CO-CONSPIRATOR Ronald Sherman was a U.S. citizen residing in Palm Beach County, Florida. Co-Conspirator Sherman was a long-standing friend of Defendant SACKS. Co-Conspirator Sherman incorporated or caused to be incorporated corporations that were used to open bank accounts into which Co-Conspirator Sherman deposited or caused to be deposited false and fraudulent checks or electronic debits, and out of which Co-Conspirator Sherman transferred or caused to be transferred ill-gotten proceeds to himself and other co-conspirators. Co-Conspirator Sherman recruited others to do the same, including but not limited to Co-Conspirators Steven Mark and Ed Hansen.

d. CO-CONSPIRATOR Steven Mark was a U.S. citizen residing in Monmouth County, New Jersey; CO-CONSPIRATOR Ed Hansen was a U.S. citizen residing in Oakland County, Michigan. Co-Conspirators Mark and Hansen were long-standing friends of Co-Conspirator Sherman and were recruited by Co-Conspirator Sherman to participate with Defendant SACKS and other co-conspirators in the scheme to defraud banks and their account holders. Co-Conspirators Mark and Hansen incorporated or caused to be incorporated corporations that were used to open bank accounts into which Co-Conspirators Mark and Hansen deposited or caused to be deposited false and fraudulent checks or electronic debits, and out of which Co-Conspirators Mark and Hansen transferred or caused to be transferred ill-gotten proceeds to themselves and other co-conspirators. Co-Conspirator Mark also recruited others to do the same.

e. CO-CONSPIRATORS Peter Affatati and Scott Salomon were U.S. citizens residing in Broward County, Florida. Co-Conspirators Affatati and Salomon incorporated or caused to be incorporated corporations or used or caused to be used existing corporations that were used to open bank accounts into which Co-Conspirators Affatati and Salomon deposited or caused to be deposited false and fraudulent checks or electronic debits, and out of which Co-Conspirators Affatati and Salomon transferred or caused to be transferred ill-gotten proceeds to themselves and other co-conspirators.

### **III. Relevant Terms**

4. At all times relevant to this Superseding Indictment:

a. “Telemarketer”, “Merchant” or “Originator” ( “Telemarketer”) were common terms for companies that sold products via telephone or internet solicitation. Legitimate Telemarketers obtain bank account information from consumers in order to facilitate payment for a product.

b. “Lead lists” or “full data lists” were lists of consumer bank account information, often compiled from data previously provided by consumers in connection with the actual purchase of a product from a Telemarketer. Fraudulent Telemarketers often sold lead lists so others could defraud consumers by debiting their accounts without their authorization or permission.

c. A “facsimile check” or “demand draft” (“demand draft”) was a document that had the same format and characteristics of a bank check. It contained the name, address, bank routing number and account number for the consumer, but not the consumer’s signature. When properly used, a demand draft was verbally authorized by the consumer, printed by the merchant or a third-party payment processor, and submitted to a bank in the form of a draft check; these drafts were processed by the banking system in the same manner as other financial instruments.

d. Telemarketers and their associates often contracted with “payment processors” to collect and transmit money. A “payment processor” performed this service in one of two ways relevant to this scheme: (i) the payment processor printed demand drafts and deposited them or caused them to be deposited in an account designated by the Telemarketer

(“Facilitating Bank Account”) or designated by the payment processor (“Processor Settlement Account”), whereby the facsimile checks were submitted to the customer’s bank for payment; and/or (ii) the payment processor, or “ACH Processor,” electronically debited the account of a customer, transferred money into a Processor Settlement Account, and electronically wired the proceeds to a designated account.

e. “Account Clearinghouse” (“ACH”) was an automated system by which accounts were electronically debited (i.e., electronically withdrawn); these electronic debits were often referred to as “ACH debits.”

f. A check or ACH “return” refers to a transaction that was refused or reversed by the payor’s bank because the check or debit was drawn upon: (i) bank accounts that were nonexistent, closed or contained insufficient funds; and/or (ii) bank accounts of unwitting individuals who had not purchased any product and did not authorize any withdrawal from their account and alerted the bank in time to reverse the transaction (usually 30-60 days), thereby effectuating a return of the money to the victim’s account.

i. The Federal Reserve Board estimated that the average total return rate for bank checks (which includes facsimile checks) was approximately one half a percent.

ii. Statistics maintained by the National Automated Clearinghouse Association (hereinafter “NACHA”) indicate that the average return rate on ACH transactions was approximately 2 percent.

g. Overall “return rate(s)” cited herein did not include withdrawals or debits from alleged telemarketing customers who had neither purchased a product nor authorized a withdrawal and who did not alert the bank in time to reverse the transaction (because they either

realized too late or never realized at all). Although they were victims, under applicable law, these accounts holders were not entitled to a return of their money from the bank. Therefore, the unauthorized demand draft or debit in their name was not included in the overall return rate.

h. “Scrubbing” was a term used to describe efforts made to determine if an alleged customer account was active and contained sufficient funds to accommodate a withdrawal or electronic debit. Pre-debit “scrubbing” of alleged telemarketing accounts resulted in fewer demand drafts and debits being returned without payment than deposits and electronic debits of non-scrubbed accounts.

i. “Voice Verifications,” “Call Verification Records” or “Genies” were recordings of transactions used to verify and substantiate customer purchases.

#### **IV. Bank Victims**

5. At all times relevant to this Superceding Indictment:

The following were financial institutions (along with their predecessor names, as is relevant to this Superceding Indictment), as defined in Title 18, United States Code, Section 20, whose deposits were insured by the FDIC: Citibank, N.A.; Fifth Third Bank (formerly First National Bank of Florida); Wachovia Corporation (formerly First Union National Bank); JP Morgan Chase & Co. (formerly Bank One); SunTrust Banks, Inc.; Branch Banking and Trust Company; Sovereign Bank; Bank of America, N.A (formerly NatWest Bank); Washington Mutual; Pilot Bank; Bank of the West (formerly Commercial Federal Bank); Bancorp Bank (dba ITI Bank); Rockland Trust Company; TD BankNorth Inc. (formerly Hudson United Bank and Commerce Bank); First Citizens Bank; and PNC Bank, N.A; Bridgehampton National Bank;

Somerset Valley Bank; Amboy National Bank; U.S. National Bank These institutions, and others, and their account holders were defrauded in the manner set forth herein.

V. The Conspiracy

6. From at least as early as July 1, 2004, to in or about December, 2008, in Bergen, Camden, Cape May, Essex, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Union Counties, in the District of New Jersey, and elsewhere, the defendants,

ROBERT SACKS and  
DIEGO HERNANDEZ,

did knowingly and intentionally conspire and agree among themselves and with Co-Conspirators Ludvik, Saleki, Nichols, Sherman, Mark, Hansen, Affatati, Salomon and others to devise a scheme and artifice to defraud financial institutions and account holders, and to obtain money and property, by means of materially false and fraudulent pretenses, representations and promises, which scheme and artifice was in substance as set forth in paragraphs 7 through 58 below, and for the purpose of effectuating such scheme and artifice below:

a. knowingly placed and caused to be placed in a post office and authorized depository of mail, and caused to be delivered thereon, certain mail matter, to be sent and delivered by the United States Postal Service, and by a private and commercial interstate carrier, contrary to Title 18, United States Code, Section 1341; and

b. knowingly transmitted and caused to be transmitted by means of using interstate and foreign wire communications writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice to defraud, contrary to Title 18, United States Code, Section 1343.

### Object of the Conspiracy

7. The object of the conspiracy was, under the fraudulent pretext of operating a telemarketing business, to defraud financial institutions (“bank-victims”) and their account holders (“consumer-victims”) out of millions of dollars by: debiting or attempting to debit tens of thousands of bank accounts throughout the United States of unwitting account-holders who did not order a product or authorize a debit, for deposit into accounts under the custody and control of the Defendants and their co-conspirators; withdrawing the ill-gotten proceeds from these accounts after the bank-victim had made funds available and before either the bank-victim or the consumer-victim had realized that the account had been wrongfully debited; and transferring the ill-gotten proceeds into additional accounts under the custody and control of the Defendants and their co-conspirators.

### Means and Methods of the Conspiracy

8. Among the means and methods employed by the Defendants and their co-conspirators to carry out the conspiracy and effectuate its unlawful object were those set forth in Paragraphs 9 through 58 below.

9. **Facilitating Corporations:** Defendants and their co-conspirators, under the guise of operating a legitimate telemarketing business, used or caused to be used pre-existing corporations, or incorporated or caused to be incorporated new corporations (“Facilitating Corporations”), that then were used to open Facilitating or Consolidating Bank Accounts.

10. **Facilitating Bank Accounts:** Defendants and their co-conspirators, under the guise of operating a legitimate telemarketing business, used or caused to be used pre-existing bank accounts, or opened or caused to be opened new bank accounts throughout the United

States in the names of various Facilitating Corporations (“Facilitating Bank Accounts”), that then received and processed false and fraudulent facsimile checks and/or electronic debits.

11. **Processing Alleged Customer Account Lists:** Defendants and their co-conspirators obtained bank account information of account holders in the United States and hired Payment Processors to debit or attempt to debit these accounts without the consent or authorization of the account holder by either: (a) drafting or causing to be drafted facsimile checks, purportedly on behalf of alleged telemarketing customers, that then were deposited into Facilitating Bank Accounts or Processor Settlement Accounts; or (b) electronically debiting or causing to be electronically debited the accounts of alleged telemarketing customers that then were deposited into Processor Settlement Accounts.

12. **Deposits of Fraudulent Checks Into Facilitating Bank and Processor Settlement Accounts:** Defendants and their co-conspirators then deposited or caused to be deposited into these Facilitating Bank Accounts or Processor Settlement Accounts millions of dollars in the form of either facsimile checks or electronic wire transfers, drawn upon: (a) bank accounts that were nonexistent, closed or contained insufficient funds; and/or (b) bank accounts of unwitting individuals who had not purchased any product and did not authorize any withdrawal from their account (“alleged telemarketing customers”).

13. **Transfers Into Consolidating Bank Accounts:** Once the Facilitating Bank Account or Processor Settlement Account made funds available, which often occurred before the checks were returned or debits were reversed for the above-mentioned reasons, the Defendants and their co-conspirators withdrew or attempted to withdraw the fraudulent proceeds from the Facilitating Bank Account or Processor Settlement Account, and transferred or attempted to

transfer the fraudulent proceeds into Consolidating Accounts that were controlled by the Defendants and their co-conspirators, for their own personal use.

**VI. Accounts:** The following accounts, among others, were used to further the aforementioned conspiracy.

**A. Fifth Third EMS**

14. Beginning in or about July, 2004, Co-Conspirator Nichols began processing millions of dollars of false and fraudulent facsimile checks based upon alleged telemarketing customer lists provided by Co-Conspirators Ludvik, Saleki and others, including but not limited to the following:

15. **Facilitating Corporations:** Co-Conspirator Nichols used Electronic Money Solutions (“EMS”), which was incorporated by OC, a business partner of Co-Conspirator Nichols, in or about October 2003, in the State of Nevada, for the purpose of opening Facilitating Bank Accounts.

16. **Facilitating Bank Accounts:** On or about July 1, 2004, Co-Conspirator Nichols opened or caused to be opened a business checking account at Fifth Third Bank (formerly First National Bank of Florida), in the name “Electronic Money Solutions” (“Fifth Third EMS Account”), to deposit funds derived from alleged telemarketing sales.

17. **Processing Alleged Customer Account Lists:** From in or about July, 2004 until in or about January, 2005, Co-Conspirators Ludvik, Saleki and others sent Co-Conspirator Nichols false and fraudulent telemarketing customer list information that represented over \$1 million worth of alleged telemarketing sales for deposit into the Fifth Third EMS Account.

18. From in or about July, 2004, Co-Conspirator Nichols hired employees to scrub the customer list information by telephoning the banks from which the electronic debits were to be made in order to determine whether the accounts were active and funded in an amount in excess of the customer check. Co-Conspirator Nichols subsequently entered into an agreement, online, with Better Check, Inc., to scrub the customer list information.

19. Once scrubbed, Co-Conspirator Nichols formatted the account information and sent the formatted lists either to Alliance Payment Technologies, Inc. ("Alliance"), for electronic debit and deposit into the Alliance Settlement Account (and subsequent deposit into the Fifth Third EMS Account), or directly to Fifth Third Bank, for electronic debit and deposit into the Fifth Third EMS Account.

20. **Transfer Of Fraudulent Proceeds Into Processor Settlement Accounts:** In or about July, 2004, Alliance electronically debited or attempted to electronically debit approximately \$42,294.00 from the bank accounts of alleged telemarketing customers associated with EMS, and credited or attempted to credit the Alliance Settlement Account. Approximately 80% of the debits were returned to the Alliance Settlement Account because they were drawn upon accounts that were non-existent, closed, contained insufficient funds, or the accounts of unwitting individuals who did not authorize the withdrawal and alerted the bank in time to reverse the transaction. From on or about July 6, 2005 to on or about July 30, 2005, approximately \$30,978.00, which represented proceeds of the scheme, was transferred from the Alliance Settlement Account to the Fifth Third EMS Account.

21. **Deposits of Fraudulent Checks Into Facilitating Bank Accounts:** From in or about October, 2004 until in or about January, 2005, Fifth Third Bank electronically debited or

attempted to electronically debit over \$1 million from the bank accounts of alleged telemarketing customers. Approximately 50% of these already-scrubbed checks were returned to the Fifth Third EMS Account because they were drawn upon accounts that were non-existent, closed, contained insufficient funds, or because they were drawn upon the accounts of unwitting individuals who did not authorize the withdrawal and alerted the bank in time to reverse the transaction. Fifth Third closed this account on or about July 22, 2005, at which time the account was overdrawn.

22. **Transfers Into Consolidating Accounts:** From on or about December 6, 2004 to on or about January 21, 2005, Co-Conspirator Nichols transferred or caused to be transferred, via wire, approximately \$266,848.37 of ill-gotten proceeds from the Fifth Third EMS Account to an account opened in the name of American Dynamic, LLC, on or about December 22, 2003, by Defendant SACKS and GH at Citibank (“Citibank American Dynamic Account”).

a. From on or about December 15, 2004 to on or about January 24, 2005, Defendant SACKS, in turn, transferred or caused to be transferred, via wire, approximately \$90,000.00 of ill-gotten proceeds from the Citibank American Dynamic Account to a Denarius Financial Group Account at Key Bank in Albany, New York, under the control of Co-Conspirator Ludvik.

b. From on or about October 14, 2004 to on or about January 14, 2005, Defendant SACKS transferred or caused to be transferred, via wire, approximately \$70,000.00 of ill-gotten proceeds from the Citibank American Dynamic Account to the Canada Inc. Account at JP Morgan Chase in New York, New York, under the control of Co-Conspirator Saleki.

**B. American Direct and American Dynamic Accounts**

23. Beginning in or about September, 2004, Defendant SACKS, GH, a personal assistant of Defendant SACKS, and others, hired ACH Processors, including but not limited to Evalucheck, Inc., to debit or attempt to debit millions of dollars from the accounts of alleged telemarketing customers, and then transfer or cause to be transferred, from Processor Settlement Accounts, the ill-gotten proceeds into Consolidating Accounts under the control of the Defendants and their co-conspirators. For example:

24. **Facilitating and/or Consolidating Corporations:** On or about October 22, 2004, Defendant SACKS, for the purpose of opening Facilitating Bank Accounts and/or receiving ill-gotten proceeds from Facilitating Bank Accounts and Processor Settlement Accounts: incorporated or caused to be incorporated American Direct, Inc.; and used or caused to be used American Dynamic, LLC, which was incorporated or caused to be incorporated by GH on or about February 1, 2003.

25. **Processing Alleged Customer Account Lists For Deposit Into Processor Settlement Accounts:** On or about October 27, 2004, Defendant SACKS, on behalf of American Direct, Inc., and Evalucheck, entered into a Check Processing Services Agreement (“Evalucheck SACKS Contract”), whereby Evalucheck agreed to debit the accounts of alleged telemarketing customers and deposit the funds into its Settlement Account at First Citizens Bank in Charlotte, North Carolina (“Evalucheck Settlement Account”). On or about September 20, 2004, GH, on behalf of American Dynamic, LLC, entered into a similar Check Processing Services Agreement with Evalucheck. From on or about October 28, 2004 to on or about November 15, 2004, Co-Conspirator Saleki and others provided or caused to be provided

customer list information to Evalucheck, via wire, that purportedly represented approximately \$702,902.00 worth of alleged telemarketing sales.

26. **Transfer Of Fraudulent Proceeds Into Processor Settlement Accounts:** From on or about October 28, 2004 to on or about November 15, 2004, Evalucheck debited or attempted to debit approximately \$702,902.00 from bank accounts of alleged telemarketing customers associated with American Direct and American Dynamic, and credited or attempted to credit the Evalucheck Settlement Account. Approximately 64% of the debits associated with American Direct and approximately 84% of the debits associated with American Dynamic were returned to the Evalucheck Settlement Account because they were drawn upon accounts that were non-existent, closed, contained insufficient funds, or the accounts of unwitting individuals who did not authorize the withdrawal and alerted the bank in time to reverse the transaction. On or about November 15, 2004, Evalucheck froze both accounts due to the excessive return rates and an inability to obtain consumer verification records.

27. **Transfers Into Consolidating Accounts:** For the purpose of receiving ill-gotten proceeds from Facilitating Bank Accounts or Processor Settlement Accounts, including but not limited to the Evalucheck Settlement Account: on or about October 27, 2004, Defendant SACKS and Co-Conspirator Sherman opened or caused to be opened a business checking account in the name of American Direct, Inc., at Sun Trust Bank; and Defendant SACKS used or caused to be used his American Dynamic Citibank Account. On or about November 22, 2004, approximately \$54,418.00 of ill-gotten proceeds from the scheme was transferred, in error, from the Evalucheck Settlement Account to Defendant SACKS' American Direct Account.

28. On or about December 13, 2004, Defendant SACKS, upon being notified that the account had been frozen and that Evalucheck was seeking the return of the errantly transferred \$54,418.00, transferred or caused to be transferred \$40,000 of the ill-gotten Evalucheck proceeds from his American Direct Account into a UBS account in his mother's name.

**C. The Recruits**

29. Defendants SACKS and others recruited co-conspirators throughout the country, including but not limited to Defendant HERNANDEZ, to incorporate additional Facilitating and Consolidating Corporations and/or open Facilitating and Consolidating Bank Accounts, into which false and fraudulent checks or debits were deposited, and out of which ill-gotten proceeds were transferred to the Defendants and their co-conspirators. For example:

**1. Wyncrest**

30. Co-Conspirator Mark, upon being recruited by Co-Conspirator Sherman, incorporated Facilitating Corporations and opened Facilitating Bank Accounts in New Jersey, and recruited another individual to do the same, into which false and fraudulent facsimile checks were deposited, and out of which ill-gotten proceeds were transferred to Defendant SACKS and his co-conspirators, including but not limited to the following:

31. **Facilitating Corporations:** On or about February 18, 2005, Co-Conspirator Mark, at the request and direction of Defendant SACKS and Co-Conspirator Sherman, incorporated or caused to be incorporated Wyncrest Consulting Corp., in the State of New Jersey, for the purpose of opening Facilitating Bank Accounts.

32. **Facilitating Bank Accounts:** On or about June 10, 2005, Co-Conspirator Mark, at the request and direction of Defendant SACKS and Co-Conspirator Sherman, opened or

caused to be opened a business checking account at Sovereign Bank in Old Bridge, New Jersey, in the name of Wyncrest Consulting Corp. (“Sovereign Wyncrest Account”), to deposit funds derived from alleged telemarketing sales.

33. **Processing Alleged Customer Account Lists:** On or about May 12, 2005, Co-Conspirator Mark, on behalf of Wyncrest Consulting Corp., and Net 30 Solutions, a payment processing company owned and operated by JM, entered into a Payment Processing Agreement, whereby Net 30 Solutions agreed to print demand drafts of alleged telemarketing customers, upon receipt of alleged customer account information, via wire (e-mail), and deposit those checks directly into the client’s bank account. Net 30 Solutions also scrubbed these accounts prior to printing and depositing the demand drafts. In or about May, 2005, Co-Conspirator Saleki provided the alleged telemarketing customer list information to JM at Net 30 Solutions, so that JM could print the demand drafts.

34. **Deposits of Fraudulent Checks Into Facilitating Bank Accounts:** On or about June 13, 2005, JM, on behalf of Defendant SACKS, and Co-Conspirators Saleki, Sherman and Mark, mailed the following demand drafts to the Sovereign Wyncrest Account at Sovereign Bank in Old Bridge, New Jersey for deposit: the first deposit, on or about June 14, 2005, totaled approximately \$168,903.00; the second deposit, on or about June 15, 2005, totaled approximately \$198,232.00. JM mailed the printed demand drafts, via Federal Express, charging account number 260315765, which is the Federal Express account number for the law firm of Sacks and Sacks, LLP., New York, New York, the law firm of Defendant SACKS’ two brothers. Approximately 83% of these post-scrubbed drafts were returned to Sovereign Bank because they were drawn upon accounts that were non-existent, closed, contained insufficient funds, or the

accounts of unwitting individuals who did not authorize the withdrawal and alerted the bank in time to reverse the transaction. On or about June 16 and June 20, 2005, JM mailed additional demand drafts, via Federal Express, in the approximate amount of \$174,009.00, to the Sovereign Wyncrest Account; these checks were held by the bank and not deposited due to a suspicion of fraud based upon the high rate of returns for the checks deposited on or about June 14 and June 15, 2005.

35. **Transfers Into Consolidating Accounts:** On or about June 20, 2005, Co-Conspirator Mark, at the direction of Defendant SACKS and Co-Conspirator Sherman, attempted to transfer ill-gotten proceeds from the Sovereign Wyncrest Account to an account in the name of American Payment Inc., at SunTrust Bank (“American Payment SunTrust Account”), which was opened by Defendant SACKS and Co-Conspirator Sherman on or about February 15, 2005. American Payment Inc., was a Florida corporation, incorporated on or about October 29, 2004 by Defendant SACKS and Co-Conspirator Sherman. This attempted transfer of proceeds was unsuccessful because on or about June 17, 2005, Sovereign Bank froze the Sovereign Wyncrest Account due to suspicious activity.

## 2. Edgebrook Services

36. Co-Conspirator Hansen, upon being recruited by Co-Conspirator Sherman, incorporated Facilitating Corporations and opened Facilitating Bank Accounts, into which false and fraudulent checks or debits were deposited, and out of which ill-gotten proceeds were transferred to the Defendants and their co-conspirators, including but not limited to the following:

37. **Facilitating Corporations:** On or about May 31, 2005, Co-Conspirator Hansen, at the direction of Defendant SACKS and Co-Conspirator Sherman, incorporated or caused to be incorporated Edgebrook Services Inc., in the State of Michigan, for the purpose of opening Facilitating Bank Accounts.

38. **Facilitating Bank Accounts:** On or about June 1, 2005, Co-Conspirator Hansen, at the request and direction of Defendant SACKS and Co-Conspirator Sherman, opened or caused to be opened a business checking account at J.P. Morgan Chase (formerly Bank One) in Detroit, Michigan, in the name of Edgebrook Services Inc. (“Chase Edgebrook Account”), to deposit funds derived from alleged telemarketing sales.

39. **Processing Alleged Customer Account Lists:** On or about May 31, 2005, Co-Conspirator Hansen, on behalf of Edgebrook Services, and Net 30 Solutions entered into a Payment Processing Agreement, whereby Net 30 Solutions agreed to print demand drafts upon receipt of customer account information via “Direct Mail,” and deposit those drafts directly into the Chase Edgebrook Account, which Net 30 Solutions did, soon thereafter, at a Bank One branch in The Woodlands, Texas. Net 30 Solutions also scrubbed these accounts prior to printing the demand drafts.

40. **Deposits of Fraudulent Checks Into Facilitating Bank Accounts:** On or about June 8, 2005 through on or about June 16, 2005, Defendant SACKS, and Co-Conspirators Saleki and Sherman caused the deposit of demand drafts totaling approximately \$250,980.00 to be made into the Chase Edgebrook Account. Approximately 72% of these post-scrubbed checks were returned to the Chase Edgebrook Account because they were drawn upon accounts that were

non-existent, closed, contained insufficient funds, or the accounts of unwitting individuals who did not authorize the withdrawal and alerted the bank in time to reverse the transaction.

41. **Transfers Into Consolidating Accounts:** On or about June 10, 2005, Co-Conspirator Hansen, at the direction of Defendant SACKS and Co-Conspirator Sherman, transferred or caused to be transferred, via wire, approximately \$60,000.00 of ill-gotten proceeds from the Chase Edgebrook Account to Defendant SACKS and Co-Conspirator Sherman's American Payment SunTrust Account. On or about July 28, 2005, J. P. Morgan Chase closed the Chase Edgebrook Account, at which time the account was overdrawn.

### 3. DI & VI

42. Defendant HERNANDEZ, upon being recruited by Defendant SACKS, incorporated or caused to be incorporated Facilitating Corporations and opened or caused to be opened Facilitating Bank Accounts, into which false and fraudulent checks or debits were deposited, and out of which ill-gotten proceeds were transferred to the Defendants and their co-conspirators, including but not limited to the following:

43. **Facilitating And/Or Consolidating Corporations:** On or about February 8, 2005, Defendant HERNANDEZ caused the incorporation of DI & VI Corporation ("DI & VI"), a Florida corporation, for the purpose of receiving ill-gotten proceeds from Processor Settlement Accounts.

44. **Processing Alleged Customer Account Lists For Deposit Into Consolidating Bank Accounts:** On or about August 24, 2005, VH (Defendant HERNANDEZ's wife), on behalf of DI & VI and the request and direction of Defendant HERNANDEZ, and Integrated Check Technologies, Inc. ("ICT"), entered into an Agreement to Provide Services ("ICT DI & VI

Contract”), whereby ICT agreed to electronically debit the accounts of alleged telemarketing customers and deposit the funds into its Settlement Account at U.S. Bank in Bedford, Ohio (“ICT Settlement Account”).

45. **Transfer Of Fraudulent Proceeds Into Processor Settlement Accounts:** From on or about October 14, 2005 to on or about December 15, 2005, ICT debited or attempted to debit approximately \$4,842,199.00 from alleged telemarketing customers associated with DI & VI, and credited or attempted to credit the ICT Settlement Account. Approximately 80% of the debits associated with DI & VI were returned to the ICT Settlement Account because they were drawn upon accounts that were non-existent, closed, contained insufficient funds, or the accounts of unwitting individuals who did not authorize the withdrawal and alerted the bank in time to reverse the transaction. On or about November 22, 2005, ICT froze the ICT Settlement Account due to excessive returns. On or about December 16, 2006, ICT closed this account due to suspicious activity.

46. **Transfers Into Consolidating Accounts:** On or about June 23, 2005, Defendant HERNANDEZ opened or caused to be opened a business checking account in the name of DI & VI Inc., at Branch Banking and Trust Company to receive, in part, ill-gotten proceeds from the ICT Settlement Account (“BB&T DI&VI Account”). On or about October 25, 2005, ICT wired approximately \$52,887.00, which represented proceeds of the scheme, to the BB&T DI & VI Account.

47. On or about November 1, 2005, approximately \$35,000.00 in ill-gotten proceeds was wired from the BB&T DI & VI Account into the SACKS’ UBS Account. On or about November 25, 2005, approximately \$4,000.00 in ill-gotten proceeds was wired from the BB&T

DI & VI Account into Defendant HERNANDEZ's account at Centennial Bank. On or about November 25, 2005, approximately \$13,000.00 in ill-gotten proceeds, in the form of a bank check, was withdrawn from the BB&T DI & VI Account and deposited on or about November 28, 2005 into the SACKS UBS Account. Moreover, from on or about November 2, 2005 to on or about November 22, 2005, approximately \$150,446.20 in ill-gotten proceeds was wired from the ICT Settlement Account directly into Co-Conspirator Saleki's Canada Inc. Account at JP Morgan Chase Bank. On or about November 23, 2005, approximately \$21,150.00 was wired from Co-Conspirator Saleki's Canada Inc. Account at JP Morgan Chase Bank back into the BB&T DI & VI Account.

**D. Pilot Accounts**

48. Starting in or about December, 2004, Defendant SACKS, Co-Conspirators Ludvik, Saleki, Salomon, Nichols, Affatati, and others, discussed, in person and on the telephone, finding a bank that would accept the deposit of alleged telemarketing drafts, tolerate high return rates, and make proceeds accessible quickly. Co-Conspirator Salomon, in furtherance of this purpose, introduced the above-mentioned co-conspirators to DV, who was employed by Pilot Bank as a Branch Manager; DV is the father of Co-Conspirator Salomon's acquaintance DJ, who previously worked with Co-Conspirators Salomon and Affatati.

49. **Facilitating Corporations:** On or about the following dates, Defendant SACKS and his co-conspirators recruited individuals in or around the Miami, Florida area to incorporate or caused to be incorporated the following Facilitating Corporations, for the purpose of opening Facilitating Bank Accounts:

<u>Name</u>	<u>Incorporation Date</u>	<u>Purported Incorporator</u>
Telenet Processing Corp.	December 28, 2004	SF
Connect Processing Inc.	January 14, 2005	DV
Mex Processing Inc.	January 14, 2005	DV
Jato Processing Inc.	January 14, 2005	JF
Joebrig Processing Inc.	January 14, 2005	BRIGETTE FREYERMUTH

50. **Facilitating Bank Accounts:** On or about February 9, 2005, Defendant SACKS, Co-Conspirators Sherman, Salomon, Nichols, Affatati, and others traveled to Tampa, Florida and opened or caused to be opened twenty-five business checking accounts at the Pilot Bank, Tampa, Florida ("Pilot Accounts"), in their names, and the names of others who were not present, including but not limited to the following accounts, to deposit funds derived from alleged telemarketing sales:

<u>Account Name</u>	<u>Account No.</u>	<u>Signator</u>
Port of Call Inc.	***5812	CS; SCOTT SALOMON
Telenet Processing Corp.	***5948	SF; SCOTT SALOMON
Connect Processing Inc.	***5993	DV; ROBERT SACKS
Mex Processing Inc.	***5841	DV; ROBERT SACKS
Jato Processing Inc.	***5838	JF; SCOTT SALOMON
JoeBrig Processing Inc.	***5799	Unnamed (business address of Co-Conspirator Salomon)

On or about February 9, 2005, Defendant SACKS provided Pilot Bank with a \$2,300.00 check (dated February 8, 2005), for the opening of the majority of the Pilot Accounts; this check was negotiated by Pilot Bank on or about February 10, 2005.

51. **Processing Alleged Customer Account Lists:** In or about February, 2005, Co-Conspirator Nichols entered into an agreement, online, with Better Check, Inc., to scrub customer list information provided by Co-Conspirators Ludvik, Saleki and others. In or about February, 2005, Co-Conspirators Ludvik, Saleki and others provided or caused to be provided the

alleged telemarketing customer list information to Co-Conspirator Nichols, via wire (e-mail). Once scrubbed, Co-Conspirator Nichols printed demand drafts containing the account information of the remaining alleged telemarketing customers and deposited or caused to be deposited these facsimile checks into the above-listed Pilot Accounts.

52. **Deposits of Fraudulent Checks Into Facilitating Bank Accounts:** On or about the following dates, the following deposits of checks were made to the following Pilot Accounts, which resulted in the following post-scrubbing return rates because the checks were drawn upon accounts that were non-existent, closed, contained insufficient funds, or the accounts of unwitting individuals who did not authorize the withdrawal and alerted the bank in time to reverse the transaction:

<u>Account</u>	<u>Deposit Date(s)</u>	<u>Deposits</u>	<u>Return Rate</u>
Pilot Port of Call Account	2/28/05	\$29,898.00	55%
Pilot Connect Account	3/1/05	\$36,828.00	49%
Pilot Mex Account	2/28/05; 3/1/05	\$44,550.00	52%
Pilot Jato Account	2/28/05; 3/1/05	\$48,312.00	51%
Pilot Telenet Account	2/28/05; 3/1/05	\$33,363.00	54%
Pilot JoeBrig Account	2/23/05; 3/1/05	\$94,050.00	43%

53. **Transfers Into Consolidating Accounts:** On or about April 26, 2005, Co-Conspirator Salomon transferred or caused to be transferred, via wire, a total of approximately \$64,000.00 of ill-gotten proceeds from the Pilot Accounts (excluding Pilot JoeBrig Account) to an escrow account at Wachovia Bank, opened on or about January 1, 2005, by Co-Conspirator Salomon (“Wachovia Escrow Account”), and subsequently distributed these ill-gotten proceeds to himself, Co-Conspirator Affatati and another co-conspirator. Soon after the April 26, 2005 transfer, Pilot Bank froze the Facilitating Pilot Accounts, for several months, due to an excessive rate of returns.

54. From on or about April 28, 2005 to on or about June 14, 2005, approximately \$29,268.30, which represented proceeds of the scheme, was transferred or caused to be transferred, via wire, from the Pilot JoeBrig Account to business checking account number 2000026281050, in the name of Cut to the Chase, opened by Co-Conspirator Nichols on or about February 3, 2005.

55. On or about April 29, 2005, approximately \$20,000.00, which represented proceeds of the scheme, was transferred or caused to be transferred, via wire, from the Pilot JoeBrig Account to Co-Conspirator Ludvik's Denarius Financial Group Account at Key Bank.

56. On or about June 2, 2005, Co-Conspirator Salomon transferred or caused to be transferred, via wire, a total of approximately \$20,423.24, which represented proceeds of the scheme, from the Pilot Accounts (excluding the Pilot JoeBrig Account) to his Wachovia Escrow Account, and subsequently distributed these ill-gotten proceeds to himself, Co-Conspirator Affatati and another co-conspirator.

**VII. Wirings Or Attempted Wirings To/From The District Of New Jersey**

57. On or about the dates set forth below, for the purpose of executing such scheme and artifice to defraud, the Defendants and their co-conspirators did knowingly cause to be transmitted by means of using interstate and foreign wire communications any writings, signs, signals, pictures and sounds, the following:

<b>WIRE DATE (on or about)</b>	<b>WIRE</b>
December 3, 2004	\$349.00 electronic debit (unauthorized) of Acct. # ***6055 at TD Bank (formerly Commerce Bank), in or around Ortley Beach, New Jersey, by Fifth Third Bank in Sarasota, Fl. (Fifth Third EMS Account), as discussed in paragraphs 14-22 of Count One of this Superceding Indictment.
December 3, 2004	\$349.00 electronic debit (unauthorized) of Acct. # ***2767 at Amboy National Bank, in or around Sayreville, New Jersey, by Fifth Third Bank in Sarasota, Fl. (Fifth Third EMS Account), as discussed in paragraphs 14-22 of Count One of this Superceding Indictment.
December 6, 2004	\$398.00 electronic debit (unauthorized) of Acct. # ***5976 at Bank of America (formerly Fleet Bank), in or around Stone Harbor, NJ, by Fifth Third Bank in Sarasota, Fl. (Fifth Third EMS Account), as discussed in paragraphs 14-22 of Count One of this Superceding Indictment.
October 29, 2004	\$398.00 electronic debit (unauthorized) of Acct. # ***4679 at Wachovia Bank, in or around Englishtown, New Jersey, by First Citizens Bank in Charlotte, North Carolina (Evaluchek Settlement Account), as discussed in paragraphs 23-28 of Count One of this Superceding Indictment.
November 4, 2004	\$399.00 electronic debit (unauthorized) of Acct. # ***8006 at Wachovia Bank, in or around Verona, New Jersey, by First Citizens Bank in Charlotte, North Carolina (Evaluchek Settlement Account), as discussed in paragraphs 23-28 of Count One of this Superceding Indictment.
November 15, 2004	\$398.00 electronic debit (unauthorized) of Acct. # ***4777 at Bank of America, in or around Franklin Lakes, New Jersey, by First Citizens Bank in Charlotte, North Carolina (Evaluchek Settlement Account), as discussed in paragraphs 23-28 of Count One of this Superceding Indictment.
June 10, 2005	\$349.00 electronic debit (unauthorized) of Acct. # ***4127 at US National Bank, in or around Cincinnati, Ohio, by Sovereign Bank in Old Bridge, NJ (Sovereign Wyncrest Account), as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.

<b>WIRE DATE (on or about)</b>	<b>WIRE</b>
June 14, 2005	\$299.00 electronic debit (unauthorized) of Acct. # ***0066 at Bank of America, in or around Rochester, New York, by Sovereign Bank in Old Bridge, NJ (Sovereign Wyncrest Account), as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
June 15, 2005	\$299.00 electronic debit (unauthorized) of Acct. # ***1612 at Bridgehampton National Bank , in or around Bridgehampton, New York, by Sovereign Bank in Old Bridge, NJ (Sovereign Wyncrest Account), as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
June 8, 2005	\$299.00 electronic debit (unauthorized) of Acct. # ***9750 at Bank of America (formerly NatWest Bank) in or around Trenton, NJ, by J.P. Morgan Chase in Bloomfield Hills, MI (Chase Edgebrook Account), as discussed in paragraphs 36-41 of Count One of this Superceding Indictment.
June 8, 2005	\$299.00 electronic debit (unauthorized) of Acct. # ***0240 at Bank of America (formerly NatWest Bank), in or around Newark, NJ, by J.P. Morgan Chase in Bloomfield Hills, MI (Chase Edgebrook Account), as discussed in paragraphs 36-41 of Count One of this Superceding Indictment.
June 14, 2005	\$349.00 electronic debit (unauthorized) of Acct. # ***4679 at Wachovia Bank, in or around Englishtown, NJ, by J.P. Morgan Chase in Bloomfield Hills, MI (Chase Edgebrook Account), as discussed in paragraphs 36-41 of Count One of this Superceding Indictment.
October 27, 2005	\$399.00 electronic debit (unauthorized) of Acct. # ***3825 at PNC Bank, in or around Haddonfield, NJ, by U.S. Bank in Bedford, Oh. (ICT Settlement Account), as discussed in paragraphs 42-47 of Count One of this Superceding Indictment.
November 21, 2005	\$399.00 electronic debit (unauthorized) of Acct. # ***1488 at Somerset Valley Bank, in or around Bridgewater, NJ, by U.S. Bank in Bedford, Oh. (ICT Settlement Account), as discussed in paragraphs 42-47 of Count One of this Superceding Indictment.
December 8, 2005	\$399.00 electronic debit (unauthorized) of Acct. # ***9961 at PNC Bank, in or around Williamstown, NJ, by U.S. Bank in Bedford, Oh. (ICT Settlement Account), as discussed in paragraphs 42-47 of Count One of this Superceding Indictment.

<b>WIRE DATE (on or about)</b>	<b>WIRE</b>
February 28, 2005	\$99.00 electronic debit (unauthorized) of Acct. # ***2638 at Wachovia Bank, in or around Tuckerton, NJ by Pilot Bank in Tampa, Fl. (Mex Processing Pilot Account), as discussed in paragraphs 48-56 of Count One of this Superceding Indictment.
March 2, 2005	\$99.00 electronic debit (unauthorized) of Acct. # ***8912 at JP Morgan Chase Bank, in or around Roselle, NJ by Pilot Bank in Tampa, Fl. (Mex Processing Pilot Account), as discussed in paragraphs 48-56 of Count One of this Superceding Indictment.
March 2, 2005	\$99.00 electronic debit (unauthorized) of Acct. # ***4162 at Citibank, in or around Jersey City, NJ by Pilot Bank in Tampa, Fl. (Mex Processing Pilot Account), as discussed in paragraphs 48-56 of Count One of this Superceding Indictment.

**VIII. Mailings Or Attempted Mailings To/From The District Of New Jersey**

58. On or about the dates set forth below, for the purpose of executing such scheme and artifice to defraud, the Defendants and their co-conspirators did knowingly place and cause to be placed in a post office and authorized depository for mail matter to be sent and delivered by the United States Postal Service, and by any private and commercial interstate carrier, according to the directions thereon, the following mail matter:

<b>MAIL DATE (on or about)</b>	<b>MAILING</b>
June 13, 2005	Federal Express mailing of false and fraudulent facsimile checks, printed by JM at Net 30 Solutions, and mailed from Net 30 Solutions, The Woodlands, Texas to Sovereign Bank in Old Bridge, NJ, as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
June 13, 2005	Federal Express mailing of false and fraudulent facsimile checks, printed by JM at Net 30 Solutions, and mailed from Net 30 Solutions, The Woodlands, Texas to Sovereign Bank in Old Bridge, NJ, as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
June 16, 2005	Federal Express mailing of false and fraudulent facsimile checks, printed by JM at Net 30 Solutions, and mailed from Net 30 Solutions, The Woodlands, Texas to Sovereign Bank in Old Bridge, NJ, as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
June 20, 2005	Federal Express mailing of false and fraudulent facsimile checks, printed by JM at Net 30 Solutions, and mailed from Net 30 Solutions, The Woodlands, Texas to Sovereign Bank in Old Bridge, NJ, as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.

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

COUNTS 2 THROUGH 19

(Wire Fraud)

59. Paragraphs 1 through 5 and 7 through 58 of Count One of this Superseding Indictment are realleged as if set forth fully herein.

60. On or about the dates listed below, in Bergen, Camden, Cape May, Essex, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Union Counties, in the District of New Jersey, and elsewhere, for the purpose of executing and attempting to execute this scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises, the following Defendants did knowingly transmit and cause to be transmitted in interstate commerce by means of wire communication, certain writings, signs, signals and sounds:

<b>COUNT</b>	<b>DEFENDANT</b>	<b>WIRE DATE (on or about)</b>	<b>WIRE</b>
2	SACKS	December 3, 2004	\$349.00 electronic debit (unauthorized) of Acct. # ***6055 at TD Bank (formerly Commerce Bank), in or around Ortley Beach, New Jersey, by Fifth Third Bank in Sarasota, Fl. (Fifth Third EMS Account), as discussed in paragraphs 14-22 of Count One of this Superseding Indictment.
3	SACKS	December 3, 2004	\$349.00 electronic debit (unauthorized) of Acct. # ***2767 at Amboy National Bank, in or around Sayreville, New Jersey, by Fifth Third Bank in Sarasota, Fl. (Fifth Third EMS Account), as discussed in paragraphs 14-22 of Count One of this Superseding Indictment.

<b>COUNT</b>	<b>DEFENDANT</b>	<b>WIRE DATE (on or about)</b>	<b>WIRE</b>
4	SACKS	December 6, 2004	\$398.00 electronic debit (unauthorized) of Acct. # ***5976 at Bank of America (formerly Fleet Bank), in or around Stone Harbor, NJ, by Fifth Third Bank in Sarasota, Fl. (Fifth Third EMS Account), as discussed in paragraphs 14-22 of Count One of this Superceding Indictment.
5	SACKS	October 29, 2004	\$398.00 electronic debit (unauthorized) of Acct. # ***4679 at Wachovia Bank, in or around Englishtown, NJ, by First Citizens Bank in Charlotte, North Carolina (Evalucheck Settlement Account), as discussed in paragraphs 23-28 of Count One of this Superceding Indictment.
6	SACKS	November 4, 2004	\$399.00 electronic debit (unauthorized) of Acct. # ***8006 at Wachovia Bank, in or around Verona, New Jersey, by First Citizens Bank in Charlotte, North Carolina (Evalucheck Settlement Account), as discussed in paragraphs 23-28 of Count One of this Superceding Indictment.
7	SACKS	November 15, 2004	\$398.00 electronic debit (unauthorized) of Acct. # ***4777 at Bank of America, in or around Franklin Lakes, New Jersey, by First Citizens Bank in Charlotte, North Carolina (Evalucheck Settlement Account), as discussed in paragraphs 23-28 of Count One of this Superceding Indictment.
8	SACKS	June 10, 2005	\$349.00 electronic debit (unauthorized) of Acct. # ***4127 at US National Bank, in or around Cincinnati, Ohio, by Sovereign Bank in Old Bridge, NJ (Sovereign Wyncrest Account), as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.

<b>COUNT</b>	<b>DEFENDANT</b>	<b>WIRE DATE (on or about)</b>	<b>WIRE</b>
9	SACKS	June 14, 2005	\$299.00 electronic debit (unauthorized) of Acct. # ***0066 at Bank of America, in or around Rochester, New York, by Sovereign Bank in Old Bridge, NJ (Sovereign Wyncrest Account), as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
10	SACKS	June 15, 2005	\$299.00 electronic debit (unauthorized) of Acct. # ***1612 at Bridgehampton National Bank , in or around Bridgehampton, New York, by Sovereign Bank in Old Bridge, NJ (Sovereign Wyncrest Account), as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
11	SACKS	June 8, 2005	\$299.00 electronic debit (unauthorized) of Acct. # ***9750 at Bank of America (formerly NatWest Bank) in or around Trenton, NJ, by J.P. Morgan Chase in Bloomfield Hills, MI (Chase Edgebrook Account), as discussed in paragraphs 36-41 of Count One of this Superceding Indictment.
12	SACKS	June 8, 2005	\$299.00 electronic debit (unauthorized) of Acct. # ***0240 at Bank of America (formerly NatWest Bank), in or around Newark, NJ, by J.P. Morgan Chase in Bloomfield Hills, MI (Chase Edgebrook Account), as discussed in paragraphs 36-41 of Count One of this Superceding Indictment.
13	SACKS	June 14, 2005	\$349.00 electronic debit (unauthorized) of Acct. # ***4679 at Wachovia Bank, in or around Englishtown, NJ, by J.P. Morgan Chase in Bloomfield Hills, MI (Chase Edgebrook Account), as discussed in paragraphs 36-41 of Count One of this Superceding Indictment.

COUNT	DEFENDANT	WIRE DATE (on or about)	WIRE
14	SACKS and HERNANDEZ	October 27, 2005	\$399.00 electronic debit (unauthorized) of Acct. # ***3825 at PNC Bank, in or around Haddonfield, NJ, by U.S. Bank in Bedford, Oh. (ICT Settlement Account), as discussed in paragraphs 42-47 of Count One of this Superceding Indictment.
15	SACKS and HERNANDEZ	November 21, 2005	\$399.00 electronic debit (unauthorized) of Acct. # ***1488 at Somerset Valley Bank, in or around Bridgewater, NJ, by U.S. Bank in Bedford, Oh. (ICT Settlement Account), as discussed in paragraphs 42-47 of Count One of this Superceding Indictment.
16	SACKS and HERNANDEZ	December 8, 2005	\$399.00 electronic debit (unauthorized) of Acct. # ***9961 at PNC Bank, in or around Williamstown, NJ, by U.S. Bank in Bedford, Oh. (ICT Settlement Account), as discussed in paragraphs 42-47 of Count One of this Superceding Indictment.
17	SACKS	February 28, 2005	\$99.00 electronic debit (unauthorized) of Acct. # ***2638 at Wachovia Bank, in or around Tuckerton, NJ by Pilot Bank in Tampa, Fl. (Mex Processing Pilot Account), as discussed in paragraphs 48-56 of Count One of this Superceding Indictment.
18	SACKS	March 2, 2005	\$99.00 electronic debit (unauthorized) of Acct. # ***8912 at JP Morgan Chase Bank, in or around Roselle, NJ by Pilot Bank in Tampa, Fl. (Mex Processing Pilot Account), as discussed in paragraphs 48-56 of Count One of this Superceding Indictment.

<b>COUNT</b>	<b>DEFENDANT</b>	<b>WIRE DATE (on or about)</b>	<b>WIRE</b>
19	SACKS	March 2, 2005	\$99.00 electronic debit (unauthorized) of Acct. # ***4162 at Citibank, in or around Jersey City, NJ by Pilot Bank in Tampa, Fl. (Mex Processing Pilot Account), as discussed in paragraphs 48-56 of Count One of this Superceding Indictment.

In violation of Title 18, United States Code, Section 1343 and Title 18, United States Code, Section 2.

COUNTS 20 THROUGH 23

(Mail Fraud)

61. Paragraphs 1 through 5 and 7 through 58 of Count One of this Superseding Indictment are realleged as if set forth fully herein.

62. On or about the dates listed below, in Middlesex County, in the District of New Jersey, and elsewhere, for the purpose of executing and attempting to execute this scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises, the following Defendants did knowingly place and cause to be placed in a post office and authorized depository of mail, and cause to be delivered thereon, certain mail matter, to be sent and delivered by the United States Postal Service, and by any private and commercial interstate carrier, as described below:

<b>COUNT</b>	<b>DEFENDANT</b>	<b>MAIL DATE (on or about)</b>	<b>MAILING</b>
20	SACKS	June 13, 2005	Federal Express mailing of false and fraudulent facsimile checks, printed by JM at Net 30 Solutions, and mailed from Net 30 Solutions, The Woodlands, Texas to Sovereign Bank in Old Bridge, NJ, as discussed in paragraphs 30-35 of Count One of this Superseding Indictment.
21	SACKS	June 13, 2005	Federal Express mailing of false and fraudulent facsimile checks, printed by JM at Net 30 Solutions, and mailed from Net 30 Solutions, The Woodlands, Texas to Sovereign Bank in Old Bridge, NJ, as discussed in paragraphs 30-35 of Count One of this Superseding Indictment.

COUNT	DEFENDANT	MAIL DATE (on or about)	MAILING
22	SACKS	June 16, 2005	Federal Express mailing of false and fraudulent facsimile checks, printed by JM at Net 30 Solutions, and mailed from Net 30 Solutions, The Woodlands, Texas to Sovereign Bank in Old Bridge, NJ, as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
23	SACKS	June 20, 2005	Federal Express mailing of false and fraudulent facsimile checks, printed by JM at Net 30 Solutions, and mailed from Net 30 Solutions, The Woodlands, Texas to Sovereign Bank in Old Bridge, NJ, as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.

In violation of Title 18, United States Code, Sections 1341 and Title 18, United States Code, Section 2.

COUNT 24

(Conspiracy to Commit Bank Fraud)

63. Paragraphs 1 through 5 and 7 through 58 of Count One are re-alleged and incorporated herein.

64. From at least as early as July 1, 2004, to in or about December, 2008, in Bergen, Camden, Cape May, Essex, Hunterdon, Mercer, Middlesex Monmouth, Ocean, Somerset, and Union Counties, in the District of New Jersey, and elsewhere, the defendants,

ROBERT SACKS, and  
DIEGO HERNANDEZ

did knowingly and intentionally conspire and agree with Co-Conspirators Ludvik, Saleki, Nichols, Sherman, Salomon, Mark, Hansen, Affatati and others, to execute and attempt to execute a scheme and artifice to defraud Citibank, N.A.; Fifth Third Bank (formerly First National Bank of Florida); Wachovia Corporation (formerly First Union National Bank); JP Morgan Chase & Co. (formerly Bank One); SunTrust Banks, Inc.; Branch Banking and Trust Company; Sovereign Bank; Bank of America, N.A (formerly NatWest Bank); Washington Mutual; Pilot Bank; Bank of the West (formerly Commercial Federal Bank); Bancorp Bank (dba ITI Bank); Rockland Trust Company; TD BankNorth Inc. (formerly Hudson United Bank and Commerce Bank); First Citizens Bank; PNC Bank, N.A., Bridgehampton National Bank; Somerset Valley Bank; Amboy National Bank; U.S. National Bank, and others (collectively, "The Banks"), and to obtain moneys, funds, and assets owned by, and under the custody and control of the Banks, by means of materially false and fraudulent pretenses, representations, and promises, contrary to Title 18, United States Code, Section 1344, in violation of Title 18, United States Code, Section 1349.

COUNTS 25 THROUGH 42

(Aggravated Identity Theft)

65. Paragraphs 1 through 5 and 7 through 58 of Count One are re-alleged and incorporated herein.

66. On or about the following dates in Bergen, Camden, Cape May, Essex, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Union Counties, in the District of New Jersey, and elsewhere, the following defendants did knowingly transfer, possess, and use, without lawful authority, a means of identification of another person, namely, the bank account information of an individual identified below, during and in relation to a felony violation of a provision contained in chapter 63, United States Code, that is, wire fraud, in violation of Title 18, United States Code, Section 1343, charged in Counts Two through Eighteen of this Superceding Indictment, in violation of Title 18, United States Code, Section 1028A(a)(1) and Title 18, United States Code, Section 2.

<b>COUNT</b>	<b>DEFENDANT</b>	<b>WIRE FRAUD OFFENSE DATE (on or about)</b>	<b>ACCOUNT INFORMATION</b>
25	SACKS	December 3, 2004	Acct. # ***6055 at TD Bank (formerly Commerce Bank), in or around Ortlely Beach, New Jersey; Account information in the name of AM , as discussed in paragraphs 14-22 of Count One of this Superceding Indictment.
26	SACKS	December 3, 2004	Acct. # ***2767 at Amboy National Bank, in or around Sayreville, New Jersey; Account information in the name of JT, as discussed in paragraphs 14-22 of Count One of this Superceding Indictment.

<b>COUNT</b>	<b>DEFENDANT</b>	<b>WIRE FRAUD OFFENSE DATE (on or about)</b>	<b>ACCOUNT INFORMATION</b>
27	SACKS	December 6, 2004	Acct. # ***5976 at Bank of America (formerly Fleet Bank), in or around Stone Harbor, NJ; Account information in the name of CA, as discussed in paragraphs 14-22 of Count One of this Superceding Indictment.
28	SACKS	October 29, 2004	Acct. # ***4679 at Wachovia Bank, in or around Englishtown, New Jersey; Account information in the name of FW, as discussed in paragraphs 23-28 of Count One of this Superceding Indictment.
29	SACKS	November 4, 2004	Acct. # ***8006 at Wachovia Bank, in or around Verona, New Jersey; Account information in the name of WD, as discussed in paragraphs 23-28 of Count One of this Superceding Indictment.
30	SACKS	November 15, 2004	Acct. # ***4777 at Bank of America, in or around Franklin Lakes, New Jersey; Account information in the name of CF, as discussed in paragraphs 23-28 of Count One of this Superceding Indictment.
31	SACKS	June 10, 2005	Acct. # ***4127 at US National Bank, in or around Cincinnati, Ohio; Account information in the name of BB, as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
32	SACKS	June 14, 2005	Acct. # ***0066 at Bank of America, in or around Rochester, New York; Account information in the name of PB, as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.

COUNT	DEFENDANT	WIRE FRAUD OFFENSE DATE (on or about)	ACCOUNT INFORMATION
33	SACKS	June 15, 2005	Acct. # ***1612 at Bridgehampton National Bank , in or around Bridgehampton, New York; Account information in the name of AW, as discussed in paragraphs 30-35 of Count One of this Superceding Indictment.
34	SACKS	June 8, 2005	Acct. # ***9750 at Bank of America (formerly NatWest Bank) in or around Trenton, NJ; Account information in the names of JL and JR, as discussed in paragraphs 36-41 of Count One of this Superceding Indictment.
35	SACKS	June 8, 2005	Acct. # ***0240 at Bank of America (formerly NatWest Bank), in or around Newark, NJ; Account information in the name of CS, as discussed in paragraphs 36-41 of Count One of this Superceding Indictment.
36	SACKS	June 14, 2005	Acct. # ***4679 at Wachovia Bank, in or around Englishtown, NJ; Account information in the name of FW, as discussed in paragraphs 36-41 of Count One of this Superceding Indictment.
37	SACKS and HERNANDEZ	October 27, 2005	Acct. # ***3825 at PNC Bank, in or around Haddonfield, NJ; Account information in the name of RB, as discussed in paragraphs 42-47 of Count One of this Superceding Indictment.
38	SACKS and HERNANDEZ	November 21, 2005	Acct. # ***1488 at Somerset Valley Bank, in or around Bridgewater, NJ; Account information in the name of AM, as discussed in paragraphs 42-47 of Count One of this Superceding Indictment.

COUNT	DEFENDANT	WIRE FRAUD OFFENSE DATE (on or about)	ACCOUNT INFORMATION
39	SACKS and HERNANDEZ	December 8, 2005	Acct. # ***9961 at PNC Bank, in or around Williamstown, NJ; Account information in the name of AM, as discussed in paragraphs 42-47 of Count One of this Superseding Indictment.
40	SACKS	February 28, 2005	Acct. # ***2638 at Wachovia Bank, in or around Tuckerton, NJ; Account information in the name of MS, as discussed in paragraphs 48-56 of Count One of this Superseding Indictment.
41	SACKS	March 2, 2005	Acct. # ***8912 at JP Morgan Chase Bank, in or around Roselle, NJ; Account information in the name of KK, as discussed in paragraphs 48-56 of Count One of this Superseding Indictment.
42	SACKS	March 2, 2005	Acct. # ***4162 at Citibank, in or around Jersey City, NJ; Account information in the name of LB, as discussed in paragraphs 48-56 of Count One of this Superseding Indictment.

## FORFEITURE ALLEGATION

The United States hereby gives notice to Defendants ROBERT SACKS and DIEGO HERNANDEZ, charged in Count One that, upon their conviction of said offense, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which requires any person convicted of such offenses to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offenses, including but not limited to the following:

67. **Proceeds of Criminal Activity:** A sum of money equal to \$7 million in United States currency, representing the amount of proceeds obtained as a result of the offense alleged in Count One, conspiracy to commit mail and wire fraud, for which the Defendants are jointly and severally liable.

68. **Bank Account:** All United States currency funds or other monetary instruments credited to the following accounts located at the following banks:

- a. \$871,710.80 deposited into account number P7-20309-52, in the name of Lois Sacks, at UBS Bank.
- b. \$102,306.90 deposited into account number 16024531, in the name of E-Commerce Cubed (dba Evalucheck) at South County Bank.

If any of the above-described forfeitable property, as a result of any act or omission of the Defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of such Defendants, up to the value of the forfeitable property described in this forfeiture allegation.

All in violation of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), and Title 18, United States Code Sections 1341, 1343 and 1349.

A TRUE BILL

  
FOREPERSON

  
RALPH J. MARRA, JR.  
Acting United States Attorney

CASE NUMBER: 08-629 (S-1) (GEB)

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United States District Court  
District of New Jersey

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UNITED STATES OF AMERICA

v.

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ROBERT SACKS and  
DIEGO HERNANDEZ

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SUPERCEDING INDICTMENT FOR

18 U.S.C. § 1349, 1343, 1341, 1344, 1028A  
18 U.S.C. § 2

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A True Bill,

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Foreperson

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RALPH J. MARRA, JR.  
ACTING U.S. ATTORNEY  
Newark, New Jersey

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