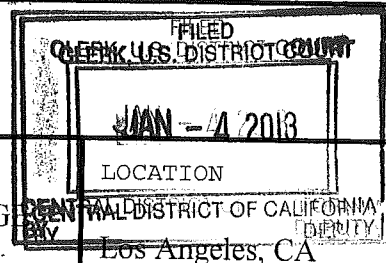


CRIMINAL COMPLAINT

UNITED STATES DISTRICT COURT	CENTRAL DISTRICT OF CALIFORNIA
UNITED STATES OF AMERICA v. ROBERT BRANDON MAWHINNEY	DOCKET NO. MAGISTRATE'S CASE NO. 13- 13-0010M

Complaint for violations of Title 18, United States Code §§ 1014, 2(b)

NAME OF MAGISTRATE JUDGE HON. MARGARET A. NAGLE	UNITED STATES MAGISTRATE JUDGE Los Angeles, CA
DATE OF OFFENSE May 6, 2010	PLACE OF OFFENSE Los Angeles County
ADDRESS OF ACCUSED (IF KNOWN)	



COMPLAINANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION:

On or about May 6, 2010, in Los Angeles County, within the Central District of California, defendant ROBERT B. MAWHINNEY knowingly made and willfully caused to be made a false statement for the purpose of influencing the actions of Comerica Bank, an institution the accounts of which were then insured by the FDIC, in connection with his application to obtain a \$3,000,000 loan, in that defendant MAWHINNEY submitted to Comerica Bank a Personal Financial Statement on which MAWHINNEY stated that he had cash in a Charles Schwab "Savings/Brokerage" account with a balance of \$9,000,000, when in truth and in fact as MAWHINNEY then well knew, he did not hold cash or other assets with a value of \$9,000,000 at Charles Schwab.

BASIS OF COMPLAINANT'S CHARGE AGAINST THE ACCUSED:

(See attached affidavit which is incorporated as part of this Complaint)

MATERIAL WITNESSES IN RELATION TO THIS CHARGE:

Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.

SIGNATURE OF COMPLAINANT

ALLISON L. HIRSCH

OFFICIAL TITLE

Special Agent, FBI

Sworn to before me and subscribed in my presence,

SIGNATURE OF MAGISTRATE JUDGE⁽¹⁾

Margaret A. Nagle

DATE

January 4, 2013

1) See Federal Rules of Criminal Procedure Rules 3 and 54.

AFFIDAVIT

I, Allison L. Hirsch, being duly sworn, hereby depose and say as follows:

I

INTRODUCTION

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI"), and have been so employed for approximately three years. I am currently assigned to the Bank Fraud/Mortgage Fraud Squad of the Los Angeles Field Office of the FBI.

2. As an FBI Special Agent, I have investigated various types of federal financial crimes, including mortgage fraud, wire fraud, bank fraud, and identity theft. My experience includes interviewing witnesses; identifying, obtaining and analyzing relevant documents including financial records; obtaining and executing search warrants and arrest warrants; and conducting surveillance. I have also received formal training from the FBI in investigating financial crimes such as wire fraud, mail fraud, and money laundering. As a result of my training and experience, I am familiar with federal laws relating to violations of numerous criminal statutes, including statutes addressing bank fraud and wire fraud, and related financial offenses such as engaging in unlawful monetary transactions.

3. Prior to my employment at the FBI, I was employed by Morgan Stanley in their Sales and Trading Division. I have a bachelor's of science degree in accounting from Pennsylvania State University and hold a Certified Public Accountant ("CPA") license (inactive status) from New Jersey.

4. I have learned the facts set forth in this affidavit through my review of documents including documents obtained from the victim banks and other entities affected by or used in the scheme described herein, and by speaking with witnesses, other special agents, and investigators;

and based on my training and experience. This affidavit is intended to show that there is sufficient probable cause for the criminal complaint and the requested warrant and does not purport to set forth all of my knowledge of the investigation into this matter. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in substance and in part only.

II

PURPOSE OF AFFIDAVIT

5. This affidavit is made in support of a criminal complaint charging ROBERT BRANDON MAWHINNEY (year of birth 1983, Social Security No. XXX-X3-2767) ("MAWHINNEY"), with a violation of Title 18, United States Code, Sections 1014, 2(b) (false statement in a loan application; willfully causing an act to be done).

III

SUMMARY OF THE FRAUDULENT CONDUCT

6. As set forth below, based on my investigation I have learned that between in or about September 2009 and in or about April 2011, MAWHINNEY, obtained four commercial loans from Comerica Bank ("Comerica"), a financial institution the deposits of which were insured by the Federal Deposit Insurance Corporation ("FDIC"). In order to obtain the loans, MAWHINNEY made false statements to Comerica, which relied on the false statements when approving the loans.

a. In May 2009, MAWHINNEY, who identified himself as doing business as ACMI, LLC ("ACMI"), signed and submitted to Comerica a Business Loan Application. On the loan application, MAWHINNEY stated that he had "Savings 8M."

b. On or about May 6, 2010, MAWHINNEY signed and submitted to Comerica

a Personal Financial Statement ("2010 PFS"). On the 2010 PFS, MAWHINNEY falsely stated that he maintained a "savings/brokerage" account at Charles Schwab that had a balance of \$9 million.

c. On or about April 19, 2011, MAWHINNEY signed and submitted to Comerica another PFS ("2011 PFS"). On this 2011 PFS, MAWHINNEY falsely stated that he maintained a savings account at Schwab that had a balance of \$8 million.

d. MAWHINNEY submitted to Comerica false and fraudulent account statements purportedly issued by "Charles Schwab" for accounts held by MAWHINNEY. The purported Charles Schwab account statements that MAWHINNEY submitted to Comerica showed account values of \$7.9 million or more. In fact, account statements obtained directly from Charles Schwab & Co. (which manages brokerage accounts) and Charles Schwab Bank (which manages bank accounts) show that during the relevant time period, the total value of MAWHINNEY's assets being held by Charles Schwab & Co and/or Charles Schwab Bank (hereinafter together "Charles Schwab") was approximately \$10,000.

7. Based on the false statements submitted by MAWHINNEY, between approximately August 2009 and approximately April 2011, Comerica approved four loans totaling approximately \$6,250,000.

8. Beginning in or about July 2011 and continuing through on or about September 1, 2011, MAWHINNEY defaulted on each of the four loans. Comerica sustained a loss of approximately \$6 million.

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III

FACTS ESTABLISHING PROBABLE CAUSE

A. ROBERT BRANDON MAWHINNEY

9. I have reviewed records from the California Department of Motor Vehicles, from which I learned that ROBERT BRANDON MAWHINNEY was born in 1983 and, as of November 15, 2011, was residing in West Hollywood, California.

10. I have reviewed records from Chase Bank, Wells Fargo Bank and Comerica for accounts held in the name of ACMI. MAWHINNEY has signature authority on each of these three accounts and, on the respective signature cards/documents, he identifies himself as the manager, owner, and president of ACMI.

11. I have reviewed records obtained from Charles Schwab & Co and from Charles Schwab Bank from which I learned the following:

a. Brokerage account no XXXX0071 in the name of ROBERT BRANDON MAWHINNEY was opened on or about October 13, 2009. Charles Schwab & Co. had no record of any account in MAWHINNEY's name prior to that date. Charles Schwab & Co. had no record of any account held in the name of ACMI.

b. Bank account no. XXXXXXXXX5603 in the name of ROBERT BRANDON MAWHINNEY was opened on or about October 13, 2009. Charles Schwab Bank had no record of any other account in MAWHINNEY's name prior to that date. Charles Schwab Bank had no record of any account in the name of ACMI.

B. MAWHINNEY's application for commercial loans from Comerica

12. On or about December 7, 2011, I interviewed Lorri O'Neill ("O'Neill"), who was then employed by Comerica. During the interview, O'Neill provided the following information:

a. O'Neill was a loan officer for Comerica. O'Neill was the originating loan officer for each of Comerica's four loans to MAWHINNEY.

b. MAWHINNEY was referred to O'Neill and her supervisor, Hugh Connors ("Connors"), as an individual interested in obtaining a commercial loan. O'Neill was unsure of where the referral originated.

c. O'Neill and Connors traveled to Burbank, California to meet with MAWHINNEY and assess his credit-worthiness. A loan candidate's ability to repay the loan was paramount in making funding decisions; the value of a loan applicant's collateral and assets was crucial in determining whether Comerica would originate a loan for the applicant.

d. The meeting took place in a studio on Magnolia Street in Burbank, California. MAWHINNEY told O'Neill that he owned the studio together with his friends Jason and Matthew Salazar. MAWHINNEY said the studio was a side project and that his main passion was writing music. MAWHINNEY told O'Neill that he was a successful ghostwriter for various artists. MAWHINNEY explained that he was seeking a commercial loan in order to finance his working capital expenditures, including equipment purchases. MAWHINNEY also wanted to finish the recording room in his studio. MAWHINNEY stated that he did business as ACMI and that he wanted the loan to be in ACMI's name.

e. O'NEILL advised MAWHINNEY that to obtain the loan he would need to submit to Comerica, among other things, three years of tax returns, ACMI's financial statements, and a bank statement or verification to verify MAWHINNEY's cash position. MAWHINNEY advised O'Neill that none of the requirements would be an issue. O'Neill further advised MAWHINNEY that the financial statements for ACMI would need to be prepared by a CPA. MAWHINNEY said that he had a CPA, and he would not have a problem providing Comerica

with ACMI's financial statements in the near future. MAWHINNEY advised O'Neill that his brokerage account usually contained approximately \$8 million to \$10 million in cash.

f. After MAWHINNEY had gathered the requested documentation, including tax returns, ACMI's financial statements, MAWHINNEY's brokerage statement, and completed a personal financial statement, MAWHINNEY provided the documents to O'Neill for consideration in his loan application. O'Neill believed she picked up all of the documentation directly from MAWHINNEY at his studio in Burbank, although MAWHINNEY may have sent the ACMI financial statements to her via facsimile.

g. Comerica considered MAWHINNEY's collateral and cash position when determining the specifics of its loan to MAWHINNEY. Comerica would advance approximately 75% of any invoice amount evidencing equipment purchases because the equipment could be used as collateral. MAWHINNEY's \$8 million cash position was an important factor in determining the loan amount as well, because it afforded Comerica a second source to recoup its loans if there were issues with repayment of the loans.

h. From approximately August of 2009 through July of 2011, O'Neill met with MAWHINNEY in person approximately eight to 10 times. In addition to these face-to-face meetings, O'Neill also communicated with MAWHINNEY by telephone, electronic mail and facsimile. O'Neill met with MAWHINNEY in person each time he was required to sign a Comerica loan document.

j. O'Neill believed the last time she met with MAWHINNEY was in July or August 2011 at a Coffee Bean establishment next to the Comerica on Sunset Boulevard in Hollywood, California. During that meeting, MAWHINNEY advised O'Neill he was having a difficult time with the recent death of his grandmother. The last time O'Neill heard from

MAWHINNEY was in approximately August of 2011, at which time MAWHINNEY left O'Neill a voice message advising her he had been in a car accident, was in a lot of pain, and was on heavy medication but would take care of his outstanding loan payments by the end of the month.

13. On or about December 8, 2011, I met with O'NEILL and showed her a "six-pack" of photographs. The photographs shown to O'NEILL contained no identifying information other than the photograph itself. I asked O'NEILL if she could identify the individual she knew as ROBERT BRANDON MAWHINNEY in any of the six photographs. O'NEILL promptly identified one photograph as MAWHINNEY. The photograph O'NEILL identified as MAWHINNEY was taken from a California Department of Motor Vehicles driver license for ROBERT BRANDON MAWHINNEY, year of birth 1983.

C. False Statements Submitted to Comerica

14. I have reviewed the files maintained by Comerica for the loans obtained by MAWHINNEY. These files include the following documents:

a. Comerica Bank Business Loan Application. On this application, the applicant is identified as "ROBERT MAWHINNEY/ACMI, LLC." The application is dated on or about May 9, 2009. MAWHINNEY states that he does business as ACMI, has been in business for 8 years, and that the nature of his business is entertainment. The application further states that ACMI has gross annual sales for 2009 of "\$13-\$15M," and that the purpose of the loan is "working capital." The application states that MAWHINNEY has savings of "8M." MAWHINNEY signed the application.

b. The 2010 PFS (Comerica Bank Personal Financial Statement for applicant ROBERT MAWHINNEY). On this 2010 PFS, MAWHINNEY stated that he had cash in a Charles Schwab "Savings/Brokerage" account with a balance of \$9,000,000. MAWHINNEY

signed this PFS certifying its accuracy on or about May 6, 2010.

c. The 2011 PFS (Comerica Bank Personal Financial Statement for applicant ROBERT MAWHINNEY) . On this 2011 PFS, MAWHINNEY stated that he had cash in a Schwab savings account with a balance of \$8,000,000. MAWHINNEY signed this PFS certifying its accuracy on or about April 19, 2011.

d. Purported account statement from "Charles Schwab" for account number XXXX-6341 held by "ROBERT MAWHINNEY, 8765 Appian Way, Los Angeles, CA" for the period May 1, 2009 to May 31, 2009. This account statement shows an "Ending Account Value" of \$8,095,605.34. The statement bears a fax header with the date "Jun. 9, 2009."

e. Purported account statement from "Charles Schwab" for an account held by MAWHINNEY for the period July 1, 2009 to July 31, 2009. This account statement shows an "Ending Account Value" of \$8,523,874.11. The statement bears a fax header with the date "Sep. 3, 2009."

f. Purported account statement from "Charles Schwab" for an account held by MAWHINNEY for the period November 1, 2009 to December 31, 2009. This account statement shows an "Ending Account Value" of \$8,862,031.10. The statement bears a fax header with the date "Jan. 7, 2010" and the handwritten annotation "ATTN LORI ONEILL."

g. Purported account statement from "Charles Schwab" for account number XXXX-0071 held by MAWHINNEY for the period April 1, 2010 to June 30, 2010. This account statement shows an "Ending Account Value" of \$8,994,523.23. The statement bears a fax header with the date "2010-09-29" and the notation "From: ROBERT MAWHINNEY."

h. Purported account statement from "Charles Schwab" for account number XXXX-0071 held by MAWHINNEY for the period October 1, 2010 to December 31, 2010.

This account statement shows an "Ending Account Value" of \$7,934,897.86. The statement bears a fax header with the date "Mar.17, 2011."

i. U.S. Individual Income Tax Returns (IRS Forms 1040) for calendar years 2005 through 2010 for ROBERT B. MAWHINNEY. The returns for 2008, 2009, and 2010 identify Juan Jose Diaz, 11814 McDonald St., Culver City, CA, as the CPA who prepared the returns. The 2008 return purports to have been signed by Juan Jose Diaz on March 5, 2009.

j. "Robert B. Mawhinney – ACMI, LLC Financial Statement With Accountant's Compilation Report, For the Period Ended December 31, 2010." The first page of this document is a letter purportedly signed by Juan Jose Diaz stating that he "compiled the accompanying statement of financial condition of ACMI, LLC. . . ."

15. I have obtained account statements directly from Charles Schwab & Co. (manager of Charles Schwab brokerage accounts) and Charles Schwab Bank (manager of Charles Schwab bank accounts) for accounts held by MAWHINNEY. Based on my review of these documents, I learned the following:

a. MAWHINNEY did not have a brokerage or bank account open at Charles Schwab in May of 2009 and as such no bank or brokerage statement was issued to MAWHINNEY for the period ending May 31, 2009. ROBERT I. MAWHINNEY, XXXX East Fallsview Road, Anaheim, CA, held Charles Schwab Account Number XXXX-6341. His statement for the period ending May 31, 2009 showed an Ending Account Value of \$0.

b. Neither Charles Schwab & Co. nor Charles Schwab Bank issued any statement to MAWHINNEY for a period ending July 31, 2009. The first statement issued to MAWHINNEY from Charles Schwab & Co. was for the period ending October 31, 2009, which showed a balance of \$10,000. The first statement issued to MAWHINNEY from Charles

Schwab Bank was for the period ending November 30, 2009, which showed a balance of \$0.00.

c. Statements obtained directly from Charles Schwab & Co. show MAWHINNEY's December 31, 2009 ending account value in account number XXXX-0071 was \$10,000. Statements obtained directly from Charles Schwab Bank indicate MAWHINNEY had an ending balance in account number XXXXXXXXX5603 of \$0.00 as of December 31, 2009.

d. Statements obtained directly from Charles Schwab & Co. show MAWHINNEY's June 30, 2010 ending account value in account number XXXX-0071 was \$4,000. Charles Schwab Bank did not issue a statement to MAWHINNEY for the three month period of April 1, 2010 to June 30 2010. Charles Schwab Bank issued statements to MAWHINNEY for account number XXXXXXXXX5603 for the following periods: April 1, 2010 to April 30, 2010 (ending balance \$10,013.15); May 1, 2010 to May 28, 2010 (ending balance \$10,016.98), and May 29, 2010 to June 30, 2010 (ending balance \$10,021.49).

e. Neither Charles Schwab & Co. nor Charles Schwab Bank issued statements to MAWHINNEY for the three-month period of October 1, 2010 through December 31, 2010. Charles Schwab & Co. issued statements to MAWHINNEY for account number XXXX-0071 for the period of October 1, 2010 to October 31, 2010, during which MAWHINNEY had an ending account value of \$0.00 and for the period November 1, 2010 to March 31, 2011, during which MAWHINNEY had an ending account value of \$5,000. Charles Schwab Bank issued statements to MAWHINNEY for account number XXXXXXXXX5603 for the following periods: October 1, 2010 to October 29, 2010 (ending balance \$10,036.06); October 30, 2010 to November 30, 2010 (ending balance \$10,038.24), and December 1, 2010 to December 31, 2010 (ending balance \$10,040.35).

16. On December 13, 2011, I interviewed Juan Jose Diaz. Mr. Diaz resides on

McDonald Street in Culver City, CA. Mr. Diaz told me that he has never heard of MAWHINNEY or ACMI and that he has never prepared financial statements for any individual or entity.

D. Comerica's Loans To MAWHINNEY

17. On or about August 11, 2009, MAWHINNEY executed and delivered to Comerica a Master Revolving Note -- essentially a line of credit -- ("Comerica Loan #1") in the principal sum of \$750,000.

18. On or about June 22, 2010, MAWHINNEY executed and delivered to Comerica an Installment Note ("Comerica Loan #2"), in the principal sum of \$3,000,000.00.

19. On or about September 27, 2010, MAWHINNEY executed and delivered to Comerica an Installment Note ("Comerica Loan #3"), in the principal sum of \$2,000,000.00.

20. On or about April 20, 2011, MAWHINNEY executed and delivered to Comerica an Installment Note ("Comerica Loan #4"), in the principal sum of \$500,000.00.

21. Based on my conversations with Comerica loan officer O'Neill, I believe that Comerica relied on the documents provided by MAWHINNEY when reviewing MAWHINNEY's eligibility for the loans, and Comerica would not have agreed to enter into the loan agreements with MAWHINNEY for Comerica Loans #1, #2, #3, and/or #4 if Comerica had known the documents were falsified.

E. MAWHINNEY Defaults on the Loans

22. MAWHINNEY defaulted under the terms of Comerica Loan #1 by failing to make the interest payment of approximately \$2,906.25, which was due on or about September 1, 2011. As of September 9, 2011, MAWHINNEY owed Comerica, according to the terms of Comerica Loan #1, the principal sum of approximately \$749,500.00 and accrued interest of

approximately \$3,654.88.

23. MAWHINNEY defaulted under the terms of Comerica Loan #2 by failing to make the interest payment of approximately \$24,145.84 and the principal payment of approximately \$155,209.16 which were due on or about July 22, 2011. As of September 9, 2011, MAWHINNEY owed to Comerica the principal sum of approximately \$3,000,000.00; accrued interest of approximately \$31,270.84; and late charges of approximately \$8,967.74.

24. MAWHINNEY defaulted under the terms of Comerica Loan #3 by failing to make the interest payment of approximately \$13,994.91 and the principal payment of approximately \$66,666.66 which were due on or about August 1, 2011. As of September 9, 2011, MAWHINNEY owed to Comerica, in accordance with the terms of Comerica Loan #3, the principal sum of approximately \$1,700,000.03; accrued interest of approximately \$15,789.36; and late charges of approximately \$2,021.15.

25. MAWHINNEY defaulted under the terms of Comerica Loan #4 by failing to make the interest payment of approximately \$1,999.32 and the principal payment of approximately \$13,888.88 which was due on or about August 22, 2011. As of September 9, 2011, MAWHINNEY owed to Comerica, in accordance with the terms of Comerica Loan #4, the principal sum of approximately \$458,333.36; accrued interest of approximately \$3,087.86; and late charges of approximately \$794.41.

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IV

CONCLUSION

26. Based on the facts and information presented above, I believe that there is probable cause to believe that on or about May 6, 2010, defendant ROBERT B. MAWHINNEY knowingly made and willfully caused to be made a false statement for the purpose of influencing the actions of Comerica Bank, an institution the accounts of which were then insured by the FDIC, in connection with his application to obtain Comerica Loan Number 2, in that MAWHINNEY submitted a Comerica Bank Personal Financial Statement on which MAWHINNEY stated that he had cash in a Charles Schwab "Savings/Brokerage" account with a balance of \$9,000,000, when in truth and in fact as MAWHINNEY then well knew that he did not hold cash or other assets with a value of \$9,000,000 at Charles Schwab, all in violation of Title 18, United States Code, Sections 1014, 2(b).

/s/
Allison L. Hirsch
Special Agent, FBI

Sworn and subscribed to
before me on this 4th day
of January, 2013.

Margaret A. Nagle

Honorable Margaret A. Nagle
Magistrate Judge