

United States District Court

for the
Western District of New York

United States of America

v.

**Nicolae Sarbu, Marinela Unguru-Ducila
and Giovanni Hornea**

Case No. 16-M-1057

Defendants

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Between in or about August 2015, and in or about November 2015, in the Western District of New York and elsewhere, the defendants did knowingly execute, attempt to execute, and conspire to execute a scheme or artifice to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of Bank of America, by means of false or fraudulent pretenses; in violation of Title 18, United States Code, Sections 1344 and 1349.

This Criminal Complaint is based on these facts:

Continued on the attached sheet.



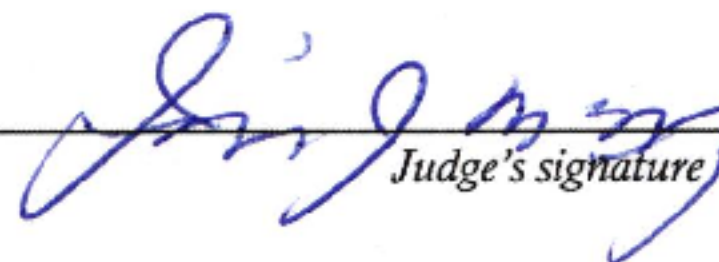
Complainant's signature

**CHARLES S. TOLIAS
SPECIAL AGENT
HOMELAND SECURITY INVESTIGATIONS**

Printed name and title

Sworn to before me and signed in my presence.

Date: May 20, 2016



Judge's signature

**HONORABLE JEREMIAH J. McCARTHY
UNITED STATES MAGISTRATE JUDGE**

Printed name and title

City and State: Buffalo, New York

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, **CHARLES S. TOLIAS**, having been first duly sworn, do hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am employed as a Special Agent with Homeland Security Investigations (HSI), United States Immigration and Customs Enforcement (ICE), within the Department of Homeland Security (DHS). I have been so employed since December 2008. Previously, I was employed with United States Customs and Border Protection for approximately six years. My duties as a Special Agent include the investigation into, among other crimes, money laundering, bulk cash smuggling, bank fraud, and wire fraud violations.

2. I am currently assigned to the investigation of a Bank Fraud scheme perpetrated by Nicolae SARBU, Marinela UNGURU-DUCILA, and Giovanni HORNEA.

3. This affidavit is submitted in support of an application for a criminal complaint charging SARBU, UNGURU-DUCILA, and HORNEA with conspiracy to commit bank fraud in violation of Title 18, United States Code Sections 1344 and 1349.

4. The statements in this affidavit are based on my investigation of this matter, information provided by other law enforcement agencies, my review of surveillance photographs and video footage, and from my review of information received from bank records. Because this affidavit is being submitted for the limited purpose of obtaining a criminal complaint and corresponding arrest warrants, I have not included each and every fact known to me concerning this investigation. I have set forth only those facts that I believe are necessary to establish probable cause to believe that SARBU, UNGURU-DUCILA, and HORNEA have committed violations of Title 18, United States Code, Sections 1344 and 1349 (conspiracy to commit bank fraud) in the Western District of New York and elsewhere.

PROBABLE CAUSE

5. Bank of America, which is a corporation insured by the FDIC (Federal Deposit Insurance Corporation), and was FDIC insured at the time of all incidents described herein, provided HSI with surveillance photographs of skimming activity that occurred on September 19, 2015, at a Bank of America Automated Teller Machine (ATM) located at 1012 Payne Avenue, North Tonawanda, New York in the Western District of New York. The surveillance photographs show an unidentified male and female installing and removing a skimming device on the ATM that same day. A skimming device reads and stores the information encoded on the magnetic strips of debit cards used at the ATM by legitimate bank customers. Bank of America further provided surveillance photographs of "cash outs" (explained below in paragraph 17) of the cards skimmed at this location that occurred on September 24, 2015, at Bank of America located at 1293 Broadway, New York, New York.

The unidentified male and female are both observed in the photographs of these cash outs. Bank of America reported that fourteen customers sustained fraud loss in the amount of \$6,694.24 from the 1012 Payne Avenue, North Tonawanda, New York skimming incident.

6. Bank of America further provided HSI with surveillance photographs and video of skimming activity that occurred between October 10, 2015, and October 11, 2015, at a Bank of America ATM located at 4049 Seneca Street, West Seneca, New York in the Western District of New York. At this location, the surveillance photographs and video show the same unidentified male and female described in Paragraph 5 installing a skimming device on a Bank of America ATM on October 10, 2015. A review of surveillance video from October 10, 2015, shows the male altering the ATM in order to install the skimming device. The female is observed giving/receiving items to/from the male to assist in altering the ATM to accept the skimming device. The October 11, 2015, surveillance photographs show the same male and female again altering the ATM to remove the skimming device. The female is observed using her pocketbook to conceal items utilized to remove the device. Bank of America reported that ninety nine customers sustained fraud loss in the amount of \$52,154.38 from the 4049 Seneca Street, West Seneca, New York skimming incident.

7. Homeland Security Investigations previously identified a subject in a separate skimming investigation by the name of Traian Silvestru DUCILA. DUCILA was observed as a result of surveillance photographs conducting "cash outs" from debit cards skimmed at a Bank of America located at 1394 Norton Street, Rochester, New York. On October 22, 2015, HSI received information from Western Union regarding wire transfers conducted by

DUCILA that occurred between September of 2013, and October of 2015. Information received showed wire transfer activity between DUCILA and various individuals in Romania. DUCILA provided the following information when conducting the transactions:

Traian DUCILA

DOB: November 14, 1968

Phone: (347) 200-1792

Florida DL #: D240817684140

Romania ID #: 051436886

Addresses: 193 Norwood Avenue, Brooklyn, New York 11208

8. System queries revealed that Nicolae SARBU has also been associated with the 193 Norwood Avenue, Brooklyn, New York address. SARBU is identified as follows:

Nicolae SARBU

DOB: November 20, 1986

Citizenship: Romania

9. On June 26, 2012, SARBU was encountered and arrested by United States Border Patrol (USBP) for illegally entering the United States through Mexico. SARBU was encountered and arrested with several subjects, to include the following:

Marinela UNGURU-DUCILA

DOB: May 4, 1988

Citizenship: Romania

10. A subsequent comparison of SARBU's booking photograph, SARBU's Florida Driver's license photograph, and surveillance photographs and video detailed in paragraphs 5 and 6, show that SARBU is the unidentified male installing and removing the skimming devices, and is the same individual conducting the "cash outs". Furthermore, a comparison of UNGURU-DUCILA's arrest photograph and the surveillance photographs and video listed in paragraphs 5 and 6 of the unidentified female show that they appear to be one and the same person as well.

11. HSI received information from Wells Fargo Bank concerning bank accounts in which SARBU is the sole owner on the accounts. A review of account activity associated with SARBU's Wells Fargo Way2Save Checking account revealed the following transaction that posted to the account on September 21, 2015 (as listed on the account statement):

Non-WF ATM Balance Inquiry Fee 09/19

Payne Avenue North Tonawanda NY ATM Inyn0333 Card 4550

Wells Fargo confirmed that the above referenced balance inquiry occurred on September 19, 2015, at 1:23 p.m. Bank of America further confirmed that the above ATM transaction occurred at a Bank of America ATM located at 1012 Payne Avenue, North Tonawanda. As detailed in paragraph 5, HSI received surveillance video of the installation and removal of the skimming device that occurred on September 19, 2015, at the ATM located at 1012 Payne Avenue, North Tonawanda, New York. A review of the video confirms that SARBU and

UNGURU-DUCILA were the only two individuals present at the ATM (ATM Inyn0333) at 1:23 p.m., when the above referenced balance inquiry occurred.

12. HSI received photographs from Bank of America of the last time SARBU used his Bank of America debit card under his true identity (Nicolae SARBU) at an ATM. Bank of America advised that when they obtained photographs of the transaction, it appeared that SARBU was installing a skimming device on the ATM at the time of the transaction. Bank surveillance footage show SARBU with tools at the ATM. While attempting to install the alleged device, another customer is observed walking into the area apparently interrupting the installation. Bank records show that SARBU utilizing his debit card at the ATM to make a balance inquiry and then leave. UNGURU-DUCILA is observed outside the bank in surveillance footage around the same time at the drive up ATM and outside of the bank near the entrance where the inside ATM is located.

13. In addition to the skimming activity detailed in paragraphs 5 and 6, SARBU, UNGURU-DUCILA, AND HORNEA are involved in the following skimming incidents, as observed in bank surveillance photographs and video:

- a. August 15, 2015, SARBU is observed placing a skimming device on a Bank of America ATM located at 2300 Grand Avenue, Baldwin, New York. On August 19, 2015, SARBU is observed conducting "cash outs" of cards skimmed at the above location. SARBU conducted "cash outs" via ATMs located at the following two locations on the above date: 40 Main Street, East Rockaway, New

York, and 300 Merrick Road, Lynbrook, New York. Bank of America reported that seventeen customers sustained a fraud loss in the amount of \$9,880.00 that occurred as a result of the 2300 Grand Avenue skimming incident.

- b. September 6, 2015, SARBU is observed placing a skimming device on a Bank of America ATM located at 322 High Street, Burlington, New Jersey. SARBU is observed removing the skimming device from the location later that same day. SARBU is observed conducting "cash outs" of cards skimmed at the above location on September 14, 2014, via the ATM located at 1050 Raritan Road, Clark, New Jersey. Additionally, SARBU and UNGURU-DUCILA are observed conducting additional "cash outs" of cards skimmed at the above location on September 14, 2015, via an ATM located at 1 Springfield Avenue, Newark, New Jersey. Bank of America reported that eighteen customers sustained a fraud loss in the amount of \$10,280.00 as a result of the 322 High Street skimming incident.
- c. October 4, 2015, SARBU is observed with an unidentified male placing and removing a skimming device on a Bank of America ATM located at 1188 Niagara Falls Boulevard, Tonawanda, New York. Bank of America reported that thirteen customers sustained a fraud loss in the amount of \$5,165.00 as a result of the 1188 Niagara Falls Boulevard skimming incident.

- d. October 4, 2015, SARBU is observed with the above unidentified male placing and removing a skimming device on a Bank of America ATM located at 1263 Military Road, Niagara Falls, New York. Bank of America reported that seventy five customers sustained a fraud loss in the amount of \$40,409.06 as a result of the 1263 Military Road skimming incident.

- e. On October 10, 2015, HORNEA is observed placing a skimming device on a Bank of America ATM located at 3842 Harlem Road, Cheektowaga, New York, and removing it the next day. HORNEA is later observed placing and removing a device at the same location on October 11, 2015. On October 19, 2015, SARBU is observed conducting "cash outs" of cards skimmed at 3842 Harlem Road, Cheektowaga, New York. SARBU is observed conducting "cash outs" via an ATM located at 1 Springfield Avenue, Newark, New Jersey, along with an unidentified male. Bank of America reported that sixty two customers sustained a fraud loss in the amount of \$36,331.12 that occurred as a result of the 3842 Harlem Road skimming incident.

- f. October 24, 2015, SARBU is observed with an unidentified male placing a skimming device on a Bank of America ATM located at 3333 West Henrietta Road, Rochester, New York. SARBU is observed removing the device with an individual who appears to be HORNEA the following day. Bank of America reported that twenty nine customers sustained a fraud loss in the amount of \$13,820.00 as a result of the 3333 West Henrietta Road skimming incident.

g. On November 14, 2015, HORNEA is observed installing a skimming device and removing it later that same day at a Bank of America ATM located at 1107 Butztown Road, Bethlehem, Pennsylvania. On November 24, 2015, and November 25, 2015, SARBU is observed conducting "cash outs" of cards skimmed at the above location. The "cash outs" occurred via ATMs located at 1046 Light Street, Baltimore, Maryland, and 2126 MacArthur Road, Whitehall, Pennsylvania. Bank of America reported that seventeen customers sustained a fraud loss in the amount of \$8,386.74 as a result of the 1107 Butztown Road skimming incident.

14. HSI received information that on February 14, 2016, HORNEA, along with three other individuals, was arrested by the Stafford, Texas Police Department while using a Frost Bank ATM to withdraw cash from compromised customer accounts. HORNEA and the other subjects were subsequently charged with Felony Theft and Engaging in Organized Criminal Activity. HSI obtained copies of the booking photographs from that arrest and the bank surveillance video and photographs of that crime which show SARBU conducting the above-detailed skimming activity. HORNEA has a distinct scorpion tattoo located on the right side of his neck. The tattoo is observed in HORNEA's Stafford, Texas booking photographs, and also in surveillance photographs from the 3842 Harlem Road, Cheektowaga, New York, and 1107 Butztown Road, Bethlehem, Pennsylvania skimming incidents, showing that HORNEA is the individual conducting the activity.

15. In my experience, Automated Teller Machine (ATM) “skimming” works as follows: A small, portable card-reading device, referred to as a skimming device, is placed over the card insertion slot of an ATM machine. The skimming device is often attached using glue or double-sided tape, and although attached to the machine, allows for the customer to complete ATM transactions. The skimming device reads and stores the information encoded on the magnetic strips of debit cards used at the ATM by legitimate bank customers.

16. Skimming devices are typically used in conjunction with PIN capturing devices (such as a miniature camera that is surreptitiously mounted on the ATM or concealed within the light panel). These PIN capturing devices are installed/concealed somewhere on, above, or near the ATM and point towards the ATM PIN pad. These devices capture a customer’s Personal Identification Number (PIN) as they enter them in order to use the ATM.

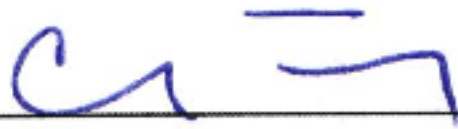
17. After the perpetrators of the fraud scheme have removed the undetected skimming device and camera, the debit card numbers stored on the skimming device are electronically extracted (“downloaded”) from the skimming device using a computer. The video, obtained from the camera, is then reviewed to obtain the customers’ PIN access codes. The downloaded debit card numbers are subsequently re-encoded onto the magnetic strips of blank plastic cards or gift cards. These manufactured debit cards, containing the legitimate bank customers’ information, are then used in combination with the PIN access code to make unauthorized withdrawals (“Cash Outs”) from the legitimate bank customer accounts. The

bank customers often do not realize that their account has been compromised until fraudulent charges appear on their bank statement.

THE APPLICATION FOR AN ARREST WARRANT

18. Based on all of the foregoing facts, I submit that there is probable cause to believe that Nicolae SARBU, Marinela UNGURU-DUCILA, and Giovanni HORNEA knowingly executed, attempted to execute, and conspired to execute a scheme or artifice to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of Bank of America, by means of false or fraudulent pretenses; in violation of Title 18, United States Code, Sections 1344 and 1349.

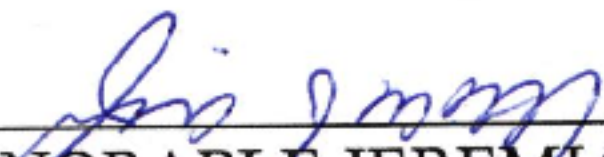
19. Accordingly, it is requested that a warrant be issued authorizing the arrest of Nicolae SARBU, Marinela UNGURU-DUCILA, and Giovanni HORNEA as detailed in this affidavit.



CHARLES S. TOLIAS
Special Agent
Homeland Security Investigations

Sworn to before me this

20th day of May, 2016.



HONORABLE JEREMIAH J. McCARTHY
United States Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

GIOVANI HORNEA,

Defendant.

17-CR-157-RJA

SENTENCING MEMORANDUM

Giovani Hornea is the third and final defendant to be sentenced by this Court in three related cases.¹ Accordingly, this Court is well aware of the circumstances of the offense, as well as personal circumstances shared by each of the defendants. Indeed, like his two co-defendants, Mr. Hornea is a Romanian National, or a Ramani. The travails of these nomadic people, commonly referred to as a “gypies” are well known. Mr. Hornea was born in Romania but has led an itinerant life. He was brought to the United States by his parents as a teenager, and, trying to carve out a life for himself and his own young family (Giovani has two children, one and two years old), has lived in various places within the United States.

Unlike his co-defendants, however, Giovani is barely an adult – he is now only 21 years old. At the time the offense-conduct began, he was only 19 years old. He is ten years younger than co-defendant Nicolae Sarbu. This is significant because Mr. Sarbu brought Giovani into the scheme, telling Giovani that he (Sarbu) knew of a way to make money. Mr. Sarbu was the ringleader of the scheme; Sarbu taught Giovani how to use the devices, and kept the lion’s share of the ill-gotten proceeds for himself – Sarbu would give Giovani only “a couple hundred

¹ See *United States v. Nicolea Sarbu*, 17-CR-008; *United States v. Marinela Unguru-Ducila*, 17-CR-007.

dollars” as compensation in scheme that netted hundreds of thousands of dollars. As Probation Officer Lindsay Maza remarks in the PSR, after detailing various crimes committed by Mr. Sarbu, “Notably, Giovani Homea was not present during this fraudulent activity and had not yet entered the conspiracy.” (¶ 12.) There are, in fact, surveillance videos of the criminal activity where Mr. Sarbu can be seen teaching Giovani how to use the fraudulent devices. Mr. Sarbu received a sentence of 25 months for his role in the scheme.² The parties and the Probation Department have calculated Giovani’s guideline range to be 33-41 months.

None of this means that Giovani has not accepted responsibility for his own role in the offense. Indeed, while many defendants accept responsibility for their crimes, during the presentence interview, Giovani was convincingly adamant: “Wrong thing. Never again,” he forcefully declared before even being asked about his acceptance of responsibility. He said that he wouldn’t do it again even for a million dollars.

Giovani will likely be removed from this country when his sentence is complete. Further, although he has been in pretrial custody for over one year, he will likely receive no credit towards his ultimate sentence because his is in primary state custody. Counsel requests that these factors be taken into account when fashioning a sentence that is sufficient but not greater than necessary.

² Mr. Sarbu’s wife, Ms. Unguru-Ducila, pleaded guilty to Misprison of a Felony and was sentenced by this Court April 26, 2017 to time served (approximately 11 months).

DATED: Buffalo, New York, December 13, 2017

Respectfully submitted,

/s/ Jeffrey T. Bagley

Jeffrey T. Bagley

Assistant Federal Public Defender

Federal Public Defender's Office

300 Pearl Street, Suite 200

Buffalo, New York 14202

(716) 551-3341, (716) 551-3346 (Fax)

Jeffrey_bagley@fd.org

Counsel for Defendant Giovanni Hornea

TO: Marie Grisanti
Assistant United States Attorney

Lindsay Maza
United States Probation Officer Specialist

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

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Defendant.

17-CR-157-RJA

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DATED: Buffalo, New York, December 13, 2017

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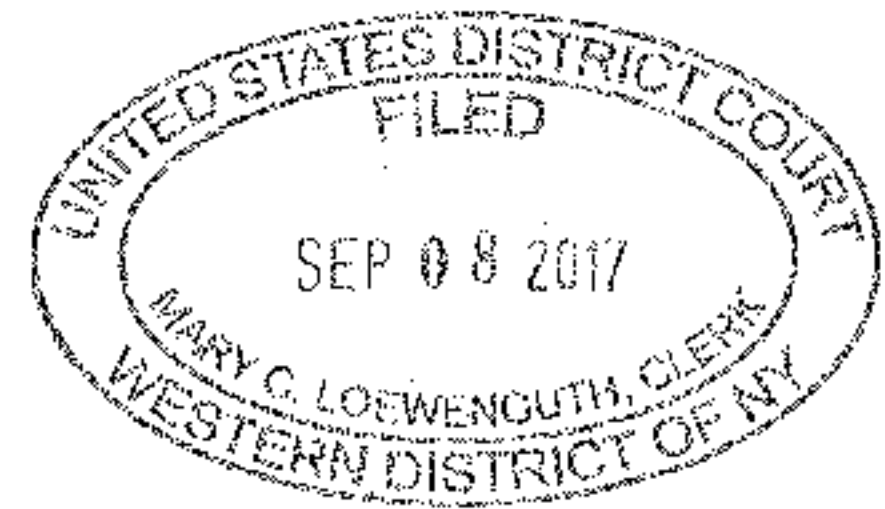
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Counsel for Defendant Giovanni Hornea

TO: Marie Grisanti
Assistant United States Attorney

Lindsay Maza
United States Probation Officer Specialist

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

17-CR-157

GIOVANI HORNEA,

Defendant.

INFORMATION

(Title 18, United States Code, Section 1349)

COUNT 1

The United States Attorney Charges That:

1. Between on or about October 4, 2015, and on or about November 14, 2015, in the Western District of New York, and elsewhere, the defendant, GIOVANI HORNEA, did knowingly, willfully and unlawfully combine, conspire and agree with Nicolae Sarbu, and others, known and unknown, to execute a scheme and artifice to defraud Bank of America, a financial institution, the deposits of which were insured by the Federal Deposit Insurance Corporation, and to obtain moneys and funds owned by and under the custody and control of such financial institution by means of false and fraudulent pretenses, representations and promises, in violation of Title 18, United States Code, Section 1344.

2. It was part of the scheme and artifice that the defendant, GIOVANI HORNEA, and Nicolae Sarbu, and others, known and unknown, devised a scheme and artifice to defraud Bank of America, using skimming devices and cameras at automated teller machines (ATMs) whereby bank account information and personal identification numbers (PINs) were recorded

without the true account holder's knowledge or authorization and thereafter used to make unauthorized withdrawals of cash from ATMs. A skimmer was a device used to unlawfully record bank account information from a customer's debit card when the card was inserted into an ATM.

3. It was further part of the scheme and artifice that the defendant, GIOVANI HORNEA, Nicolae Sarbu, and others known and unknown, placed, and caused the placement of, and removed, and caused the removal of, skimming devices and cameras from Bank of America ATMs thereby unlawfully obtaining customers' bank account information and PINs maintained by Bank of America as set forth below:

Date Skimmer Installed	Date Skimmer Removed	Skimmer Location	Loss
10/4/15	10/4/15	1263 Military Road Niagara Falls, NY	\$40,409.06
10/4/15	10/4/15	1188 Niagara Falls Blvd. Tonawanda, NY	\$5,165.00
10/10/15	10/11/15	4049 Seneca Street West Seneca, NY	\$52,154.38
10/10/15	10/11/15	3842 Harlem Road	\$36,331.12
10/11/15	10/11/15	Cheektowaga, NY	
10/24/15	10/25/15	3333 W. Henrietta Road Rochester, NY	\$13,820.00
11/14/15	11/14/15	1107 Butztown Road Bethlehem, PA	\$8,386.74
		Total	\$156,266.30

4. It was further part of the scheme and artifice that the defendant, GIOVANI HORNEA, Nicolae Sarbu, and others known and unknown, extracted bank account information obtained by the skimmers and thereafter encoded the unlawfully obtained bank account information onto magnetic strips on blank plastic cards and gift cards.

5. It was further part of the scheme and artifice that the defendant, GIOVANI HORNEA, Nicolae Sarbu, and others known and unknown, viewed the video recordings obtained from the cameras which had been installed at the bank ATMs referenced above and obtained the PINs associated with the compromised accounts.

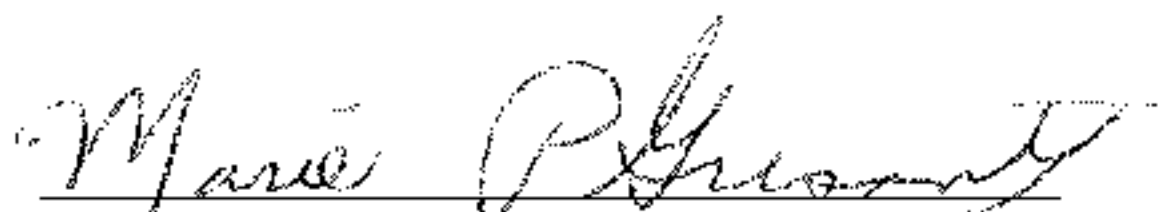
6. It was further part of the scheme and artifice that the defendant, GIOVANI HORNEA, Nicolae Sarbu, and others known and unknown, after having unlawfully obtained bank account information and the associated PINs, used the encoded cards and PINs at various ATMs in the Western District of New York and elsewhere to unlawfully withdraw cash from the compromised accounts.

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

DATED: Buffalo, New York, September 8, 2017.

JAMES P. KENNEDY, JR.
Acting United States Attorney

BY:



MARIE P. GRISANTI
Assistant United States Attorney
United States Attorney's Office
Western District of New York
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