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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

DANIEL RIVAS,  
JAMES MOODHE,  
ROBERTO RODRIGUEZ,  
RODOLFO SABLON,  
JHONATAN ZOQUIER,  
MICHAEL SIVA, and  
JEFFREY ROGIERS,

Defendants.

1:17-cv-06192-VM

FINAL JUDGMENT AS TO  
DEFENDANT JEFFREY ROGIERS

The Securities and Exchange Commission having filed a Complaint, and Defendant Jeffrey Rogiers having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any

officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

- (b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith
- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
  - (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
  - (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$51,788, but that this amount shall be deemed satisfied by the order of forfeiture entered against Defendant in *United States v. Michael Siva et al.*, 17-cr-00503-AJN (S.D.N.Y. Dec. 21, 2018) (Dkt. 111), which ordered forfeiture of \$51,788.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

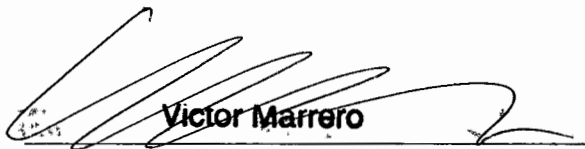
VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: 23 September 2019

  
**Victor Marrero**  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

DANIEL RIVAS,  
JAMES MOODHE,  
ROBERTO RODRIGUEZ,  
RODOLFO SABLON,  
JHONATAN ZOQUIER,  
MICHAEL SIVA, and  
JEFFREY ROGIERS,

Defendants.

1:17-cv-06192-VM

**CONSENT OF DEFENDANT JEFFREY ROGIERS**

1. Defendant Jeffrey Rogiers ("Defendant") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Michael Siva et al.*, 17-cr-00503-AJN (S.D.N.Y.), Defendant pleaded guilty to violating 18 U.S.C. § 371 (Conspiracy to Commit Securities Fraud and Fraud in Connection With a Tender Offer). In connection with that plea, Defendant admitted the facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Michael Siva et al.*

3. Defendant hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violations of Sections

10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b), 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5, 14e-3]; and

(b) orders Defendant liable for disgorgement in the amount of \$51,788, but finds that that this amount shall be deemed satisfied by the order of forfeiture entered against Defendant in *United States v. Michael Siva et al.*, 17-cr-00503-AJN (S.D.N.Y. Dec. 21, 2018) (Dkt. 111), which ordered forfeiture of \$51,788.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission,

within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related



conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

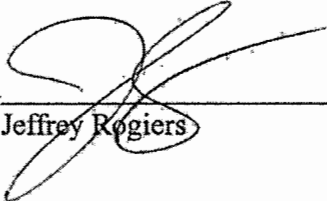
12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have

reached a good faith settlement.

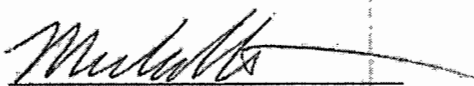
13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 06/14/2019

  
\_\_\_\_\_  
Jeffrey Rogiers

Approved as to form:

  
\_\_\_\_\_  
Michael A. Asaro, Esq.  
Attorney for Defendant

# EXHIBIT A

Case 1:17-cr-00503-AJN Document 84 Filed 09/07/18 Page 1 of 30  
I8DJROGP Plea

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 503 AJN

5 JEFFREY ROGIERS,

6 Defendant.

7 -----x

8 August 13, 2018  
9 3:00 o'clock p.m.

10  
11 Before:

12 HON. ALISON J. NATHAN,

13 District Judge

14  
15 APPEARANCES

16 GEOFFREY S. BERMAN,  
17 United States Attorney for the  
18 Southern District of New York  
19 SAMSON AARON ENZER,  
20 Assistant United States Attorney

21 PARVIN DAPHNE MOYNE,  
22 MICHAEL A. ASARO,  
23 Attorneys for defendant Rogiers

24 FEDERAL DEFENDERS SERVICES UNIT  
25 Attorneys for defendant Rogiers  
BY: SABRINA SHROFF,  
Assistant Federal Defender

Also Present:  
JONATHAN POLONITZA, Special Agent FBI

1 (In open Court)

2 (Case called)

3 THE COURT: Good afternoon. Please be seated. Good  
4 afternoon, Mr. Rogiers.

5 Ms. Moyne, we're here, I understand, because  
6 Mr. Rogiers wishes to plead guilty to Count 39 of the  
7 Indictment 17 Cr. 503. Is that correct?

8 MS. MOYNE: That's correct, your Honor.

9 THE COURT: Mr. Rogiers, am I pronouncing your name  
10 correctly?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Mr. Rogiers, before I accept your guilty  
13 plea, I am going to ask you certain questions so that I can  
14 establish to my satisfaction that you wish to plead guilty  
15 because you are guilty and not for some other reason, and also  
16 to establish that you know what you'll be giving up by pleading  
17 guilty. If at any point during this proceeding you don't  
18 understand my question or you want more time to consult with  
19 your attorneys, you'll let me know and I'll give you as much  
20 time as you need, okay?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Mr. Rogiers because I'm going to ask you  
23 questions today, am going to place you under oath. I will ask  
24 you to please rise and raise your right hand.

25 (The defendant was duly sworn)

1 THE COURT: Mr. Rogiers, you are now under oath, which  
2 means if you answer any of my questions falsely, you may be  
3 prosecuted for the separate crime of perjury. Do you  
4 understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: What is your full name?

7 THE DEFENDANT: Jeffrey Raymond Rogiers.

8 THE COURT: How old are you?

9 THE DEFENDANT: I am 34.

10 THE COURT: How far did you go in school?

11 THE DEFENDANT: I got a bachelors degree.

12 THE COURT: Have you ever been treated for any type of  
13 mental illness?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Are you now or have you recently been  
16 under the care of a psychiatrist?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: What about a doctor?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Have you ever been treated or hospitalized  
21 for any type of addiction?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Have you taken any drugs, medicine, pills  
24 or alcoholic beverages in the past two days?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: What was that?

2 THE DEFENDANT: Alcohol.

3 THE COURT: In the past 24 hours?

4 THE DEFENDANT: No, not past 24 hours.

5 THE COURT: Your mind is clear today?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: You understand what is happening here  
8 today?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Does either counsel have any doubt as to  
11 Mr. Rogiers' competence to plead at this time?

12 MR. ENZER: No, your Honor.

13 MS. MOYNE: No, your Honor.

14 THE COURT: On the basis of Mr. Rogiers' responses to  
15 my questions, my observations of his demeanor here in court and  
16 the representations of counsel, I do find he is fully competent  
17 to enter an informed plea of guilty at this time.

18 Mr. Rogiers, I want to confirm again you received a  
19 copy of the indictment in this case, the document that contains  
20 the charges against you. You have received that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Have you had enough of a chance to discuss  
23 with your lawyers the charge to which you intend to plead  
24 guilty and any possible defenses to that charge?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Has your lawyer explained to you the  
2 consequences of entering a plea of guilty?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You're satisfied with your lawyers'  
5 representation of you?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: I am now going to explain certain  
8 constitutional rights that you have. These are rights you'll  
9 be giving up if you enter a guilty plea. Again please listen  
10 carefully to everything that I am about to say. If there is  
11 anything you don't understand, you'll let me know and either I  
12 or your lawyers will explain the matter more fully.

13 Under the Constitution and laws of the United States,  
14 you have a right to plead not guilty to the charges in the  
15 indictment. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If you did plead not guilty, you would be  
18 entitled to a speedy and public trial by a jury on the charges  
19 contained in the indictment. Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: At that trial you would be presumed to be  
22 innocent, and the government would be required to prove you  
23 guilty by competent evidence beyond a reasonable doubt before  
24 you could be found guilty. Do you understand that?

25 THE DEFENDANT: Yes, your Honor.



1 THE COURT: A jury of twelve people would have to  
2 agree unanimously that you were guilty. You would not have to  
3 prove you were innocent if you were to go to trial. Do you  
4 understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: At that trial and at every stage of your  
7 case, you'd be entitled to be represented by a lawyer. If you  
8 couldn't afford a lawyer, one would be appointed at public  
9 expense, that is, free of cost to you to represent you.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: During a trial, the witnesses for the  
13 government would have to come to court and testify in your  
14 presence, and your lawyer could cross-examine the witnesses for  
15 the government, object to evidence offered by the government  
16 and offer evidence on your own behalf if you so desired. You'd  
17 also have the right to have subpoenas issued or other process  
18 used to compel witnesses to testify in your defense.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: At a trial, although you'd have the right  
22 to testify if you chose to do so, you would also have the right  
23 not to testify. If you decided not to testify, no one,  
24 including the jury, could draw any inference or suggestion of  
25 guilt from the fact that you did not testify. Do you

1 understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand by pleading guilty, you  
4 are giving up your right to seek suppression of any evidence  
5 against you. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: If you were convicted at a trial, you  
8 would have the right to appeal that verdict.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Even now as you're here entering this  
12 plea, you do have the right to change your mind, plead not  
13 guilty and go to trial on the charges contained in this  
14 indictment. Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: If you plead guilty and if I accept your  
17 plea, you will give up your right to a trial and the other  
18 rights I've just discussed, other than the right to a lawyer  
19 which you have regardless of whether or not you plead guilty.

20 If you plead guilty, there will be no trial and I will  
21 enter a judgment of guilty and then I'll sentence you at a  
22 later date on the basis of your plea after I have considered a  
23 presentence report that will be prepared by the Probation  
24 Department and whatever submissions I get from your lawyer and  
25 from the government. Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If you plead guilty, there will be no  
3 trial and no appeal with respect to whether you did or did not  
4 commit this crime. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: If you do plead guilty, you'll have to  
7 give up your right not to incriminate yourself because I'll ask  
8 you questions today about what you did in order to satisfy  
9 myself that you are guilty as charged, and you will have to  
10 admit and acknowledge your guilt. Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Mr. Rogiers, are you willing to give up  
13 your right to a trial and the other rights I've just discussed  
14 with you?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Turning to the charge in Count 39 of the  
17 indictment, it charges you with participating in a conspiracy  
18 to commit securities fraud and fraud in connection with a  
19 tender offer from at least in or about March 2016 through in or  
20 about April 2017, in violation of Title 18, United States Code,  
21 Section 371. Do you understand that's the charge against you  
22 in Count 39?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Mr. Enzer, I'll ask the government to  
25 state what the elements of the offense in question are, please.

1 MR. ENZER: The government would have to prove beyond  
2 a reasonable doubt:

3 First, that the defendant agreed with at least one  
4 other person to commit the defined goals of the conspiracy;

5 Second, that at least one overt act was taken by the  
6 defendant or by a co-conspirator to further the conspiracy.

7 And for the purposes of venue, the government would  
8 have to prove by a preponderance of the evidence that at least  
9 one overt act in furtherance of the conspiracy took place in  
10 the Southern District of New York.

11 For background, the elements of the goals of this  
12 conspiracy, one goal was securities fraud. The elements of  
13 securities fraud through insider trading are:

14 First, that the defendant or a co-conspirator received  
15 material nonpublic information that is information he knew was  
16 not publicly available and would be important to a reasonable  
17 investor;

18 Second, that the information was disclosed or used in  
19 breach of a duty to keep the information confidential and  
20 disclosed or used for a personal benefit;

21 Third, that the defendant knew the information was  
22 disclosed or used in breach of a duty and for personal benefit;

23 Fourth, that the defendant or a co-conspirator traded  
24 based on the material nonpublic information that he received,  
25 And at least one act in furtherance of the scheme took place in

1 the Southern District of New York.

2 The second goal of the conspiracy was tender offer  
3 fraud, and for background, the elements of that are as follows:

4 First, that after substantial steps had been taken to  
5 commence a tender offer, the defendant or a co-conspirator  
6 received material nonpublic information relating to the  
7 transaction;

8 Second, that that information came either directly or  
9 indirectly from someone the defendant knew to be associated  
10 with either the offerer or the target issuer;

11 That the defendant or a co-conspirator knowingly and  
12 willfully traded on that information in advance of the tender  
13 offer's public announcement; and

14 Lastly, at least one act in furtherance of the scheme  
15 occurred in the Southern District of New York.

16 THE COURT: Thank you.

17 Mr. Rogiers, did you hear the attorney for the  
18 government state the elements of the offense to which you've  
19 indicated an intent to plead guilty? Did you hear those  
20 elements?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand if you were to go to  
23 trial, the government would have to prove all of those elements  
24 beyond a reasonable doubt? Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: I am going to talk to you now about the  
2 maximum possible penalties you face for this crime.

3 The "maximum" means the most that could possibly be  
4 imposed. That doesn't mean that is what you'll necessarily  
5 receive, but you do have to understand by pleading guilty, you  
6 are exposing yourself to the possibility of receiving any  
7 combination of punishments up to the maximum that I'm about to  
8 describe. Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: First I'm going to talk about the maximum  
11 possible restrictions on your liberty. The maximum term of  
12 imprisonment for this crime is five years, which can be  
13 followed by up to three years of supervised release.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: To pause for a moment on the term  
17 "supervised release," that means you'll be subject to  
18 supervision by the Probation Department. There would be rules  
19 of supervised release you'll have to follow. If you were to  
20 violate those rules, you can be returned to prison without a  
21 jury trial to serve additional time, with no credit for time  
22 you served in prison as a result of your sentence and no credit  
23 for any time spent on post-release supervision.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.



1 THE COURT: You should understand there is no parole  
2 in the federal system, and if you're sentenced to prison, you  
3 will not be released early on parole.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: In addition to these restrictions on your  
7 liberty, the maximum possible punishment also includes certain  
8 financial penalties. The maximum allowable fine is \$250,000 or  
9 twice the gross gain derived from the offense or twice the  
10 gross loss to persons other than yourself, whichever is  
11 greater.

12 In addition, I can order restitution to any person or  
13 entity injured as a result of your criminal conduct. I can  
14 also order you to forfeit all property derived from the offense  
15 or used to facilitate the offense. Finally, I must order a  
16 mandatory assessment of \$100.00.

17 Do you understand what I have just described are the  
18 maximum possible financial penalties you face for this crime?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I want to pause for a moment and ask Mr.  
21 Enzer a question about the plea agreement. We'll come back to  
22 the plea agreement in a moment and discuss, but, Mr. Enzer, on  
23 the first page, second paragraph, last line, it says:

24 "In addition to the foregoing, the court must order  
25 restitution as specified below." I am not sure what that is

1 referencing.

2 MR. ENZER: I think it is just referencing Page 2, the  
3 paragraph that says, "The defendant further agrees to make  
4 restitution in an amount ordered by the court," and so forth.

5 THE COURT: Just that standard? Sometimes these  
6 agreements --

7 MR. ENZER: Specify --

8 THE COURT: When I see that "as outlined below"  
9 language, I expect to see a paragraph that has a dollar amount.  
10 That wasn't intended to be included. Is that correct?.

11 MR. ENZER: That's correct.

12 THE COURT: Ms. Moyne, that is your understanding as  
13 well?

14 MS. MOYNE: Yes, your Honor.

15 THE COURT: Thank you. All right. So we have  
16 discussed the penalties you face, Mr. Rogiers. Let me ask you,  
17 are you a United States Citizen?

18 THE DEFENDANT: Yes, I am.

19 THE COURT: As a result of your guilty plea, you may  
20 lose certain valuable civil rights to the extent you have them  
21 now or could otherwise obtain them now, such as the right to  
22 vote, the right to hold public office, the right to serve on a  
23 jury and the right to possess any kind of firearm.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.



1 THE COURT: Are you serving any other sentence, state  
2 or federal, or being prosecuted in state court for any crime?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: I want to make sure you understand that if  
5 your lawyer or any lawyer attempted to predict what your  
6 sentence could be, that prediction could be wrong. No one, not  
7 your lawyer or government's lawyer, no one can give you any  
8 assurance as to what your sentence will be since I will decide  
9 your sentence and I will don't that now.

10 I will wait until I receive a presentence report that  
11 is prepared by the Probation Department. I will do my own  
12 independent calculation of the sentencing guidelines range. I  
13 will consider it and any possible departures from it and  
14 determine what a reasonable sentence is for you based on the  
15 sentencing factors contained in a statute called 18 U.S.C.  
16 Section 3553 (a). Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: You have discussed these issues with your  
19 attorneys?

20 THE DEFENDANT: Yes, we have. Thank you, your Honor.

21 THE COURT: Even if your sentence is different from  
22 what your lawyer or anyone else has told you might be, and even  
23 if it is different from what you expect or what is contained in  
24 your written plea agreement that you entered into with the  
25 government, you'll still be bound by your guilty plea and will

1 not be allowed to withdraw your plea of guilty. Do you  
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: I understand there is a written plea  
5 agreement entered into between you and your lawyer and the  
6 lawyer for the government. Is that correct?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: I have the original of the agreement in  
9 front of me. It is dated July 31st, 2018. It appears to be  
10 six pages long. I will hand it to my Deputy and ask him to  
11 mark it as Court Exhibit 1 and place the original in front of  
12 Mr. Rogiers. Mr. Enzer, I will ask the government to maintain  
13 the original in its records following our discussion.

14 MR. ENZER: Will do.

15 THE COURT: Do you have the original in front of you,  
16 Mr. Rogiers?

17 THE DEFENDANT: Yes, I do, your Honor.

18 THE COURT: On the front page is it dated July 31st,  
19 2018?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Is it six pages long?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: On the last page, the 6th page, is that  
24 your signature?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Did you sign that today?

2 THE DEFENDANT: Yes, I did, your Honor.

3 THE COURT: Did you sign it in the presence of your  
4 attorneys?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: At some point before you signed this  
7 document, did you read it?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did you discuss it with your lawyers  
10 before you signed it?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you believe you fully understood it  
13 before you signed it?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: One of the features of the agreement with  
16 the government is that you've agreed on a guideline range that  
17 would apply in this case. That is something called the  
18 stipulated guideline range. Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: The stipulated guideline range in your  
21 agreement with the government is 18 to 24 months.

22 Do you see that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: The stipulated fine range in your  
25 agreement with the government is \$7,500 to \$75,000.

1 Do you see that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: It is important to understand that  
4 agreement as to what the applicable guideline range is is  
5 binding on you and it is binding on the government, but it is  
6 not binding on me. As I said, I do have my own obligation to  
7 determine the correct guideline range and what the appropriate  
8 sentence is in your case.

9 I am not saying I will come up with something  
10 different than what is contained in the agreement that you  
11 entered into with the government, but if I do, I will not let  
12 you withdraw your plea even if the applicable range I determine  
13 is higher than the one that you've agreed to with the  
14 government. Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: In your plea agreement you have waived  
17 your right to appeal or otherwise challenge any sentence that  
18 is 24 months or below. In other words, if I were to sentence  
19 you to 24 months or anything less than 24 months, you'd have no  
20 right to appeal or otherwise try to challenge that sentence.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Rogiers, does this written plea  
24 agreement we've been discussing constitute your complete and  
25 total understanding of the entire agreement between you and the

1 government?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Other than what is written in this plea  
4 agreement, has anyone made any promise or offered you any  
5 inducement to plead guilty or to sign this agreement?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Has anyone threatened you or forced you to  
8 plead guilty or to sign the plea agreement?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Has anyone made a promise to you as to  
11 what your sentence will be?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Let me ask counsel, are there any other  
14 features of the plea agreement that you'd like emphasized at  
15 this time?

16 MS. MOYNE: Not on behalf of the defendant.

17 MR. ENZER: Not from the government.

18 THE COURT: Mr. Rogiers, what I am going to ask you to  
19 do now is to tell me in your own words what you did that makes  
20 you believe you are guilty of Count 39 charged in the  
21 indictment.

22 THE DEFENDANT: In around April 2016, I met with  
23 Daniel Rivas, who worked for Bank of America, outside of a  
24 restaurant in Manhattan. I knew Daniel through a mutual  
25 friend, Jhonatan Zoquier. In that meeting, Daniel told me he

1 was providing confidential information to Jhonatan about  
2 potential mergers and acquisitions of various companies.  
3 Daniel offered to provide me with the same information, but at  
4 the time I declined. I knew that by providing Jhonatan with  
5 this information, Daniel was violating a duty of trust and  
6 confidence he owed to Bank of America in exchange for his  
7 personal benefit.

8 In particular, I understood that Daniel was sharing  
9 the material nonpublic information with Jhonatan because they  
10 were close friends. Later, I agreed to trade securities  
11 recommended by Jhonatan. While I originally consciously  
12 avoided knowing, I later traded when I knew that these  
13 recommendations were based on material nonpublic information  
14 that Jhonatan received from Daniel.

15 THE COURT: Thank you. Mr. Enzer, are there any  
16 questions you would like me to pose to the defendant?

17 MR. ENZER: No questions. There are a few proffers  
18 the government would like to make and --

19 THE COURT: Before you do that, let me ask  
20 Mr. Rogiers, you read what you just told me, you read from a  
21 statement, and I am grateful to you and counsel to working  
22 together to prepare that in advance. I do want to make sure  
23 you understood everything that you just read to me?

24 THE DEFENDANT: Yes, I did.

25 THE COURT: You accept those words fully as your own?



1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Go ahead, Mr. Enzer, you may make a  
3 proffer.

4 MR. ENZER: With respect to the proffers:

5 First, the government proffers that at least two of  
6 the securities that Mr. Rogiers received inside material  
7 nonpublic information about and traded on were related to  
8 companies that were going to be acquired in tender offers, and  
9 that when he received that information, substantial steps had  
10 been taken to commence the relevant tender offers and that the  
11 source of the information he was receiving, Mr. Rivas, he was  
12 an employee of a bank based in Manhattan that was associated  
13 with a party to the tender offer transactions.

14 With respect to venue --

15 THE COURT: Let's just take one at a time. I'll ask  
16 both counsel and Mr. Rogiers if they have any objection or  
17 dispute with respect to what the government just proffered?

18 MS. MOYNE: No objection, your Honor.

19 THE COURT: Mr. Rogiers, no disagreement?

20 THE DEFENDANT: No.

21 THE COURT: Go ahead.

22 MR. ENZER: With respect to venue, in addition to what  
23 Mr. Rogiers spoke about, the government proffers that Daniel  
24 Rivas, the insider, was based in Manhattan and was  
25 misappropriating information from his employer in Manhattan,

1 and also that several of the securities' material nonpublic  
2 information was passed to Mr. Rogiers, several of those  
3 securities were stocks that were traded on an exchange  
4 headquartered in Manhattan.

5 THE COURT: The same?

6 MS. MOYNE: Again no objection.

7 THE COURT: Any dispute, Mr. Rogiers?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Mr. Enzer.

10 MR. ENZER: With respect to the allocution, the  
11 government believes it is sufficient, it is legally sufficient.

12 We know for the record that the government's position  
13 is that the evidence shows Mr. Rogiers acted with knowledge,  
14 not merely consciously avoided. To the extent that this issue  
15 becomes material down the road at sentencing, the government  
16 reserves the right to seek a Fatico hearing on it and/or to  
17 argue that Mr. Rogiers has not fully accepted responsibility.

18 THE COURT: Let me just look at the allocution for one  
19 moment. (Pause) I am not sure we need to deal with this now.  
20 I'll hear from defense counsel.

21 I mean, Mr. Rogiers' allocution is what it is. He  
22 said he first acted with conscious avoidance, originally  
23 consciously avoided, but then traded knowing that it was based,  
24 that the recommendation was based on material nonpublic  
25 information that Jhonatan received from Daniel.



1 It is obviously you all have been working through this  
2 with great detail, but what you just said, Mr. Enzer, I don't  
3 think matched up with the actual allocution, so I want to make  
4 sure we are comfortable with how we are proceeding.

5 MS. MOYNE: Your Honor, we understand the government's  
6 position.

7 THE COURT: Could you just pull --

8 MS. MOYNE: We understand the government's position.

9 We are comfortable proceeding. If the government  
10 feels at sentencing that the sort of metaphysical question of  
11 when conscious avoidance tipped to knowledge exactly matters,  
12 then we understand the government will try to establish when  
13 that moment happened, but as the court heard, the defendant had  
14 explained that it was an evolution in mental state.

15 THE COURT: Okay. Mr. Enzer?

16 MR. ENZER: I think that sums it up. I don't think we  
17 need to deal with it at this time, but we just want to make  
18 sure for the record everyone is on notice.

19 The government's position is Mr. Rogiers acted with  
20 knowledge the entire time. There was no time when it was mere  
21 conscious avoidance. I don't know that this issue will be  
22 material, but if it is, it may have consequences down the road.

23 THE COURT: Okay.

24 MS. SHROFF: Your Honor, may we just have one second?

25 THE COURT: Yes, you may.

1 (Off-the-record discussion)

2 MS. MOYNE: Your Honor, if I may, we understand the  
3 government's position. We just want to put on the record that  
4 we think our client has fully accepted responsibility and has  
5 allocuted sufficiently to receive full acceptance, but  
6 obviously that is an issue for sentencing.

7 THE COURT: That is the one question I think I was  
8 going to follow up with Mr. Enzer. Obviously, there is a  
9 stipulated guideline range here and that should be the  
10 government's best estimate of what the applicable guideline  
11 range will be.

12 Obviously, it says assuming the defendant clearly  
13 demonstrates acceptance of responsibility to the satisfaction  
14 of the government through his allocution and subsequent conduct  
15 prior to the imposition of sentence, a two-level reduction  
16 would be warranted and the third point that the government  
17 would move for.

18 I guess the only thing I want to have clarity on, Mr.  
19 Enzer, is whether the government's position, as just reserved  
20 by you, is that his allocution would not be sufficient. If  
21 your current position is that his allocution is not sufficient  
22 to demonstrate acceptance of responsibility, we should know  
23 that at the outset.

24 MR. ENZER: What we're trying to do is reserve our  
25 right to oppose up to the three points for acceptance because

1 of the allocution. We have had discussions with defense  
2 counsel about this issue before today. I think --

3 MS. SHROFF: May we have one second with Mr. Enzer?

4 THE COURT: I will step down so you can discuss it and  
5 discuss with Mr. Rogiers, obviously. I want to make sure  
6 everybody has full understanding of what the agreement is so  
7 that we're not -- so, A, and most importantly, Mr. Rogiers  
8 knows what he is entering into; and, B, so we can forestall any  
9 contention down the road that the government is in breach of  
10 the agreement in some way by arguing later something different  
11 than what is contained in the agreement and what the  
12 understanding is now. I will step down for a few moments and  
13 tell Mr. Scott when you're ready.

14 (Recess)

15 THE COURT: Please be seated.

16 Mr. Enzer or Ms. Moyne.

17 MR. ENZER: Judge, after we spoke during the break,  
18 the government is satisfied the allocution as stated qualifies  
19 for acceptance of responsibility credit under the agreement, in  
20 Paragraph 5 of Page 2 of the agreement, and so the government  
21 will not be arguing that the reference to conscious avoidance  
22 in the allocution denies Mr. Rogiers credit for that.

23 THE COURT: Thank you. Ms. Moyne, is there anything  
24 further on that?

25 MS. MOYNE: No, your Honor. Thank you.

1 THE COURT: All right. Then, Ms. Moyne, let me ask if  
2 you know of any valid defense that would likely prevail at  
3 trial or any reason why your client should not be permitted to  
4 plead guilty?

5 MS. MOYNE: No, your Honor.

6 THE COURT: Mr. Enzer, I will ask that the government  
7 make a proffer to the court as to what the evidence would  
8 consist of if we were to proceed to trial and what it would  
9 show specifically with respect to Mr. Rogiers.

10 MR. ENZER: Certainly, your Honor.

11 The evidence would include the testimony of a  
12 cooperating witness, Mr. Rivas, the insider at Bank of America,  
13 who was the source of the inside information that was passed to  
14 Mr. Zoquier, and from Mr. Zoquier to Mr. Rogiers.

15 Mr. Rivas' testimony would include testimony about his  
16 knowing theft of confidential material nonpublic information  
17 about expected announcements about transactions, acquisitions  
18 through mergers or tender offers to acquire certain companies.  
19 These were transactions that his employer, Bank of America, had  
20 some role in and that he had access to this information.

21 He would testify that he had a close personal  
22 relationship with Mr. Zoquier and began providing material  
23 nonpublic information to Mr. Zoquier, in knowing breach of his  
24 duties to his employer, Bank of America, because of his close  
25 personal relationship with Mr. Zoquier, and that at a certain

1 point during the charged conspiracy, at the behest of  
2 Mr. Zoquier, Mr. Rivas met Mr. Rogiers for the purpose of  
3 explaining the nature, quality and type of material nonpublic  
4 information that he had and could provide for the benefit of  
5 Mr. Rogiers to trade on, by virtue of the fact they were mutual  
6 friends with Mr. Zoquier.

7 And he would testify about using a particular system  
8 at BFA to do that and his provision of material nonpublic  
9 information to Zoquier. The evidence would include documents  
10 corroborating Mr. Rivas' testimony, including trading records  
11 showing the various trades that Mr. Rogiers made on material  
12 nonpublic information as well as, for example, documents from  
13 Bank of America, from a system called the Digital Deal  
14 Management System, which was a system Mr. Rivas used to look up  
15 and take from his employer material nonpublic information.

16 The evidence would also include, among other things,  
17 transcripts of recordings that Mr. Rivas made once he had begun  
18 cooperating, including recordings of calls, conversations he  
19 had with Mr. Zoquier, where they discussed the insider trading  
20 scheme and in parts, in parts the role Mr. Rogiers had on it,  
21 his knowledge and recording of a call between Mr. Rivas,  
22 Mr. Zoquier and Mr. Rogiers. That is not all of the evidence,  
23 but those are the main pieces of the evidence.

24 THE COURT: All right. Thank you.

25 In a moment I'm going to ask Mr. Rogiers for his



1 formal entry of plea. Before I do so, let me just give both  
2 counsel a final opportunity to indicate whether you know of any  
3 reason that I should not accept the defendant's plea of guilty?

4 MS. MOYNE: No, your Honor.

5 MR. ENZER: No, your Honor.

6 THE COURT: Thank you. Mr. Rogiers, based on  
7 everything that we've discussed today, I will ask for your  
8 formal entry of plea with respect to Count 39 of the Indictment  
9 17 Cr. 503, how do you plead?

10 THE DEFENDANT: Guilty, your Honor.

11 THE COURT: Mr. Rogiers, because you acknowledge  
12 you're, in fact, guilty as charged in Count 39 of the  
13 indictment, because I am satisfied that you know of your  
14 rights, including your right to go to trial, and that you're  
15 aware of the consequences of your plea, including the sentence  
16 which may be imposed, and because I find you are knowingly and  
17 voluntarily pleading guilty, I do accept your guilty plea and  
18 enter a judgment of guilty on Count 39 of the indictment.

19 I order the preparation of the presentence report.  
20 Mr. Rogiers, the Probation Department will want to interview  
21 you in connection with the presentence report that it will  
22 prepare. Ms. Moyne, does defense counsel wish to be present  
23 for any interview in connection with that report?

24 MS. MOYNE: Yes, your Honor.

25 THE COURT: I order that Probation conduct no

1 interview unless counsel is present. If you do choose to speak  
2 to the Probation Department, please make sure anything you say  
3 is truthful and accurate. I will read the report carefully and  
4 it is important to me in deciding what sentence to impose. You  
5 and your counsel have a right to examine the report and comment  
6 on it at the time of sentencing. I urge you to read it and  
7 discuss it with your lawyer before sentencing. If there are  
8 any mistakes in it, please point them out to your attorney  
9 prior to sentencing.

10 The sentencing date that I propose is December 18th,  
11 which is a Tuesday, at 10:00 am. Counsel?

12 MS. MOYNE: That is fine for us, your Honor.

13 (Off-the-record discussion)

14 MS. MOYNE: Fine.

15 MR. ENZER: That is fine, Judge.

16 THE COURT: Sentencing is set for that date and time,  
17 Tuesday, December 18, at 10:00 am.

18 I do direct the government to please provide the  
19 probation officer with its factual statement within seven days,  
20 and defense counsel please do arrange for the defendant to be  
21 interviewed by the Probation Department within the next two  
22 weeks.

23 I refer counsel to my individual rules and practices  
24 for criminal cases which is available on the court's web site  
25 and contains some rules regarding sentencing submissions. In

1 accordance with those rules, the defense submission is due one  
2 week prior to sentencing and the government's submission is due  
3 three days prior to sentencing.

4 Is there any objection to the present bond being  
5 continued to the date of sentencing?

6 MR. ENZER: No objection.

7 THE COURT: Ms. Moyne?

8 MS. MOYNE: No, your Honor.

9 THE COURT: Mr. Rogiers, I want to make sure you  
10 understand all of the conditions on which you were released up  
11 till now continue to apply and that a violation of any of those  
12 conditions can have serious consequences for you at the time of  
13 sentencing. Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: You must be in the courtroom, in this  
16 courtroom for sentencing at the time and date I have just set  
17 for you unless you hear from counsel that there has been any  
18 change to that.

19 If you were to fail to appear at that date and time,  
20 you would be guilty of a separate crime, bail jumping, and  
21 could be subject to a fine and/or prison term in addition to  
22 whatever sentence you may receive for the crime to which you  
23 have just pled guilty. Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Counsel, is there anything else I can



1 address at this time?

2 MS. MOYNE: Not on behalf of the defendant, your  
3 Honor.

4 MR. ENZER: Nothing from the government. Thank you.

5 THE COURT: I'll see everyone at sentencing. Thank  
6 you. We're adjourned.

7 (Court adjourned)

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**United States District Court  
Southern District of New York**

Ruby J. Krajick  
*Clerk of Court*

Dear Litigant:

Enclosed is a copy of the judgment entered in your case. If you disagree with a judgment or final order of the district court, you may appeal to the United States Court of Appeals for the Second Circuit. To start this process, file a "Notice of Appeal" with this Court's Pro Se Intake Unit.

You must file your notice of appeal in this Court within 30 days after the judgment or order that you wish to appeal is entered on the Court's docket, or, if the United States or its officer or agency is a party, within 60 days after entry of the judgment or order. If you are unable to file your notice of appeal within the required time, you may make a motion for extension of time, but you must do so within 60 days from the date of entry of the judgment, or within 90 days if the United States or its officer or agency is a party, and you must show excusable neglect or good cause for your inability to file the notice of appeal by the deadline.

Please note that the notice of appeal is a *one-page* document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit) – *it does not* include your reasons or grounds for the appeal. Once your appeal is processed by the district court, your notice of appeal will be sent to the Court of Appeals and a Court of Appeals docket number will be assigned to your case. At that point, all further questions regarding your appeal must be directed to that court.

The filing fee for a notice of appeal is \$505 payable in cash, by bank check, certified check, or money order, to "Clerk of Court, S.D.N.Y." *No personal checks are accepted.* If you are unable to pay the \$505 filing fee, complete the "Motion to Proceed *in Forma Pauperis* on Appeal" form and submit it with your notice of appeal to the Pro Se Intake Unit. If the district court denies your motion to proceed *in forma pauperis* on appeal, or has certified under 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith, you may file a motion in the Court of Appeals for leave to appeal *in forma pauperis*, but you must do so within 30 days after service of the district court order that stated that you could not proceed *in forma pauperis* on appeal.

For additional issues regarding the time for filing a notice of appeal, see Federal Rule of Appellate Procedure 4(a). There are many other steps to beginning and proceeding with your appeal, but they are governed by the rules of the Second Circuit Court of Appeals and the Federal Rules of Appellate Procedure. For more information, visit the Second Circuit Court of Appeals website at <http://www.ca2.uscourts.gov/>.

**THE DANIEL PATRICK MOYNIHAN  
UNITED STATES COURTHOUSE  
500 PEARL STREET  
NEW YORK, NY 10007-1312**

**THE CHARLES L. BRIEANT, JR.  
UNITED STATES COURTHOUSE  
300 QUARROPAS STREET  
WHITE PLAINS, NY 10601-4150**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
\_\_\_\_\_  
(List the full name(s) of the plaintiff(s)/petitioner(s).)

\_\_\_\_ CV \_\_\_\_\_ ( ) ( )

-against-

**NOTICE OF APPEAL**

\_\_\_\_\_  
\_\_\_\_\_  
(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: \_\_\_\_\_

\_\_\_\_\_  
(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the  judgment  order entered on: \_\_\_\_\_  
(date that judgment or order was entered on docket)

that:  
\_\_\_\_\_

\_\_\_\_\_  
(If the appeal is from an order, provide a brief description above of the decision in the order.)

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Name (Last, First, MI)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
E-mail Address (if available)

\* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
\_\_\_\_\_  
(List the full name(s) of the plaintiff(s)/petitioner(s).)

\_\_\_\_ CV \_\_\_\_\_ ( ) ( )

-against-

**MOTION FOR EXTENSION  
OF TIME TO FILE NOTICE  
OF APPEAL**

\_\_\_\_\_  
\_\_\_\_\_  
(List the full name(s) of the defendant(s)/respondent(s).)

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment entered in this action on \_\_\_\_\_ but did not file a notice of appeal within the required date time period because:

\_\_\_\_\_  
\_\_\_\_\_  
(Explain here the excusable neglect or good cause that led to your failure to file a timely notice of appeal.)

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Last, First, MI)

\_\_\_\_\_  
Address City State Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
E-mail Address (if available)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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(List the full name(s) of the plaintiff(s)/petitioner(s).)

\_\_\_\_CV\_\_\_\_ ( ) ( )

-against-

**MOTION FOR LEAVE TO  
PROCEED IN FORMA  
PAUPERIS ON APPEAL**

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(List the full name(s) of the defendant(s)/respondent(s).)

I move under Federal Rule of Appellate Procedure 24(a)(1) for leave to proceed *in forma pauperis* on appeal. This motion is supported by the attached affidavit.

---

Dated

---

Signature

---

Name (Last, First, MI)

---

Address

City

State

Zip Code

---

Telephone Number

---

E-mail Address (if available)

## Application to Appeal In Forma Pauperis

\_\_\_\_\_ v. \_\_\_\_\_ Appeal No. \_\_\_\_\_  
 District Court or Agency No. \_\_\_\_\_

<p><b>Affidavit in Support of Motion</b></p> <p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: _____</p>	<p><b>Instructions</b></p> <p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>
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My issues on appeal are: (required):

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	<u>Spouse</u>	You	<u>Spouse</u>
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$

Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
<b>Total monthly income:</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

<b>Employer</b>	<b>Address</b>	<b>Dates of employment</b>	<b>Gross monthly pay</b>
			\$
			\$
			\$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

<b>Employer</b>	<b>Address</b>	<b>Dates of employment</b>	<b>Gross monthly pay</b>
			\$
			\$
			\$



4. How much cash do you and your spouse have? \$ \_\_\_\_\_

*Below, state any money you or your spouse have in bank accounts or in any other financial institution.*

<b>Financial Institution</b>	<b>Type of Account</b>	<b>Amount you have</b>	<b>Amount your spouse has</b>
		\$	\$
		\$	\$
		\$	\$

*If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.*

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<b>Home</b>	<b>Other real estate</b>	<b>Motor vehicle #1</b>
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

<b>Motor vehicle #2</b>	<b>Other assets</b>	<b>Other assets</b>
(Value) \$	(Value) \$	(Value) \$
Make and year:		
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? [ ] Yes [ ] No Is property insurance included? [ ] Yes [ ] No	\$	\$
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$	\$
Home maintenance (repairs and upkeep)	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$

Transportation (not including motor vehicle payments)	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$	\$
Installment payments		
Motor Vehicle:	\$	\$
Credit card (name):	\$	\$
Department store (name):	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify):	\$	\$
<b>Total monthly expenses:</b>	<b>\$</b>	<b>\$</b>

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

Yes       No      If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?*  Yes  No

*If yes, how much?* \$ \_\_\_\_\_

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *Identify the city and state of your legal residence.*

City \_\_\_\_\_ State \_\_\_\_\_

Your daytime phone number: \_\_\_\_\_

Your age: \_\_\_\_\_ Your years of schooling: \_\_\_\_\_

Last four digits of your social-security number: \_\_\_\_\_