

COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

ONEIDA COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 10-CF-_____

MICHELLE R. POPENHAGEN
1837 NORTH FARMING ROAD
ARBOR VITAE, WISCONSIN 54568
F/W DOB 06/20/1971,

Defendant.

SUMMONS

THE STATE OF WISCONSIN TO THE ABOVE-NAMED DEFENDANT:

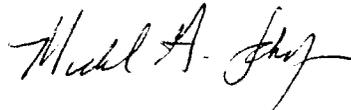
A Complaint, copy of which is attached, having been made before me accusing the defendant of committing the following crimes:

1. COUNT I: Felony Theft, contrary to Wis. Stat. §§ 943.20(1)(b), 943.20(3)(c) and 971.36(3)(b) (2003-04), a Class G Felony;
2. COUNT II: Fraudulent Writings, contrary to Wis. Stat. § 943.39 (2003-04), a Class H Felony;
3. COUNT III: Felony Theft, contrary to Wis. Stat. §§ 943.20(1)(b), 943.20(3)(c) and 971.36(3)(b) (2003-04), a Class G Felony; and
4. COUNT IV: Fraudulent Writings, contrary to Wis. Stat. § 943.39(1) (2003-04), a Class H Felony.

You, Michelle R. Popenhagen, are, therefore, summoned to appear before the Circuit Court of Oneida County, the Honorable Mark A. Mangerson, Branch 2, Courthouse, 1 South Oneida Avenue, Rhinelander, Wisconsin, 54501, to answer the complaint, on **May 3, 2010, at 1:30 p.m.**, and, in case of your failure to appear, a warrant for your arrest may be issued.

Dated this 25th day of February, 2010.

J.B. VAN HOLLEN
Attorney General



MICHAEL G. SCHAEFER
Assistant Attorney General and
Special Prosecutor for Oneida County
State Bar #1010877

Attorneys for State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2070 (MGS)
(608) 267-2778 (facsimile)
schaefermg@doj.state.wi.us

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH _____

ONEIDA COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 10-CF-____

MICHELLE R. POPENHAGEN
1837 NORTH FARMING ROAD
ARBOR VITAE, WISCONSIN 54568
F/W DOB 06/20/1971,

Defendant.

CRIMINAL COMPLAINT

Kyra M. Schallhorn, Special Agent in the Division of Criminal Investigation, within the Wisconsin Department of Justice, being first duly sworn on oath, upon information and belief states the following:

COUNT I (FELONY THEFT)

From on or about July 16, 2003, to on or about March 24, 2004, in the city of Minocqua, Wisconsin, in Oneida County, the defendant, Michelle R. Popenhagen, by virtue of her employment as a head cashier, having possession or custody of money of another, namely, Save More Food Markets, Inc., her employer, intentionally used, transferred, concealed or retained possession of such money, in excess of \$10,000, without the consent of the owner, Save More Food Markets, Inc., contrary to her authority and with intent to convert it to her own use or the use of another. The defendant's actions are contrary to Wis. Stat. §§ 943.20(1)(b), 943.20(3)(c)

and 971.36(3)(b) (2003-04), a Class G Felony, and are punishable by a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both.

COUNT II (FRAUDULENT WRITINGS)

On or about January 3, 2004, in the city of Minocqua, Wisconsin, in Oneida County, the defendant, Michelle R. Popenhagen, with intent to injure or defraud, being an employee of a corporation, namely, Save More Food Markets, Inc., did falsify a record or other document belonging to that corporation, in particular a quarterly inventory cutoff packet report, by making a false entry, specifically by writing that the cash balance in the store's automated teller machine ("ATM") was \$6,860 when the balance actually was \$3,240, and that the defendant knew that this entry was false. The defendant's actions violate Wis. Stat. § 943.39(1) (2003-04), which is a Class H Felony that is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both.

COUNT III (FELONY THEFT)

From on or about April 7, 2004, to on or about June 16, 2004, in the city of Minocqua, Wisconsin, in Oneida County, the defendant, Michelle R. Popenhagen, by virtue of her employment as a head cashier, having possession or custody of money of another, namely, Save More Food Markets, Inc., her employer, intentionally used, transferred, concealed or retained possession of such money, in excess of \$10,000, without the consent of the owner, Save More Food Markets, Inc., contrary to her authority and with intent to convert it to her own use or the use of another. The defendant's actions are contrary to Wis. Stat. §§ 943.20(1)(b), 943.20(3)(c) and 971.36(3)(b) (2003-04), a Class G Felony, and are punishable by a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both.

COUNT IV (FRAUDULENT WRITINGS)

On or about April 3, 2004, in the city of Minocqua, Wisconsin, in Oneida County, the defendant, Michelle R. Popenhagen, with intent to injure or defraud, being an employee of a corporation, namely, Save More Food Markets, Inc., did falsify a record or other document belonging to that corporation, in particular a quarterly inventory cutoff packet report, by making a false entry, specifically by writing that the cash balance in the store's ATM was \$14,740 when the balance actually was \$7,340, and that the defendant knew that this entry was false. The defendant's actions violate Wis. Stat. § 943.39(1) (2003-04), which is a Class H Felony that is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both.

FACTUAL BASIS

Kyra M. Schallhorn is a Special Agent employed by the Wisconsin Department of Justice, Division of Criminal Investigation. Agent Schallhorn was assigned to investigate allegations of theft committed by Michelle Popenhagen.

Agent Schallhorn has reviewed investigative reports prepared by Lieutenant David J. Jaeger of the Minocqua Police Department. Lt. Jaeger interviewed Brian Krueger, who is one of the owners of Save More Food Markets, Inc. ("Save More"). Agent Schallhorn knows that Save More is located in the city of Minocqua, Wisconsin, in Oneida County. Brian advised Lt. Jaeger that Michelle Popenhagen, the defendant, was employed by Save More until June 21, 2004. Brian stated that Popenhagen was the head cashier and that her duties and responsibilities included completing Sales and Cash ("S&C") Reports, completing the weekly close-out of the S&C Reports, and filling the store's ATM machine. Brian explained that cash taken from the safe in the head cashier's office was placed in the ATM. The employee placing the cash into the ATM would then record the amount in the ATM, which generated a ticket that reflected customer withdrawals and deposits to the machine by the employee. Brian also stated that the

weekly S&C reports were prepared to account for the flow of money. One of the lines on the weekly S&C Report was for the ATM deposit. Brian explained that the amount taken from the safe was documented in the S&C Report as "ATM deposits," which indicated how much money was periodically put into the ATM machine. Brian stated that Popenhagen had very distinctive handwriting and that he determined that the amounts entered on the S&C Reports for the ATM deposits were made by Popenhagen.

Brian also informed Lt. Jaeger that, for the six months prior to the second quarter of 2004, Save More's accounting files were handled by RSM McGladrey. He explained that Save More changed accountants and that Schenck and Associates ("Schenck") began handling Save More's accounting files for the second quarter, beginning April 1, 2004. In mid-July 2004, during Schenck's first review, Brian was contacted and advised that the ATM balances were "not reconciling." Brian advised that Save More started an internal investigation. Brian prepared a summary of the internal investigation, which covered the period from July 16, 2003, through June 16, 2004, and which identified specific dates on which the amount entered on the S&C Reports as taken from the store safe did not agree with the amounts entered as placed in the ATM, for a total shortage of \$28,500.

Lt. Jaeger interviewed Julie Krueger, who advised that Popenhagen was in charge of the ATM and that she was also in charge of entering the inventory numbers in the quarter's end profit and loss report. Julie also described the ATM process that Popenhagen used, explaining that Popenhagen would take money from the safe located in the head cashier's office, document the amount taken on the S&C Reports, walk the money to the ATM, open the ATM with a key, place the money into the ATM, enter the amount of money placed into the ATM on a key pad located on the ATM, close the ATM and run off a receipt from the ATM.

Julie further informed Lt. Jaeger that she spoke with certified public accountant (“CPA”) Patrick Ness of Schenck, who informed her there were discrepancies with the amounts noted in regard to the ATM. Julie and a store employee went to the ATM, removed all of the cash inside, and physically counted it. Julie then started with that amount and worked backwards, comparing the amounts recorded on the S&C Reports to the ATM receipts and recording the discrepancies. Julie subsequently provided to Lt. Jaeger copies of the S&C Reports from September 2003 through June 2004.

Agent Schallhorn interviewed CPA Patrick Ness of Schenck. Ness stated that he did Save More’s accounting for June 2004 and that he alerted the store to a possible discrepancy with the ATM money. Specifically, Ness explained that the ATM balance, as shown in the store’s S&C Reports, kept growing until it became more than what an ATM machine could actually hold. Ness further advised that he typically sees an ATM balance in the \$10,000 range, but the balance in Save More’s ATM was more than that. He reported that he contacted the store to let them know of a possible problem.

Agent Schallhorn interviewed Brian and Julie Krueger. The Kruegers stated that they conducted an inventory process every quarter and provided that information to their accountant. The Kruegers explained that, at the end of each quarter, the accountants received an “inventory cutoff packet” from Save More. The packet included information such as the ATM balance and cash on hand. The Kruegers advised that Popenhagen filled out the S&C Reports and the numbers for the inventory cutoff packets, including the amount of cash in the ATM. Agent Schallhorn showed the Kruegers a packet of documents she had obtained during the investigation. The documents had a fax cover sheet that indicated they had been faxed to Brian from Jeff at RSM McGladrey. The Kruegers identified these documents as one page from the

inventory cutoff packets sent to the accountants. Each page showed the amount of cash that Popenhagen had written was in the ATM.

Agent Schallhorn also learned from Julie Krueger that Julie had prepared ATM inventory totals on three sheets of graph paper. She prepared these sheets after counting the money in the ATM machine in August 2004 and working backwards. Brian Krueger advised that he prepared a daily accounting of ATM disbursements and the balance per ATM printout, covering the period from June 2003 through June 2004.

Agent Schallhorn received from Lt. Jaeger records entitled "Weekly Sales and Cash Report" for the period starting September 21, 2003, through June 5, 2004; records entitled "Cash Paid Out/Purchases/Transfers In," for the period starting June 1, 2003, through June 26, 2004, which are the second pages of the S&C Reports; three handwritten pages that detailed ATM deposits and withdrawals from December 28, 2002, through August 7, 2004, which Julie Krueger prepared; multiple pages corresponding to the daily ATM disbursement and balance accounting, prepared by Brian Krueger; and the summary of the result of Save More's internal investigation, also prepared by Brian Krueger, which showed individual shortages and a total shortage of \$28,500. During the investigation, Agent Schallhorn obtained copies of documents entitled "ATM Zero Balance Report," which also has been referred to as an ATM report, ATM receipt or ATM ticket, for dates between July 10, 2003, and ending June 21, 2004. Agent Schallhorn also obtained a copy of excerpted pages from an ATM manual for the ATM that was at Save More in 2003 and 2004. The excerpted pages describe how to complete various functions on the ATM and explain the contents of various reports that can be printed from the ATM.

Agent Schallhorn reviewed all the available records and independently determined that, between July 16, 2003, and March 24, 2004, the ATM's actual cash balance was a total of

\$14,500 less than what Popenhagen claimed she had deposited into the ATM, per the S&C Reports for that period. Agent Schallhorn also independently determined that, between April 7, 2004, and June 16, 2004, the ATM's actual cash balance was a total of \$14,000 less than what Popenhagen claimed she deposited into the ATM, per the S&C Reports for that period.

Agent Schallhorn observed that, on the page dated January 3, 2004, from the inventory cutoff packet that showed the cash balance in the ATM, Popenhagen had written \$6,860. Agent Schallhorn further observed that, according to Brian Krueger's daily disbursement and balance accounting, the actual balance in the ATM machine on January 3, 2004, was \$3,240.

Agent Schallhorn observed that, on the page dated April 3, 2004, from the inventory cutoff packet that showed the cash balance in the ATM, Popenhagen had written \$14,740. Agent Schallhorn further observed that, according to Brian Krueger's daily disbursement and balance accounting, the actual balance in the ATM machine on April 2, 2004, was \$7,800 and on April 4, 2004, was \$7,120.

Agent Schallhorn reviewed the excerpted pages from the ATM manual as well as the S&C Reports and the ATM Zero Balance Reports. Based on this information, Agent Schallhorn was able to independently determine that the actual balance in the ATM on January 3, 2004, was \$3,240 and not \$6,860, as Popenhagen wrote in the inventory cutoff packet. Likewise, Agent Schallhorn was able to independently determine that the actual balance in the ATM on April 3, 2004, was \$7,340 and not \$14,740, as Popenhagen wrote in the inventory cutoff packet.

Agent Schallhorn reviewed the Wisconsin Department of Financial Institution's ("DFI") website and confirmed that Save More is a domestic business that was incorporated on March 11, 1959.

Agent Schallhorn believes the information provided by Lt. Jaeger because he is a fellow law enforcement officer. Agent Schallhorn believes the information provided by Brian Krueger and Julie Krueger because they are citizen informants with personal knowledge of the matters

reported and because they are victims and represent the corporate victim of the crimes charged. Agent Schallhorn believes the information provided by Patrick Ness because he is a citizen informant who obtained his information in the normal course of his business as a certified public accountant. Agent Schallhorn believes the information contained in the documents provided by Save More and the Kruegers because the documents were created and maintained in the normal course of business of Save More. Agent Schallhorn believes the information contained in the Save More internal investigation documents prepared by Brian Krueger or Julie Krueger because they are based on Save More's business records and because Agent Schallhorn was able to independently confirm the information. Agent Schallhorn believes the information contained in the excerpted pages of the ATM manual because the manual was created in the normal course of

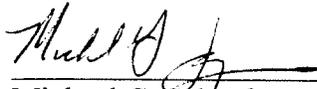
business by the ATM manufacturer. Agent Schallhorn believes the information on DFI's website because it is information that DFI is required by statute to collect and maintain.

Dated this 25 day of February, 2010.



Kyra M. Schallhorn
Special Agent, Division of Criminal Investigation
Wisconsin Department of Justice

Subscribed and sworn to before me
and approved for filing
this 25th day of February, 2010.



Michael G. Schaefer
Assistant Attorney General
State Bar No. 1010877
Special Prosecutor for Oneida County

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2070 (MGS)
(608) 267-2778 (facsimile)
schaefermg@doj.state.wi.us