

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - : SEALED INDICTMENT

STEVEN KAITZ, : 14 Cr.

LATCHMEE MAHATO,

a/k/a "Robbie,"

JONATHAN WHEELER,

KATHLEEN SMITH, and

ZACHARY KAITZ,

: **14 CRIM845**

Defendants.

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COUNT ONE

(Conspiracy to Commit Wire Fraud and Bank Fraud)

The Grand Jury charges:

Relevant Persons and Entities

1. At all times relevant to this Indictment, the Company was a custom designer, manufacturer, and installer of in-store signage, displays, and fixtures for retailers around the world, including major retailers of sports apparel and footwear. The Company was based in Hoboken, New Jersey, and had several offices throughout the United States, as well as in Brazil and China.

2. At all times relevant to this Indictment, STEVEN KAITZ, the defendant, was the Chief Executive Officer of the Company and one of its three managing partners.

3. At all times relevant to this Indictment, LATCHMEE MAHATO, a/k/a "Robbie," the defendant, was the Chief Operating Officer of the Company and one of its three managing partners.

4. At all times relevant to this Indictment, JONATHAN WHEELER, the defendant, was an executive officer of the Company and one of its three managing partners. WHEELER was the Chief Financial Officer of the Company until in or about October 2013, when another individual ("the Company Employee-1") was hired to take over that position.

5. At all times relevant to this Indictment, ZACHARY KAITZ, the defendant, was the Vice President of Creative Services at the Company.

6. Until in or about January 2013, KATHLEEN SMITH, the defendant, was a director of a business unit dealing with visual displays and print productions at a national sports apparel and footwear retailer based in New York, New York that was a customer of the Company ("Customer-1").

7. At all times relevant to this Indictment, Customer-2 was a multinational corporation that designed and manufactured athletic footwear, clothing, and accessories. Customer-2's United States headquarters were in Portland, Oregon. At all times relevant to this Indictment, Customer-1

and Customer-2 were the Company's two largest customers by revenue.

8. At all times relevant to this Indictment, Lender-1 was an asset-backed lender that provided credit facilities to small and medium-sized businesses. Lender-1 was based in Florida.

9. At all times relevant to this Indictment, Lender-2 and Lender-3 were banks based in New Jersey, the deposits of which were insured by the Federal Deposit Insurance Corporation ("FDIC").

10. At all times relevant to this Indictment, Lender-4 was a publicly-traded business development company that invested in and lent money to small and medium-sized companies. Lender-4 was based in Westchester County, New York.

The Scheme to Defraud

11. From at least in or about 2012 through in or about May 2014, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," and JONATHAN WHEELER (collectively, the "Management Defendants"), ZACHARY KAITZ, and KATHLEEN SMITH, the defendants, carried out an elaborate scheme to (a) trick multiple financial institutions into lending the Company millions of dollars by repeatedly making, and causing to be made, materially false and misleading statements about the Company's financial condition,

and (b) trick the Company's customers into paying falsely inflated invoices.

12. In particular, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, ZACHARY KAITZ, and KATHLEEN SMITH, the defendants, and others, falsely inflated the Company's sales and accounts receivables by manufacturing phony purchase orders, invoices, and other documents, and creating purchase orders, invoices, and other documents that contained deliberately inflated sales amounts. The defendants used those falsely inflated sales and accounts receivables to mislead the Company's lenders and outside auditors about the Company's true financial performance so that the Company could secure and draw down millions of dollars in loans from multiple lenders. In 2013, for example, the defendants falsely manufactured approximately \$15 million in purported sales from Customer-1 and Customer-2.

13. The defendants took elaborate steps to keep the scheme afloat and prevent the Company's lenders and outside auditors from discovering the fraud. For example, the Company Management Defendants created fake email accounts purporting to belong to fictitious employees of Customer-1 and Customer-2. The Management Defendants then used those fake email accounts to provide and "verify" false information to the Company's lenders and auditors about the Company's financial condition, including

its sales and accounts receivables. By using the fake email accounts, the Management Defendants made it appear that the information was being independently verified by third parties (i.e., the Company's customers), when in truth and in fact, the information was being submitted and verified by the defendants themselves.

14. In addition, the Management Defendants paid kickbacks to employees of Customer-1 and Customer-2, including KATHLEEN SMITH, the defendant, for their assistance in carrying out the scheme. For example, at the direction of the Management Defendants, SMITH provided the Company's lenders and outside auditors supposed "verification" of certain financial information concerning the Company, including amounts of money Customer-1 purportedly owed the Company, even though SMITH knew that those amounts were false. In addition, SMITH caused Customer-1 to process and pay invoices from the Company that she knew had been falsely inflated. In exchange for her assistance with the fraud, SMITH received substantial kickbacks from the Management Defendants that included cash payments, personal family vacations, and home renovations.

15. As another example of the elaborate steps the defendants took to keep the scheme afloat, the Management Defendants utilized shell companies to engage in "round-trip"

transactions to create the false appearance that customers were paying the Company's outstanding receivables.

16. ZACHARY KAITZ, the defendant, who was skilled in graphic design, helped carry out the fraud by creating fraudulent documentation, such as fake invoices, purchase orders, and bills of lading to support the false representations to the lenders about the Company's business.

17. Further, between in or about August 2012 and May 2014, the Management Defendants diverted approximately \$2.8 million from the loan proceeds to their own personal use, such as to pay for homes and luxury cars, private school tuition, and credit card bills, as well as to pay kickbacks to KATHLEEN SMITH, the defendant, and others. At times, the Management Defendants also used the shell companies they controlled to conceal their diversion of the Company's assets.

The Company's Credit Facilities

18. In or about August 2012, the Company entered into an asset-backed, revolving loan agreement (the "First Loan") with Lender-1, Lender-2, and Lender-3 (collectively, the "First Loan Lenders"). Between 2012 and 2014, the First Loan was increased in various increments from approximately \$5 million to an approximately \$15 million revolving line of credit.

19. Under the terms of the First Loan, the Company's maximum borrowings were tied to the value of certain the Company

assets, including its accounts receivables, and any amounts borrowed under the First Loan were collateralized by those assets. The Company was required to provide to the First Loan Lenders, on a weekly basis, "borrowing base certificates" ("BBCs") certifying certain financial information, including the Company's sales and accounts receivables, which comprised the vast majority of its assets. Because the defendants falsely inflated the Company's accounts receivables, the BBCs routinely contained materially false statements about the Company's financial condition and thereby fraudulently induced the First Loan Lenders to continue to lend to the Company. On a cumulative basis, the Company borrowed a total of approximately \$34 million under the First Loan.

20. In or about April 2014, the Company entered into a \$10 million term loan facility with Lender-4 (the "Second Loan"). The Second Loan required the Company to obtain audited financial statements for 2012 and 2013. Thus, in or about early 2014, the Company hired a national accounting firm (the "Auditors") to prepare audited financial statements. As set forth below, the defendants made, and caused to be made, materially false statements to the Auditors about the Company's financial condition, including by using fake email accounts to "verify" false financial information. The Company borrowed a total of approximately \$6 million under the Second Loan.

21. In or about late April and early May 2014, shortly after the Company secured the Second Loan, the lenders discovered the Company's fraud and terminated their lending relationships with the Company. At the time, approximately \$12.6 million was outstanding under the First Loan, and approximately \$6 million was outstanding under the Second Loan.

Fraud Related to the Company's Business
with Customer-1 and Customer-2

22. As part of the scheme, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, and ZACHARY KAITZ, the defendants, worked with complicit employees of Customer-1 and Customer-2, including KATHLEEN SMITH, the defendant, to falsely inflate the Company's sales and accounts receivables. By doing so, the Company was able to obtain millions of dollars in loans to which the Company was not entitled. In particular, the defendants worked with SMITH and other employees of Customer-1 and Customer-2 to: (a) overbill those customers and trick them into paying falsely-inflated invoices from the Company, and (b) trick lenders into loaning millions of dollars to the Company by submitting to lenders and auditors, and purporting to "verify," materially false information concerning the Company's financial condition.

23. The Management Defendants provided kickbacks to KATHLEEN SMITH, the defendant, and others at Customer-1 and

Customer-2 for their participation in the fraud. Further, at the direction of the Management Defendants, ZACHARY KAITZ, the defendant, created many of the fake documents that were used to support thee falsely inflated sales and accounts receivables.

24. By way of example, on or about August 17, 2012, STEVEN KAITZ, the defendant, emailed KATHLEEN SMITH, the defendant, and alerted SMITH that someone from Lender-1 would be emailing her "asking to verify some invoices." KAITZ directed SMITH, "Please respond that they are ok." A few days later, on or about August 20, 2012, as STEVEN KAITZ had warned SMITH, an analyst at Lender-1 emailed SMITH to verify certain Company invoices. SMITH responded by email, with a blind carbon copy to STEVEN KAITZ, "I can verify that the invoices and amounts are accurate." In truth and in fact, as SMITH well knew, three of the six invoices -- comprising approximately \$855,000 of the total \$1.1 million that she verified in this correspondence -- were fake. Ten minutes later, STEVEN KAITZ wrote to SMITH, "Thanks. Balance of \$\$ on the way to your bank now." Within approximately one day, SMITH was paid at least \$2,000 in cash.

25. The Management Defendants paid kickbacks, in cash and gifts, to KATHLEEN SMITH, the defendant, on numerous other occasions in exchange for SMITH's verifying false financial information to the Company's lenders and auditors and causing Customer-1 to pay falsely inflated invoices from the Company.

The kickbacks consisted of thousands of dollars in cash, as well as personal vacations for her and her family, renovations for her home, and payments of her personal mortgage. SMITH often added the costs of these kickbacks to purchase orders that she prepared and caused Customer-1 to pay. For example, on or about January 3, 2012, SMITH sent an email to a Company employee not named herein ("Company Employee-2"), copying STEVEN KAITZ, the defendant, in which she requested that Company Employee-2 book flights to Florida for SMITH and three of her relatives. In the email, SMITH wrote, "I will add the cost to the [purchase orders] that are to be processed this week. Will also need car to pick us up. All four of us are going to Florida for a wedding."

26. On or about January 22, 2013, KATHLEEN SMITH, the defendant, was terminated by Customer-1. The Management Defendants recognized that SMITH's termination presented a problem because SMITH had been processing and verifying false Company invoices. The day after SMITH's termination, on or about January 23, 2013, JONATHAN WHEELER, the defendant, replied to an email from STEVEN KAITZ, copying LATCHMEE MAHATO, a/k/a "Robbie," the defendant, in which WHEELER wrote, referring to SMITH's departure from Customer-1: "This is a HUGE hit for us . . . close to \$475k in PO's [purchase orders] were still owed by KS [KATHLEEN SMITH] for billing we have on our books and now

we cannot get paid on? . . . I am raising the warning flag now that we are going to come to a screeching 'CASH' halt VERY soon based on projecting out my BBC models . . . even with billing . . . which we [do] not have more to 'makeup'! Not to mention we have an audit exam here NEXT week and how will we have [Customer-1] VERIFY invoices on our books that don't exist with [Customer-1] THIS IS A MAJOR PROBLEM!"

27. In addition to the assistance provided to them by KATHLEEN SMITH, the defendant, in verifying false invoices, the Management Defendants were able to use at least one other employee of Customer-1 (the "Customer-1 Employee"), and at least one employee of Customer-2 (the "Customer-2 Employee"), to provide similar confirmations of false documentation that the Management Defendants had provided to their lenders.

28. As noted above, the Second Loan required that the Company obtain audited financial statements for 2012 and 2013. In order to obtain audited financial statements and secure the Second Loan, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, and ZACHARY KAITZ, the defendants, lied to the Auditors and Lender-4 about the Company's accounts receivables, including by creating fraudulent documentation, such as fake invoices and bills of lading, to falsely inflate the Company's sales and accounts receivables. The Management Defendants fraudulently "verified" the false information that had been

provided to the Auditors by enlisting the assistance of the Customer-1 Employee and the Customer-2 Employee and by sending bogus emails from fake email accounts that purported to belong to employees at Customer-1 and Customer-2, as described below.

The Creation and Use of Fake Email Accounts

29. To further carry out the fraud and prevent the Company's lenders and the Auditors from detecting the fraud, the Management Defendants created fake corporate email accounts that purported to belong to fictitious employees of Customer-1 and Customer-2. The Management Defendants then used those fake email accounts to send emails with false information that purported to come from Customer-1 and Customer-2 but that, in fact, had been written and sent by the defendants themselves.

30. To create the fake email accounts, in or about January 2013, shortly after KATHLEEN SMITH, the defendant, was terminated by Customer-1, the Management Defendants directed an information technology consultant for the Company (the "IT Consultant") to register two internet domain names that were very similar to the actual domain names used by Customer-1 and Customer-2. The Management Defendants also directed the IT Consultant to create two fake email accounts: one that appeared to belong to a fictitious employee of Customer-1 (using the domain name similar to Customer-1's domain name) and one that appeared to belong to a fictitious employee of Customer-2 (using

the domain name similar to Customer-2's domain name). The Management Defendants controlled these fake email accounts and used them to "confirm" to the Auditors and others that Customer-1 and Customer-2 owed, and intended to pay, the Company millions of dollars in outstanding receivables that did not actually exist.

31. On or about March 23 and March 24, 2014, for example, JONATHAN WHEELER, the defendant, sent emails to the IT Consultant testing the fake Customer-1 email account. Then, on or about March 26, 2014, STEVEN KAITZ, the defendant, forwarded to representatives of Lender-4 an email dated March 24, 2014 from the fake Customer-1 email account -- addressed to STEVEN KAITZ, WHEELER, and Company Employee-1 -- in which the fictitious Customer-1 employee purported to confirm that at least \$2,710,355.49 in outstanding invoices had been approved by Customer-1 and would be paid in the next week. In truth and in fact, the email overstated the amount that would be paid by Customer-1 by approximately \$2 million.

32. As another example, on or about April 3, 2014, STEVEN KAITZ, the defendant, sent an email from his Company email account to the fictitious Customer-2 employee at the fake Customer-2 email address. STEVEN KAITZ copied JONATHAN WHEELER, the defendant, along with two representatives of Lender-4, among others. In the email, STEVEN KAITZ wrote to the fictitious

Customer-2 employee that the Company was in the process of closing a financing opportunity with Lender-4 and needed help confirming when Customer-2 would be paying certain supposedly outstanding invoices. That same day, STEVEN KAITZ sent a separate email to WHEELER containing a proposed reply that could be sent from the fictitious Customer-2 employee. The proposed reply purported to confirm that Customer-2 would pay the Company approximately \$4,813,625 in April 2014 for outstanding invoices. Later that day, that same proposed reply was in fact sent to representatives of Lender-4, among others, from the fake Customer-2 email account, purporting to be from the fictitious Customer-2 employee, "confirming" that Customer-2 would be paying the Company approximately \$4,813,625 in April 2014. In truth and in fact, the email was sent using a fake email account the Management Defendants controlled, and the purported payments to the Company were false.

The Use of Shell Companies

33. To further carry out the fraud and prevent the lenders and others from discovering the truth, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, and ZACHARY KAITZ, the defendants, used shell companies to engage in "round-trip" transactions to create the false appearance that the Company's customers had been paying the Company's outstanding receivables when, in fact, they had not.

34. As a result of falsely inflating the Company's sales, the defendants' scheme generated false receivables on the Company's books. To prevent those receivables from simply remaining on the Company's books for lengthy periods of time, the defendants used the loan proceeds to engage in round-trip transactions to create the false appearance that customers were paying those outstanding receivables. In truth and in fact, the defendants were simply cycling the loan proceeds through various shell companies to make it appear that a third party was paying the Company on outstanding invoices.

35. The Management Defendants accomplished this through an elaborate series of steps. They turned to shell companies that they had created, such as Shell Company-1 and Shell Company-2, and pretended that these shell companies were "vendors" that had provided services to the Company. Then, they transferred money from the Company, often using the proceeds of the loans, to the shell companies as purported payments for services rendered by the shell companies to the Company. In reality, the shell companies provided no services to the Company. Finally, they transferred money between and among the shell companies and, ultimately, back to the Company. When the money was transferred from the shell companies back to the Company, it was transferred directly into a bank account designated by Lender-1 to receive the Company's customer

payments, making it appear as if the money represented customer payments on outstanding invoices.

36. In order to sustain this cycling of the loan proceeds, the Management Defendants and ZACHARY KAITZ, the defendant, manufactured phony documentation. For example, they created fake purchase orders, invoices, and bills of lading to make the payments to the shell companies appear to be payments to vendors for services rendered. Similarly, they created fake customer remittances to make the receipt of payments from the shell companies seem like payments by actual customers.

37. The Management Defendants used a spreadsheet to track the millions of dollars in "round-trip" transactions they cycled through the shell companies. In total, the Management Defendants used round-trip transactions to create the false appearance that at least approximately \$4.8 million in receivables had been paid by the Company's customers between in or about September 2013 and April 2014.

38. For example, on or about December 20, 2013, Company Employee-3, who was the assistant to JONATHAN WHEELER, the defendant, emailed ZACHARY KAITZ, the defendant, at the direction of WHEELER, asking him to create phony remittances. ZACHARY KAITZ then created fraudulent "remittance advices" that purported to come from Customer-2, using actual remittances from Customer-2 as a template, thereby creating the false appearance

that Customer-2 was making payments to the Company. In fact, the remittances referred to money that had simply been cycled from the Company to Shell Company-1 and then from Shell Company-1 back to the Company. ZACHARY KAITZ emailed the fabricated Customer-2 remittances to Company Employee-3 later that same day.

39. The Management Defendants also at times used the shell companies to conceal their diversion of the Company's assets to their own personal use, as described below.

Misappropriation of Company Funds

40. Between at least in or about August 2012 and in or about May 2014, STEVE KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," and JONATHAN WHEELER, the defendants, diverted approximately \$2.8 million from the First and Second Loans, which were supposed to be used for corporate purposes, to their own personal use, including to purchase homes and luxury cars, pay private school tuition, and pay their credit card bills. The GK Management defendants sometimes diverted the money directly from the loan proceeds; other times, they first transferred the money from the Company to one of the shell companies and then to personal accounts to conceal their diversion of corporate assets.

41. For example, approximately \$370,000 was transferred from the bank accounts of the shell companies to

personal accounts of STEVE KAITZ, LATCHMEE MAHATO, a/k/a

"Robbie," and JONATHAN WHEELER, the defendants. Over the same period, MAHATO paid his spouse, who was not a Company officer or employee, approximately \$430,000 drawn from the Company's loan proceeds.

Statutory Allegations

42. From at least in or about 2012 through in or May 2014, in the Southern District of New York and elsewhere, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, KATHLEEN SMITH, and ZACHARY KAITZ, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit wire fraud and bank fraud, to wit, the defendants engaged in a scheme to defraud the Company's lenders and customers by creating false invoices, intentionally overbilling the Company's customers, and making false statements about the Company's financial condition.

43. It was a part and an object of the conspiracy that STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, KATHLEEN SMITH, and ZACHARY KAITZ, the defendants, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and

did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

44. It was further a part and an object of the conspiracy that STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, KATHLEEN SMITH, and ZACHARY KAITZ, the defendants, and others known and unknown, willfully and knowingly, would and did execute, and attempt to execute, a scheme and artifice to defraud a financial institution, and to obtain the moneys, funds, credits, assets, securities, and other property owned by, and 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.

Overt Acts

45. In furtherance of the conspiracy and to effect the illegal objects thereof, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, KATHLEEN SMITH, and ZACHARY KAITZ, the defendants, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about January 3, 2012, SMITH sent an email to Company Employee-2, copying STEVEN KAITZ, requesting

that Company Employee-2 book flights to Florida for her and her family to attend a wedding.

b. On or about August 17, 2012, STEVEN KAITZ sent an email to SMITH advising SMITH that she would receive an email from a representative of Lender-1 requesting SMITH's verification of some invoices.

c. In or about August 2012, STEVEN KAITZ and WHEELER had a meeting with an employee of the Company and a representative of Lender-1 at a restaurant in New York, New York at which they discussed, among other things, the Company's business prospects with Customer-1 and Customer-2.

d. On or about January 22, 2013, MAHATO met with SMITH and discussed purchase orders from Customer-1, which as noted above was based in New York, New York.

e. On or about January 24, 2013, WHEELER sent an email to the IT Consultant asking about the status of the creation of a fake email address purportedly belonging to an employee of Customer-2.

f. On or about December 20, 2013, ZACHARY KAITZ sent an email to Company Employee-3 attaching fabricated remittances.

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

COUNT TWO

(Wire Fraud)

The Grand Jury further charges:

46. The allegations contained in paragraphs 1 through 41 above are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

47. From at least in or about 2012 through in or about May 2014, in the Southern District of New York and elsewhere, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, KATHLEEN SMITH, and ZACHARY KAITZ, the defendants, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, the defendants engaged in a scheme to defraud the Company's lenders and customers by intentionally overbilling customers and making false statements about the Company's financial condition, and in furtherance of that scheme, sent and caused to be sent email communications and interstate wire transfers.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE

(Bank Fraud)

The Grand Jury further charges:

48. The allegations contained in paragraphs 1 through 41 above are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

49. From at least in or about 2012 through in or about May 2014, in the Southern District of New York and elsewhere, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, KATHLEEN SMITH, and ZACHARY KAITZ, the defendants, willfully and knowingly executed, and attempted to execute, a scheme and artifice to defraud a financial institution, and to obtain the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, a financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, the defendants engaged in a scheme to defraud Lender-2 and Lender-3 by making false statements about the Company's financial condition in order to obtain loans.

(Title 18, United States Code, Sections 1344 and 2.)

COUNT FOUR

(Conspiracy to Commit Honest Services Wire Fraud)

The Grand Jury further charges:

50. The allegations contained in paragraphs 1 through 41 above are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

51. From at least in or about 2012 up through and including in or about January 2013, in the Southern District of New York and elsewhere, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, and KATHLEEN SMITH, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit honest services wire fraud, in violation of Title 18, United States Code, Section 1343.

52. It was a part and an object of the conspiracy that STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, and KATHLEEN SMITH, the defendants, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud, and to deprive Customer-1 of the intangible right of honest services, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and ~~did~~ transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and

sounds for the purpose of executing such scheme and artifice, to wit, STEVEN KAITZ, MAHATO, and WHEELER paid kickbacks to SMITH in exchange for SMITH causing Customer-1 to pay inflated invoices from the Company.

Overt Act

53. In furtherance of the conspiracy and to effect the illegal object thereof, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, and KATHLEEN SMITH, the defendants, committed the following overt act, among others, in the Southern District of New York, and elsewhere:

a. On or about January 3, 2012, SMITH sent an email to Company Employee-2, copying STEVEN KAITZ, requesting that Company Employee-2 book flights to Florida for her and her family to attend a wedding, and indicated the cost of the flights would added to purchase orders for Customer-1, which as noted above was based in New York, New York.

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

COUNT FIVE

(Money Laundering Conspiracy)

The Grand Jury further charges:

54. The allegations contained in paragraphs 1 through 41 above are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

55. From at least in or about 2012 up to and including in or about May 2014, in the Southern District of New York and elsewhere, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," and JONATHAN WHEELER, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit money laundering, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

56. It was a part and an object of the conspiracy that STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," and JONATHAN WHEELER, the defendants, and others known and unknown, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such a financial transaction which in fact involved the proceeds of specified unlawful activity, to wit, wire fraud, bank fraud, and conspiracy to commit wire fraud and bank fraud, in violation of Title 18, Sections 1343, 1344, and 1349, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, to wit, STEVEN KAITZ, MAHATO, and WHEELER engaged in fraudulent financial transactions to conceal their fraud scheme, including by using shell companies.

Overt Acts

57. In furtherance of the conspiracy and to effect the illegal object thereof, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," and JONATHAN WHEELER, the defendants, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about August 2012, STEVEN KAITZ and WHEELER had a meeting with an employee of the Company and a representative of Lender-1 at a restaurant in New York, New York at which they discussed, among other things, the Company's business prospects with Customer-1 and Customer-2.

b. On or about April 14, 2014, WHEELER sent an email to MAHATO and STEVEN KAITZ which advised MAHATO that Shell Company-2 needed to cycle money through Shell Company-1.

c. On or about April 29, 2014, WHEELER sent an email to MAHATO attaching a spreadsheet outlining a running summary of millions of dollars in round-trip transactions through shell companies.

(Title 18, United States Code, Section 1956(a).)

COUNT SIX

(Conspiracy to Commit Bank Fraud)

The Grand Jury further charges:

58. The allegations contained in paragraphs 1 through 41 above are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

59. In or about 2013, STEVEN KAITZ and ZACHARY KAITZ, the defendants, engaged in a separate scheme to defraud a financial institution in connection with a residential mortgage that STEVEN KAITZ obtained in connection with his purchase of a vacation home on Martha's Vineyard, Massachusetts. In order to obtain a mortgage loan of approximately \$220,000 from Lender-5, an FDIC-insured bank in Massachusetts, STEVEN KAITZ and ZACHARY KAITZ created false pay stubs for STEVEN KAITZ, which STEVEN KAITZ submitted to Lender-5 in support of his mortgage application.

Statutory Allegation

60. In or about 2013, in the Southern District of New York and elsewhere, STEVEN KAITZ and ZACHARY KAITZ, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit bank fraud, in violation of Title 18, United States Code, Section 1344, to wit, STEVEN KAITZ and ZACHARY KAITZ created and provided false financial information

to Lender-5 to induce Lender-5 to lend STEVEN KAITZ

approximately \$220,000 to purchase a home on Martha's Vineyard.

61. It was a part and an object of the conspiracy that STEVEN KAITZ and ZACHARY KAITZ, the defendants, and others known and unknown, willfully and knowingly, would and did execute and attempt to execute, a scheme and artifice to defraud a financial institution, and to obtain the moneys, funds, credits, assets, securities, and other property owned by, and 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.

Overt Acts

62. In furtherance of the conspiracy and to effect the illegal object thereof, STEVEN KAITZ and ZACHARY KAITZ, the defendants, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about July 15, 2013, ZACHARY KAITZ sent STEVEN KAITZ an email attaching a fabricated pay stub for STEVEN KAITZ which STEVEN KAITZ provided to Lender-5 in support of his mortgage application.

b. In or about July 2013, Lender-5 mailed correspondence related to the loan to STEVEN KAITZ's residence in New York, New York.

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

FORFEITURE ALLEGATION AS TO COUNTS ONE, TWO, AND THREE

63. As a result of committing the wire and bank fraud offenses alleged in Counts One through Three of this Indictment, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, KATHLEEN SMITH, and ZACHARY KAITZ, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any property constituting or derived from proceeds obtained directly or indirectly as a result of the offenses alleged in Count One through Three of this Indictment including but not limited to at least approximately \$18.6 million in United States Currency in that such a sum represents property constituting or derived from proceeds obtained as a result of these offenses.

(Title 18, United States Code 982(a)(2)(A).)

FORFEITURE ALLEGATION AS TO COUNT FOUR

64. As a result of committing the theft of honest services fraud offense alleged in Count Four of this Indictment, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," JONATHAN WHEELER, and KATHLEEN SMITH, the defendants, shall forfeit to the United States pursuant to Title 18, United States Code, Section

981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense charged in Count Four, including but not limited to at least approximately \$18.6 million in United States Currency in that such a sum represents property that constitutes or is derived from proceeds traceable to the commission of that offense.

(Title 18, United States Code, Section 981(a)(1)(C); Title 28, United States Code, Section 2461.)

FORFEITURE ALLEGATION AS TO COUNT FIVE

65. As a result of committing the money laundering offense alleged in Count Five of this Indictment, STEVEN KAITZ, LATCHMEE MAHATO, a/k/a "Robbie," and JONATHAN WHEELER, the defendants, shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(1), all property, real and personal, involved in the that offense and all property traceable to such property, including but not limited to at least \$18.6 million in United States currency, in that such a sum represents property involved in or traceable to that offense.

(Title 18, United States Code, Section 982(a)(1).)

FORFEITURE ALLEGATION AS TO COUNT SIX

66. As a result of committing the bank fraud conspiracy offense alleged in Count Six of this Indictment,

STEVEN KAITZ and ZACHARY KAITZ, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2), any property constituting or derived from proceeds obtained directly or indirectly as a result of the conspiracy offense alleged in Count Six of this Indictment, including but not limited to at least \$220,000.00 in United States currency in that such a sum represents property constituting or derived from proceeds obtained as a result of that offense.

(Title 18, United States Code 982(a)(2).)

Substitute Assets Provision

67. If any of the property described above as being subject to forfeiture, 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 person;

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 subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21,
United States Code, Section 853(p), to seek forfeiture of any
other property of the defendants up to the value of the
forfeitable property.

(Title 18, United States Code, Sections 981 and 982;
Title 21, United States, Section 853(p);
Title 28, United States Code, Section 2461(c).)



FOREPERSON

Handwritten signature of Preet Bharara in cursive script.

PREET BHARARA

United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

STEVEN KAITZ,
LATCHMEE MAHATO,
a/k/a "Robbie,"
JONATHAN WHEELER,
KATHLEEN SMITH, and
ZACHARY KAITZ,

Defendants.

SEALED INDICTMENT

14 Cr. _____

(18 U.S.C. §§ 1343, 1344, 1349,
1956, and 2.)

PREET BHARARA

United States Attorney.



Foreperson.
