

STATE OF FLORIDA  
OFFICE OF FINANCIAL REGULATION  
DIVISION OF FINANCIAL INSTITUTIONS



IN RE:

ROBERT HOFLER,

Administrative Proceeding No. 0729-FI-3/10

\_\_\_\_\_/

EMERGENCY ORDER OF SUSPENSION AND PROHIBITION  
WITH NOTICE OF RIGHTS

The State of Florida, Office of Financial Regulation (hereinafter "Office"), gives notice that it, having determined that ROBERT HOFLER (hereinafter "HOFLER"), a financial institution-affiliated party, has been charged with a felony violation involving fraud, embezzlement, theft, or moral turpitude, files this Emergency Order of Suspension and Prohibition with Notice of Rights (hereinafter "Emergency Order"), pursuant to the provisions of Sections 655.012 and 655.037(6)(b), Florida Statutes (2009), against HOFLER, immediately suspending HOFLER from serving as a financial institution-affiliated party of First Southern Bank and any other state financial institution, subsidiary, or service corporation, and immediately prohibiting HOFLER from participation in any manner in the affairs of First Southern Bank and any other state financial institution, subsidiary, or service corporation.

STATEMENT OF FACTS AND CONCLUSIONS OF LAW

1. First Southern Bank is a Florida state-chartered bank, charter number 947, with its principal place of business at 900 North Federal Highway, Boca Raton, FL 33432, and thus a financial institution, as that term is defined in Section 655.005(1)(p), Florida Statutes.

2. During the period from approximately March 13, 2006 through April 2, 2007, and at all times material hereto, HOFLEER was an officer, agent, or employee of First Southern Bank. Thus, HOFLEER is a financial institution-affiliated party, as that term is defined in Section 655.005(1)(i), Florida Statutes.

3. On March 16, 2010, a Superseding Grand Jury Indictment was filed in the United States District Court, Southern District of Florida, West Palm Beach Division, in the case styled United States v. Jason Vitulano, et al, Case No. 09-80156-CR. The indictment charged HOFLEER with one felony count violation of Title 18, United States Code, Section 1349 (18 U.S.C. §1349), for conspiracy to commit wire and mail fraud and alleges in the count that HOFLEER and other defendants “did knowingly and willfully combine, conspire, confederate, agree and reach a tacit understanding with each other and with other persons known and unknown to the Grand Jury to commit the offenses of mail and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343.” The count alleges that the violation occurred during the period of January 2006, through, in, or about October 2007. See attached Exhibit 1 which is hereby incorporated by reference as if set forth in its entirety.

4. A violation of Title 18, United States Code, Section 1349, is a felony punishable by a fine of up to \$1,000,000, or imprisonment for up to 30 years, or both.

5. Violations of Title 18, United States Code, Section 1349, involve fraud, theft, or moral turpitude.

6. The Office is responsible for the enforcement of the laws governing financial institutions authorized or chartered by the State of Florida, and financial institution-affiliated parties associated with such institutions, their subsidiaries, and service

corporations, including but not limited to officers, employees, and agents, as well as former officers, employees, and agents. §§ 655.001, 655.005(1)(i), (j), (o), (p) and (q), 655.012, 655.037(1), (6)(b), and (8), Florida Statutes.

7. HOFLEER's resignation, termination of employment or participation, or separation from First Southern Bank does not affect the jurisdiction and authority of the Office to issue any notice and to proceed against HOFLEER as Section 655.037(8), Florida Statutes, specifically states:

The resignation, termination of employment or participation, or separation from a state financial institution, subsidiary, or service corporation of the financial institution-affiliated party does not affect the jurisdiction and authority of the office to issue any notice and proceed under this section against such financial institution-affiliated party, if such notice is served before the end of the 6-year period beginning on the date such person ceases to be such a financial institution-affiliated party with respect to such state financial institution, subsidiary, or service corporation.

8. Section 655.037(6)(b), Florida Statutes, further states, in pertinent part:

Whenever any financial institution-affiliated party is charged with a felony in a state or federal court, or in the courts of any foreign country with which the United States maintains diplomatic relations, and such charge alleges violation of any law involving fraud, currency transaction reporting, money laundering, theft, or moral turpitude and the charge under such foreign law is equivalent to a felony charge under state or federal law, the office may enter an emergency order suspending such financial institution-affiliated party or restricting or prohibiting participation by such financial institution-affiliated party in the affairs of that particular state financial institution, subsidiary, or service corporation or any other financial institution, subsidiary, or service corporation, upon service of the order upon the state financial institution, subsidiary, or service corporation and the financial institution-affiliated party so charged.

9. Although it is unnecessary to find or demonstrate that the reasons for concluding that the procedures employed herein are fair under the circumstances, since this

action is in the context of an emergency suspension and prohibition pursuant to the provisions of Sections 655.031 and 655.037(6)(b), Florida Statutes, the Office nevertheless finds that the procedures used are fair, since the Office has used the very procedures contained within the provisions of Sections 655.031 and 655.037(6)(b), Florida Statutes.

10. The Office concludes, pursuant to Section 655.0321, Florida Statutes, that this Emergency Order shall be a public document, and should HOFLER request a post-suspension hearing or appeal this Emergency Order, said hearings and proceedings shall be conducted as public proceedings, and that all documents related to such hearing will be public documents unless subject to a protective order or made confidential pursuant to federal or Florida law.

#### AGENCY ACTION

11. Based on the foregoing Statement of Facts and Conclusions of Law, it is ORDERED that:

- a. HOFLER is hereby IMMEDIATELY suspended from any and all positions he holds at any state financial institution, subsidiary, or service corporation.
- b. HOFLER is hereby IMMEDIATELY suspended from serving in the capacity of a financial institution-affiliated party, as the term is defined in Section 655.005(1)(i), Florida Statutes, for any state financial institution, subsidiary, or service corporation.
- c. HOFLER is hereby IMMEDIATELY prohibited from serving in the capacity of a financial institution-affiliated party, as the term is defined in Section 655.005(1)(i), Florida Statutes, for any state financial institution, subsidiary, or service corporation.
- d. HOFLER is hereby IMMEDIATELY prohibited from participation in any manner in the affairs of any state financial institution, subsidiary, or service corporation.

This prohibition includes, but is not limited to, matters of corporate governance and the following prohibitions regarding stock ownership, transfer, and voting:

(1) HOFLEER shall not vote any stock he owns or controls in any state financial institution, subsidiary, or service corporation, without the prior written permission of the Office.

(2) HOFLEER shall not solicit, procure, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any state financial institution, subsidiary, or service corporation.

(3) HOFLEER shall not solicit or procure any additional stock in any other state financial institution, subsidiary, or service corporation.

(4) HOFLEER shall not transfer or attempt to transfer: a) any stock he owns or controls in any state financial institution, subsidiary, or service corporation, without the prior written permission of the Office; or b) any proxy, consent, or authorization with respect to any voting rights in any state financial institution, subsidiary, or service corporation, without the prior written permission of the Office.

e. HOFLEER is hereby IMMEDIATELY suspended from serving as a consultant or independent contractor for any state financial institution, subsidiary, or service corporation.

f. HOFLEER is hereby IMMEDIATELY prohibited from serving as a consultant or independent contractor, or other similar position, for any state financial institution, subsidiary, or service corporation, unless, prior to accepting appointment with, and prior to providing any services to, any state financial institution, subsidiary, or service corporation as a consultant or independent contractor, or other similar position:

(1) HOFLEER provides a copy of this Emergency Order to the chief executive officer of the state financial institution, subsidiary, or service corporation, with which HOFLEER seeks to serve as a consultant or independent contractor, or other similar position; and

(2) HOFLEER, and the chief executive officer and the chairman of the board of directors of the state financial institution, subsidiary, or service corporation with which HOFLEER seeks to serve as a consultant or independent contractor, or other similar position, provides written notification to the Office describing in detail the duties and responsibilities of the services HOFLEER desires to provide to the state financial institution, subsidiary, or service corporation; and

(3) HOFLEER is authorized by the Office, at its sole discretion, to accept the appointment with the state financial institution, subsidiary, or service corporation, as a consultant or independent contractor, or other similar position.

g. The Office will only rescind or otherwise modify this Emergency Order upon the issuance of an Office Order finding that HOFLEER has demonstrated through a post-suspension hearing that his service to or participation in the affairs of any state financial institution, subsidiary, or service corporation does not pose a threat to the interests of the state financial institution's depositors, members, or stockholders, or threaten to impair public confidence in the state financial institution or the financial institution system.

h. This Emergency Order will remain in effect, unless otherwise rescinded or modified by Office Order, until the criminal charges are disposed of.

i. This Emergency Order shall become final if HOFLEER is convicted or pleads guilty or *nolo contendere* to any felony involving fraud, currency transaction reporting,

money laundering, theft, or moral turpitude, whether or not an adjudication of guilt is entered by the Court.

j. This Emergency Order will dissolve in the event of an acquittal, or the final, unappealed dismissal of all charges against HOFLEER. However, such dissolution does not prohibit the Office from instituting proceedings under Section 655.037(1), Florida Statutes.

DONE AND ORDERED in Tallahassee, Florida, this 19<sup>th</sup> day of March, 2010.

  
J. Thomas Cardwell, Commissioner  
Office of Financial Regulation

#### NOTICE OF RIGHTS

NOTICE IS HEREBY provided that the foregoing Emergency Order is entered pursuant to section 655.037(6)(b), Florida Statutes, and is accordingly effective immediately. HOFLEER is entitled to seek judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure, and are commenced by filing the original notice of appeal with the Clerk of the Office of Financial Regulation, Legal Services Office, The Fletcher Building, Suite 526, 200 East Gaines Street, Tallahassee, Florida 32399-0379, and a copy of the notice of appeal, accompanied by the filing fees prescribed by law, with the First District Court of Appeal, 301 Martin Luther King, Jr. Blvd., Tallahassee, Florida 32399, or the District Court of Appeal in the appellate district where the party resides, or as otherwise provided

by law. The notice of appeal must be filed within thirty (30) days of rendition of the Emergency Order.

HOFILER may also request a post-suspension hearing, to be conducted in accordance with the provisions of sections 120.569 and 120.57, Florida Statutes. Requests for such a post-suspension hearing must comply with the provisions of Rule 28-106.104, Florida Administrative Code, and must be filed with:

Clerk  
Office of Financial Regulation  
Legal Services Offices  
The Fletcher Building, Suite 526  
200 East Gaines Street  
Tallahassee, Florida 32399-0379  
(850) 410-9896

within twenty-one (21) days after HOFILER, or his agent or representative, receives a copy of this Emergency Order. Should HOFILER request a post-suspension hearing, he will have the right to be represented by counsel or other qualified representative; to offer testimony, either written or oral; to call and cross-examine witnesses; and to have subpoenas and subpoenas duces tecum issued on HOFILER's behalf. Failure to respond within twenty-one (21) days of receipt of this Emergency Order shall be deemed to be a waiver of all rights to a post-suspension hearing, and this Emergency Order shall, without further notice, remain in effect until the criminal charges are disposed of. If HOFILER is convicted of or pleads guilty or *nolo contendere* to the charges alleged, regardless of whether an adjudication of guilt is entered by the court, the Emergency Order shall become final.

Note that the acquittal of the financial institution-affiliated party charged, or the final unappealed dismissal of all charges against such person, will dissolve the Emergency

Order, but will not prohibit the Office from instituting proceedings under section 655.037(1), Florida Statutes. Pursuant to section 120.573, Florida Statutes, HOFLER is advised that mediation is not available.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Order of Suspension and Prohibition with Notice of Rights has been furnished via certified U.S. Mail, return receipt requested, delivery to addressee only, to Mr. ROBERT HOFLER, 11218 NW 14<sup>th</sup> Court, Pembroke Pines, FL 33026, and by U.S. Mail to First Southern Bank, through Frank G. Burnside, President, 900 N. Federal Highway, Boca Raton, FL 33432, this 19<sup>th</sup> of March, 2010.

  
Jeffrey A. LeHeup, Fla. Bar No. 0979937  
Assistant General Counsel  
Office of Financial Regulation  
The Fletcher Building  
200 East Gaines Street, Suite 526  
Tallahassee, Florida 32399-0379  
Tel: (850) 410-9896

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 09-80156-CR-MIDDLEBROOKS/JOHNSON(s)**

**18 U.S.C. § 1341  
18 U.S.C. § 1343  
18 U.S.C. § 1349  
18 U.S.C. § 982(a)(2)(A)  
18 U.S.C. § 981(a)(1)(C)  
18 U.S.C. § 2  
28 U.S.C. § 2461**

**UNITED STATES OF AMERICA,**

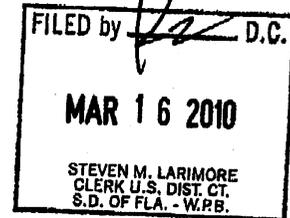
**Plaintiff,**

**vs.**

**JASON VITULANO,  
PETER HARTOFILIS,  
JOSEPH MILLER,  
ROBERT HOFLE, and  
STEVE VENTO,**

**Defendants.**

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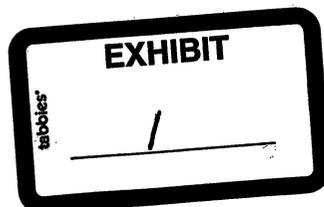
**SUPERSEDING INDICTMENT**

The Grand Jury charges that:

**GENERAL ALLEGATIONS**

At all times relevant and material to this Superseding Indictment:

1. Washington Mutual Bank, FA, ("Washington Mutual"), was a financial institution whose accounts were insured by the Federal Deposit Insurance Corporation.
2. First Magnus Financial Corp. ("First Magnus"), was based in Tucson, AZ and was



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a private mortgage lending company that specialized in originating residential nonconforming mortgage loans.

3. Novastar Mortgage, Inc. ("Novastar"), was based in Kansas City, MO and was a private mortgage lending company that specialized in originating residential nonconforming mortgage loans.

4. Premium Capital Funding LLC d/b/a TopDot Mortgage Company (hereinafter "TopDot Mortgage") was a New York corporation licensed in Florida to conduct business as a correspondent mortgage lender, with offices in Deerfield Beach and Boca Raton, Florida, and elsewhere. A correspondent lender can originate its own mortgage loans, or obtain mortgage financing for its clients through other lenders.

5. **JASON VITULANO** and **PETER HARTOFILIS** were both employed as branch managers for the TopDot office in Boca Raton, Florida. In this position, **VITULANO** and **HARTOFILIS** managed loan officers and had authority to place mortgage loans through Premium Capital Funding LLC.

6. Although neither **VITULANO** nor **HARTOFILIS** was a licensed mortgage broker, through their positions at TopDot each had the ability to obtain loans for their clients through other mortgage lenders, such as Washington Mutual, First Magnus and Novastar.

7. TopDot, **JASON VITULANO** and **PETER HARTOFILIS** received commissions from the placement of these mortgages.

8. **JOSEPH MILLER** was an attorney licensed to practice law in Florida and New York. **MILLER** acted as closing agent and as title agent through Old Republic Title Co. on numerous real estate closings involving coconspirators **JASON VITULANO**, **PETER**

**HARTOFILIS** and others.

9. **ROBERT HOFLE**R was a vice president at First Southern Bank in Boca Raton, Florida who signed false verification of deposit forms in connection with loan applications submitted by **VITULANO, HARTOFILIS** and others.

10. **STEVE VENTO** was a resident of Florida who purchased real property and applied for and obtained financing from lenders through TopDot Mortgage through the submission of false and fraudulent loan applications.

**COUNT 1**  
**CONSPIRACY TO COMMIT WIRE AND MAIL FRAUD**  
**(18 U.S.C. § 1349)**

11. Paragraphs 1 through 10 of the General Allegations of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

12. Beginning at least as early as in or about January 2006, through in or about October 2007, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida and elsewhere, the defendants,

**JASON VITULANO,  
PETER HARTOFILIS,  
JOSEPH MILLER,  
ROBERT HOFLE**R, and  
**STEVE VENTO,**

did knowingly and willfully combine, conspire, confederate, agree and reach a tacit understanding with each other and with other persons known and unknown to the Grand Jury to commit the offenses of mail and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343.

**PURPOSE OF THE CONSPIRACY**

13. It was the object of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things, preparing and submitting Uniform Residential Loan Applications, also known as Fannie Mae Form 1003s, and supporting documents, which contained false information, to obtain mortgage money from mortgage lenders for the purchase of residential property; and by preparing and submitting Settlement Statements, also known as Forms HUD-1, which contained false information, to mislead the mortgage lender as to the ultimate distribution of the mortgage money obtained from the lender.

**MANNER & MEANS OF THE CONSPIRACY**

It was a part of the manner and means of the conspiracy that:

14. **JASON VITULANO** and his coconspirators caused residential loan applications (Fannie Mae Forms 1003) and other information to be submitted to mortgage lenders, including Washington Mutual Bank, F.A., Novastar Mortgage Incorporated and First Magnus Financial Corp., that were false or fraudulent in that they misstated one or more material facts, for the purpose of obtaining mortgage financing and to obtain mortgage broker fees for TopDot Mortgage in connection with fraudulent loans.

15. Defendant **JASON VITULANO** and his coconspirators submitted loan applications falsely inflating a loan applicant's salary information through their stated monthly earnings, in order to induce the mortgage lender to make the loan.

16. Defendant **JASON VITULANO** and his coconspirators created false and fictitious verification of deposit forms, ("VOD's"), that were used to deceive Washington

Mutual and other mortgage lenders into believing that a prospective loan applicant had large balances in certain financial accounts, when in truth and in fact the assets represented were either grossly inflated or non-existent.

17. Specifically, **JASON VITULANO** and **PETER HARTOFILIS** recruited **ROBERT HOFLE**R, who was a vice president at the Boca Raton branch of First Southern Bank, to falsify VOD's for the purpose of verifying to mortgage lenders that TopDot loan applicants had substantial assets, in order to induce the lenders to make the loans.

18. In some cases, **HOFLE**R signed blank VOD forms which he gave to **JASON VITULANO** and **PETER HARTOFILIS** to be used in connection with loan applications. In other cases, **VITULANO**, **HARTOFILIS** and/or their coconspirators submitted VOD's bearing the name, telephone number and forged signature of **ROBERT HOFLE**R at First Southern Bank to use as false verification of assets on deposit.

19. **JASON VITULANO**, **PETER HARTOFILIS** and their coconspirators at TopDot Mortgage caused loan application packages which contained false and fraudulent information to be submitted from TopDot's Boca Raton office to the offices of the mortgage lenders.

20. Once a given loan was approved, **JASON VITULANO** and his coconspirators caused the mortgage lender to wire funds using the interstate wires from states including Arizona, California, New York and Wisconsin to the Southern District of Florida for purposes of funding the approved mortgage loan.

21. Defendants **JASON VITULANO** and **PETER HARTOFILIS** obtained portions of the wired settlement proceeds under false and fraudulent pretenses by directing that one

or more checks and/or wire transfers be issued to TopDot Mortgage as payment of mortgage brokerage fees.

22. Defendant **JASON VITULANO** recruited attorney **JOSEPH MILLER** to work with him and serve as the title and closing agent on a number of these loans. **MILLER** opened a law office on the same floor as the TopDot Mortgage office and received work in the form of numerous real estate closings referred to him by **VITULANO, HARTOFILIS** and others at TopDot. On several occasions, **MILLER** agreed to provide loan settlement proceeds by wire transfers and/or checks into the individual bank accounts of **JASON VITULANO** and others which were not reflected on the HUD-1 Settlement Statement.

23. After the loan closing took place, a closing package that included the loan application, HUD-1 Settlement Statement, and other supporting documents was sent from the law office of closing agent **JOSEPH MILLER** to the mortgage lender by means of the commercial interstate carrier United Parcel Service. Many of these fraudulently obtained loans, including those discussed below, went into foreclosure proceedings due to nonpayment of the mortgages, causing substantial losses to the lenders.

24. Among other fraudulent mortgage loans orchestrated by **JASON VITULANO** and **PETER HARTOFILIS**, the following false loan applications were submitted to lenders through TopDot Mortgage:

**LIGHTHOUSE POINT**

25. In July 2006, **JASON VITULANO** recruited defendant **STEVE VENTO** to obtain mortgage financing through a TopDot loan application submitted to First Magnus for over \$1.5 million to purchase a house located at 2530 N. E. 47<sup>th</sup> Street, Lighthouse Point, FL.

In order to persuade First Magnus to make the loan, **VENTO's** loan application – which listed **JASON VITULANO** as interviewer – contained the following material false statements:

- Monthly salary and rental income for **VENTO** of \$57,850 (grossly inflated figure).
- Claim of primary residence by **VENTO** (who never occupied this house as his primary residence and owned several other properties which he had also claimed as primary residences).
- Bank account at First Southern Bank with a balance of \$148,575.00 claimed on a VOD bearing the name and phone number of **ROBERT HOFER**. (**VENTO** was not an account holder at time of the loan and this account did not exist, nor did any other **VENTO** bank account reflect a balance close to that figure during that time period).

26. Based upon the false loan application and supporting documents, on July 25, 2006, First Magnus funded the first and second mortgage loans through wire transfers from Austin, TX totaling \$1,544,855.00 to the trust account of **JOSEPH MILLER** as closing agent. TopDot Mortgage received commissions and fees of \$28,500 according to the HUD-1 Settlement Statement received by the lender.

**PARKSIDE CIRCLE, BOCA RATON**

27. In July and August 2006, **JASON VITULANO** again recruited defendant **STEVE VENTO** to submit another false loan application, this time to Novastar, seeking mortgage funding of \$1.1 million to purchase property located at 887 Parkside Circle North, Boca Raton, FL.

28. The **VENTO** loan application submitted through TopDot – which listed **VITULANO** as interviewer – contained the following material false statements:

- Monthly income for **VENTO** of \$67,000 (grossly inflated income and no rental income claimed).
- Claim of primary residence by **VENTO** (who never occupied this house as his primary residence and owned several other properties which he had also claimed as primary residences).
- Bank account at First Southern Bank with a balance of \$601,119 claimed on a VOD bearing the name and phone number of **ROBERT HOFER**. (**VENTO** was not an account holder at time of the loan and this account did not exist, nor did any other **VENTO** bank account reflect a balance close to that figure during that time period).

29. Based upon the false loan application, on August 22, 2006, Novastar funded the mortgage loan through a wire transfer from USB Warburg Real Estate Securities in New York, NY in the amount of \$1,106,860.05 to the trust account of **JOSEPH MILLER** as closing agent. Out of these loan proceeds, TopDot Mortgage received a commission of \$11,000. On August 23, 2006 – the day after the closing took place – **JASON VITULANO** received a telephonic wire transfer from the trust account of coconspirator and title agent **JOSEPH MILLER** in the amount of \$61,142.97. This transfer to **JASON VITULANO** was not reflected on the HUD-1 Settlement Statement.

**LAKE AZURE WAY - HARTOFILIS, BOCA RATON**

30. On August 21, 2006, a purchase contract was prepared and executed for **PETER HARTOFILIS** to buy a house located at 17817 Lake Azure Way, Boca Raton, FL

for \$1.65 million. **HARTOFILIS** then submitted a false loan application to Washington Mutual seeking mortgage funding to purchase the property in the form of a \$1 million first mortgage, and a \$481,519 home equity line.

31. The loan application submitted to Washington Mutual stated that **HARTOFILIS** was branch president at TopDot Mortgage, and contained the following material false statements:

- Monthly income for **HARTOFILIS** of \$67,000 (grossly inflated).
- Bank C.D. at First Southern Bank with a balance of \$384,670 claimed on a VOD bearing the name and phone number of **ROBERT HOFLE**R. (**HARTOFILIS** was an account holder at First Southern Bank at time of the loan, but this account did not exist, nor did any other **HARTOFILIS** bank account reflect a balance close to that figure during that time period).

32. Based upon the false loan application, on or about September 13, 2006, Washington Mutual funded the mortgage loans through two wire transfers from the Washington Mutual offices in the following amounts: \$995,889.50 (first mortgage wire from Stockton, CA ) and \$489,725.65 (second mortgage home equity line wire from Jacksonville, FL, routed through Madison, WI) to the trust account of **JOSEPH MILLER** as closing agent.

33. For this transaction, two HUD-1 Settlement Statements were prepared by the title agent, defendant **JOSEPH MILLER**. Both showed an earnest money deposit by **HARTOFILIS**, of \$165,000.00, which deposit was never made by **HARTOFILIS** nor held by **MILLER** as the escrow agent. One HUD-1 Settlement Statement showed an additional

"Seller Contribution" of \$135,000 with a net payment of cash to **HARTOFILIS** of \$101,472.68. This HUD-1 Settlement Statement was never shown to Washington Mutual. A second HUD-1 Settlement Statement was created which did not reflect the \$135,000 "Seller Contribution" and instead showed that the seller was to receive a cash payment at closing of \$671,686.83. The seller did NOT receive this amount from the transaction, but received only \$555,534.43.

34. On September 14, 2006, the day after the closing, **MILLER** sent a wire transfer from his own trust account to the personal checking account of **PETER HARTOFILIS** in the amount of \$111,000.00. The lender, Washington Mutual, was unaware of this payment from the loan proceeds since it was not reflected in the HUD-1 Settlement Statement sent to Washington Mutual by **JOSEPH MILLER** in the closing package.

**LAKE AZURE WAY - VITULANO, BOCA RATON**

35. On September 28, 2006, **JASON VITULANO** and a person known as "V. M.", who was recruited by **VITULANO**, signed a contract to purchase a home located at 17874 Lake Azure Way, Boca Raton, FL at auction for \$979,050.00. A subsequent sales contract was prepared naming only V. M., and deleting **VITULANO**, as purchaser. The new contract, dated October 2, 2006, stated a purchase price of \$1.75 million. Based on that new falsely inflated purchase price, V. M. applied for mortgage financing through **JASON VITULANO** and TopDot Mortgage.

36. **JASON VITULANO** submitted a false loan application for V. M. to Washington Mutual seeking mortgage funding totaling \$1,562,500.00 to purchase the property, even though **VITULANO** knew the true purchase price was only \$979,500.00.

37. The loan application submitted to Washington Mutual, which contained the forged signature of V. M. as applicant, and listed **JASON VITULANO** as interviewer, contained the following material false statements:

- Monthly income for V. M. of \$33,246 (grossly inflated).
- Claim of primary residence by V. M. (who never intended to occupy this house as his primary residence, and who knew that **JASON VITULANO** intended to live in this house, and did move in and occupy this house after the closing).
- Bank C. D. at First Southern Bank with a balance of \$433,310.00 claimed on a VOD bearing the name and phone number of **ROBERT HOFER**. (V. M. was not an account holder at time of the loan and this account did not exist, nor did any other V. M. bank account reflect a balance close to that figure during that time period).

38. Based upon the false loan application, on or about October 25, 2006, Washington Mutual funded the mortgage loans through two wire transfers from the Washington Mutual offices in the following amounts: \$1,349,373.98 (first mortgage wire from Stockton, CA ) and \$252,625.00 (second mortgage wire from Jacksonville, FL, routed through Madison, WI) to the trust account of **JOSEPH MILLER**. Out of these loan proceeds, TopDot Mortgage received a commission of \$39,375.00.

39. For this transaction, two HUD-1 Settlement Statements were prepared by the closing agent, defendant **JOSEPH MILLER**. One showed an earnest money deposit by the purchaser, V. M., of \$771,000.00. The other showed no earnest money deposit, but rather showed that the seller was to receive \$701,059.00. In fact, the seller of this property received no cash proceeds from this sale, but rather the seller had to wire

transfer \$34,625.77 to closing agent **JOSEPH MILLER** in order to close the sale.

40. On October 25, 2006, the day of the closing, **MILLER** issued a check from his trust account payable to **JASON VITULANO** in the amount of \$150,721.85, which check was deposited into **JASON VITULANO**'s personal bank account. Then, on October 26, 2006, **MILLER** wire transferred \$234,200.00 to V. M.'s personal bank account, and wire transferred \$173,350.00 to the personal bank account of **PETER HARTOFILIS** from **MILLER**'s trust account. None of these payments – totaling over \$558,000 – was disclosed anywhere in the loan documents or the HUD-1 Settlement Statement sent to Washington Mutual by **JOSEPH MILLER** in the closing package, nor was the lender ever told that the loan proceeds were being disbursed in this way.

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

**COUNTS 2 THROUGH 8**  
**WIRE FRAUD**  
**(18 U.S.C. § 1343)**

41. Paragraphs 1 through 10 of the General Allegations of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

42. Beginning at least as early as in or about July 2006, through in or about October 2007, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

**JASON VITULANO, and**  
**PETER HARTOFILIS,**

and others known and unknown to the Grand Jury, did knowingly, and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and for obtaining money and property from mortgage lenders, by means of materially false and fraudulent

pretenses, representations and promises, well knowing that the pretenses, representations and promises would be and were false and fraudulent when made.

**OBJECT OF THE SCHEME AND ARTIFICE TO DEFRAUD**

43. It was the object of the scheme to defraud for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things, preparing and submitting Uniform Residential Loan Applications, also known as Fannie Mae Form 1003s, and supporting documents, which contained false information, to obtain mortgage money from mortgage lenders for the purchase of residential property; and by preparing and submitting Settlement Statements, also known as Forms HUD-1, which contained false information, to mislead the mortgage lender as to the ultimate distribution of the mortgage money obtained from the lender.

**MANNER & MEANS OF EXECUTING THE SCHEME TO DEFRAUD**

44. The allegations of paragraphs 14 through 40 of this Superseding Indictment are realleged and incorporated herein by reference as a description of the scheme and artifice, as well as a description of the material falsehoods through which the scheme and artifice was conducted.

**USE OF THE WIRES**

45. On or about the dates enumerated as to each count, at Palm Beach County, in the Southern District of Florida and elsewhere, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by false and fraudulent pretenses, representations and promises, the defendants enumerated as to each count did knowingly transmit and cause to be transmitted in interstate commerce by means of wire communications certain signals and sounds, as more particularly described for each count

below:

<u>COUNT</u>	<u>DATE</u>	<u>DEFENDANT</u>	<u>DESCRIPTION OF WIRE COMMUNICATION</u>
2	7/25/06	VITULANO	\$1,353,579.58 wire transfer from First Magnus, Tucson, AZ to the trust account of JOSEPH MILLER at First Southern Bank, Boca Raton, FL re: purchase of 2530 N.E. 47 <sup>th</sup> Street, Lighthouse Point, FL.
3	7/25/06	VITULANO	\$191,275.42 wire transfer from First Magnus, Tucson, AZ to the trust account of JOSEPH MILLER at First Southern Bank, Boca Raton, FL re: purchase of 2530 N.E. 47 <sup>th</sup> Street, Lighthouse Point, FL.
4	8/22/06	VITULANO	\$1,106,860.05 wire transfer from Novastar Financial, Inc., via UBS Warburg Real Estate Securities, New York, NY to the trust account of JOSEPH MILLER at First Southern Bank, Boca Raton, FL re: purchase of 887 Parkside Circle N., Boca Raton, FL.
5	9/13/06	HARTOFILIS	\$995,889.50 wire transfer from Washington Mutual Bank, FA, Stockton, CA, to the trust account of JOSEPH MILLER at First Southern Bank, Boca Raton, FL re: purchase of 17817 Lake Azure Way, Boca Raton, FL.

<u>COUNT</u>	<u>DATE</u>	<u>DEFENDANT</u>	<u>DESCRIPTION OF WIRE COMMUNICATION</u>
6	9/13/06	HARTOFILIS	\$489,725.65 from Washington Mutual Bank, FA, Jacksonville, FL routed through Madison, WI to the trust account of JOSEPH MILLER at First Southern Bank, Boca Raton, FL re: purchase of 17817 Lake Azure Way, Boca Raton, FL.
7	10/26/2006	VITULANO	\$1,349,373.98 wire transfer from Washington Mutual Bank, FA, Stockton, CA to the trust account of JOSEPH MILLER at First Southern Bank, Boca Raton, FL re: purchase of 17874 Lake Azure Way, Boca Raton, FL.
8	10/26/2006	VITULANO	\$252,625.00 wire transfer from Washington Mutual Bank, FA, Jacksonville, FL routed through Madison, WI to the trust account of JOSEPH MILLER at First Southern Bank, Boca Raton, FL re: purchase of 17874 Lake Azure Way, Boca Raton, FL.

All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNTS 9 THROUGH 12**  
**MAIL FRAUD**  
**(18 U.S.C. § 1341)**

46. Paragraphs 1 through 10 of the General Allegations of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

47. Beginning at least as early as in or about January 2006, through in or about October 2007, the exact dates being unknown to the Grand Jury, in Palm Beach County, in

the Southern District of Florida, and elsewhere, the defendant,

**JASON VITULANO,  
PETER HARTOFILIS, and  
JOSEPH MILLER,**

and others known and unknown to the Grand Jury, did knowingly, and with intent to defraud, unlawfully devise and intend to devise a scheme and artifice to defraud and for obtaining money and property from Washington Mutual Bank, FA, and other mortgage lenders, by means of materially false and fraudulent pretenses, representations and promises, well knowing that the pretenses, representations and promises would be and were false and fraudulent when made.

**OBJECT OF THE SCHEME AND ARTIFICE TO DEFRAUD**

48. It was the object of the scheme to defraud for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things, preparing and submitting Uniform Residential Loan Applications, also known as Fannie Mae Form 1003s, and supporting documents, which contained false information, to obtain mortgage money from mortgage lenders for the purchase of residential property; and by preparing and submitting Settlement Statements, also known as Forms HUD-1, which contained false information, to mislead the mortgage lender as to the ultimate distribution of the mortgage money obtained from the lender.

**MANNER & MEANS OF EXECUTING THE SCHEME TO DEFRAUD**

49. The allegations of paragraphs 14 through 40 of this Superseding Indictment are realleged and incorporated herein by reference as a description of the scheme and artifice, as well as a description of the material falsehoods through which the scheme and artifice was conducted.

**USE OF THE MAILS**

50. On or about the dates enumerated as to each count, at Palm Beach County, in the Southern District of Florida and elsewhere, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by false and fraudulent pretenses, representations and promises, the defendants enumerated as to each count did knowingly cause to be delivered by the United States Postal Service, or by private or commercial interstate carrier according to the direction thereon, mail matter, as more particularly described below in each count:

<b><u>COUNT</u></b>	<b><u>DATE</u></b>	<b><u>DEFENDANT</u></b>	<b><u>DESCRIPTION OF MAIL COMMUNICATION</u></b>
9	7/26/2006	VITULANO MILLER	Completed loan closing package for 2530 N.E. 47 <sup>th</sup> Street, Lighthouse Point, Florida sent via United Parcel Service from JOSEPH MILLER Law Office, Boca Raton, FL to First Magnus Financial, Inc., Austin, TX.
10	8/23/2006	VITULANO MILLER	Completed loan closing package for 887 Parkside Circle N., Boca Raton, Florida sent via United Parcel Service from JOSEPH MILLER Law Office, Boca Raton, FL to Novastar Mortgage, Inc., Richfield, OH.
11	9/13/06	HARTOFILIS MILLER	Completed loan closing package for 17817 Lake Azure Way, Boca Raton, Florida sent via United Parcel Service from JOSEPH MILLER Law Office, Boca Raton, FL to Washington Mutual Bank, FA, Florence, SC.
12	10/26/06	VITULANO MILLER	Completed loan closing package for 17874 Lake Azure Way, Boca Raton, Florida sent via United Parcel Service from JOSEPH MILLER Law Office, Boca Raton, FL to Washington Mutual Bank, Jacksonville, FL.

All in violation of 18 United States Code, Sections 1341 and 2.

### FORFEITURE ALLEGATIONS

1. The general allegations and Counts 1 through 12 of this Superseding Indictment are realleged and by this reference fully incorporated herein for the purpose of alleging forfeitures to the United States of America of certain property in which one or more of the defendants has an interest pursuant to 32.2(a), Federal Rules of Criminal Procedure. Forfeiture is being sought pursuant to the provisions of Title 18, United States Code, Sections 982(a)(2)(A) and 981(a)(1)(C), as made applicable hereto by Title 28, United States Code, Section 2461.

2. Upon conviction of any of the offenses set forth in the Superseding Indictment charging mail fraud, wire fraud or conspiracy to commit wire fraud and mail fraud affecting a financial institution, set forth in Counts 1, 5 through 8 and Counts 11 through 12 of the Superseding Indictment, the defendants, **JASON VITULANO, PETER HARTOFILIS, JOSEPH MILLER, ROBERT HOFER and STEVE VENTO**, shall forfeit to the United States all property, constituting or derived from, proceeds the defendants obtained, directly or indirectly, as a result of such violation.

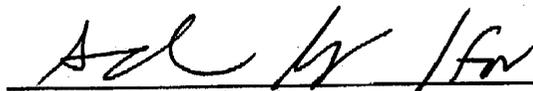
3. Upon conviction of any of the offenses of wire fraud and mail fraud as set forth in Counts 2 through 4 and Counts 9 through 10 of the Superseding Indictment, the defendants, **JASON VITULANO, PETER HARTOFILIS and JOSEPH MILLER**, shall forfeit to the United States, all property, real or personal, which constitutes or is derived from proceeds traceable to the offense.

All pursuant to Title 18, United States Code, Section 982(a)(2)(A) and Title 18, United

States Code, Section 981(a)(1)(C) made applicable through Title 28, United States Code, Section 2461; and the procedures outlined at Title 21, United States Code, Section 853.

A TRUE BILL

~~FOREPERSON~~ / 0



JEFFREY H. SLOMAN  
UNITED STATES ATTORNEY



LAUREN E. JORGENSEN  
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. 09-80156-CR-MIDDLEBROOKS/Johnson(s)

vs.

CERTIFICATE OF TRIAL ATTORNEY

JASON VITULANO, ET AL

Defendant.

Superseding Case Information:

Court Division: (Select One)

New Defendant(s) Yes X No       
Number of New Defendants 4  
Total number of counts 12

     Miami      Key West  
     FTL   X   WPB      FTP

I do hereby certify that:

- I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
- Interpreter: (Yes or No) No  
List language and/or dialect
- This case will take 12 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I 0 to 5 days <u>    </u>	Petty <u>    </u>
II 6 to 10 days <u>    </u>	Minor <u>    </u>
III 11 to 20 days <u>  X  </u>	Misdem. <u>    </u>
IV 21 to 60 days <u>    </u>	Felony <u>  X  </u>
V 61 days and over <u>    </u>	

6. Has this case been previously filed in this District Court? (Yes or No) Yes  
If yes: Judge: MIDDLEBROOKS/Johnson Case No. 09-80156-CR  
(Attach copy of dispositive order)

Has a complaint been filed in this matter? Yes (Yes or No)  
If yes:  
Magistrate Case No. 09-8320-LR-I  
Related Miscellaneous numbers: n/a  
Defendant(s) in federal custody as of 12-8-09 as to Jason Vitulano  
Defendant(s) in state custody as of 10-04-07 as to Steve Vento  
Rule 20 from the n/a District of     

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003?      Yes   X   No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007?      Yes   X   No

  
LAUREN E. JORGENSEN  
ASSISTANT UNITED STATES ATTORNEY  
Florida Bar No. 726885

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PENALTY SHEET**

Defendant Name: JASON VITULANO Case No.: 09-80156-CR-MIDDLEBROOKS/Johnson(s)

Count # 1  
CONSPIRACY TO COMMIT WIRE AND MAIL FRAUD  
18 USC § 1349

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release  
=====

Count # 2 - 4, 7, 8  
WIRE FRAUD  
18 USC §§ 1343 and 2

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release  
=====

Count # 9, 10, 12  
MAIL FRAUD  
18 USC §§ 1341 and 2

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release  
=====

Count # \_\_\_\_\_

Max. Penalty: \_\_\_\_\_  
=====

Count # \_\_\_\_\_

Max. Penalty: \_\_\_\_\_  
=====

\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PENALTY SHEET**

Defendant Name: PETER HARTOFILIS Case No.: 09-80156-CR-MIDDLEBROOKS/Johnson(s)

Count # 1  
CONSPIRACY TO COMMIT WIRE AND MAIL FRAUD  
18 USC § 1349

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release  
=====

Count # 5, 6  
WIRE FRAUD  
18 USC §§ 1343 and 2

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release  
=====

Count # 11  
MAIL FRAUD  
18 USC §§ 1341 and 2

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release  
=====

Count # \_\_\_\_\_

Max. Penalty: \_\_\_\_\_  
=====

Count # \_\_\_\_\_

Max. Penalty: \_\_\_\_\_  
=====

\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PENALTY SHEET**

Defendant Name: JOSEPH MILLER Case No.: 09-80156-CR-MIDDLEBROOKS/Johnson(s)

Count # 1

CONSPIRACY TO COMMIT WIRE AND MAIL FRAUD

18 USC § 1349

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release

Count # 9 - 12

MAIL FRAUD

18 USC §§ 1341 and 2

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release

Count # \_\_\_\_\_

Max. Penalty: \_\_\_\_\_

Count # \_\_\_\_\_

Max. Penalty: \_\_\_\_\_

\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PENALTY SHEET**

Defendant Name: ROBERT HOFER Case No.: 09-80156-CR-MIDDLEBROOKS/Johnson(s)

Count # 1

CONSPIRACY TO COMMIT WIRE AND MAIL FRAUD

18 USC § 1349

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release

=====  
Count # \_\_\_\_\_

\_\_\_\_\_  
Max. Penalty: \_\_\_\_\_

=====  
Count # \_\_\_\_\_

\_\_\_\_\_  
Max. Penalty: \_\_\_\_\_

=====  
Count # \_\_\_\_\_

\_\_\_\_\_  
Max. Penalty: \_\_\_\_\_

=====  
\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PENALTY SHEET**

Defendant Name: STEVE VENTO Case No.: 09-80156-CR-MIDDLEBROOKS/Johnson(s)

Count # 1  
CONSPIRACY TO COMMIT WIRE AND MAIL FRAUD  
18 USC § 1349

Max. Penalty: 0-30 years imprisonment; \$0-1,000,000.00 fine; 0-5 years supervised release  
=====

Count # \_\_\_\_\_

Max. Penalty: \_\_\_\_\_  
=====

Count # \_\_\_\_\_

Max. Penalty: \_\_\_\_\_  
=====

Count # \_\_\_\_\_

Max. Penalty: \_\_\_\_\_  
=====

\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.