

**STATEMENT BY GILDENHUYS MALATJI ON BEHALF OF
MINISTER PRAVIN GORDHAN**

We have received the attached summons directed to Minister Pravin Gordhan to appear in the Regional Division, Pretoria Court 16 on 2 November 2016. The summons was received by Minister Gordhan's office in circumstances where we had expected that the National Director of Public Prosecutions ("NDPP") will interact with us in light of the correspondence exchanged between our office and the NDPP dating back to 18 May 2016. We had repeatedly requested that the NDPP afford Minister Gordhan the opportunity to make written and/or oral representations before making a decision on whether to prosecute or not. In particular, the NDPP, Adv. S. K. Abrahams, advised us on 25 August 2016 that he will only consider our request to make representations to him on whether to initiate a prosecution or not once the investigation has been concluded and a docket has been submitted to the National Prosecuting Authority. It is surprising that we have only received a letter dated 4 October 2016 but only sent to our office this morning advising that Minister Gordhan is an accused person. The correspondence exchanged between our office and that of the National Prosecuting Authority is attached.

The other difficult matter for Minister Pravin Gordhan to appreciate is the nature of the charges. We were firstly advised that he is not a suspect during May 2016. In August 2016, Minister Pravin Gordhan was advised that he should give a warning statement which by its very nature meant that he is now considered to be a suspect in relation to very clearly defined charges. It was contemplated by the HAWKS that he has contravened the provisions of Sections 1, 34 and 81(2) of the Public Finance Management Act, 1 of 1999, that he was guilty of corruption in terms of Section 3, 4 and/or 10 of the Prevention of Corrupt Activities Act, 12 of 2004 as well as Section 3 of the National Strategic Intelligence Act, 39 of 1994. These related to the establishment of an investigative unit at SARS and the early retirement of Mr Ivan Pillay as SARS Deputy Commissioner.

The charges now preferred against Minister Pravin Gordhan are charges of fraud alternatively theft insofar as it relates to Mr Pillay's early retirement. Fraud is defined as **“the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another”**. In order to succeed with proving the crime of fraud, the State must establish the elements of the crime which are defined as first, a misrepresentation, second, prejudice or potential prejudice to another, third, unlawfulness and lastly an intention to so prejudice.

The Minister is taking counsel on all available legal avenues to bring this matter to an expedited end.

Tebogo Malatji

Gildenhuis Malatji Inc

11 October 2016

All the documents mentioned in this statement are available at (**Gildenhuis Malatji's website, www.gminc.co.za**)

CAS: BROOKLYN
429/05/2015

J175 (81/810713)



REPUBLIC OF SOUTH AFRICA

Summons No. 574/16

COPY: To be handed to accused

Case No. /

SUMMONS IN CRIMINAL CASE

Magistrate's Court

District Pretoria		Regional division Tshwane District	
Held at Pretoria	Court 16	Date of trial 02-November-2016	

TO THE ACCUSED

- You are hereby summoned to appear in person before the above-mentioned court at 08:30 on the above-mentioned date and place in connection with the charge(s) of which the particulars is/are mentioned above and to remain in attendance.
- An admission of guilt fine of may be made on or before to the Clerk of the above-mentioned Magistrate's Court or at any police station within the area of jurisdiction of the said Court.

Name Pravin Gordhan			
Address 93 Frans Oerder street Groenkloof			
Gender	Male	Occupation	Member of Parliament
Age	67	Id No.	4 9 0 4 1 2 5 1 3 0 0 8 7

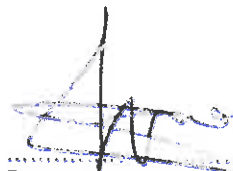
Particulars of charge(s):

Accused is/are guilty of the offence of fraud

in that upon or about the 18 day of October in the year 2010 and at or near BROOKLYN

the accused did wrongfully SEE ATTACHED ANNEXURES A-E

- Warning:** (i) Should any change in above-mentioned address take place before the proceedings are finally disposed of you are compelled to inform the official who served this summons upon you thereof.
(ii) Failure to comply with either the above-mentioned warning or this summons renders you liable to a fine or a term of imprisonment not exceeding three months
- Should you decide to dispute the charge(s) against you, and you wish to make use of legal practitioner, you may, if you cannot afford a legal practitioner, apply for legal aid at the local Legal Aid Officer.


Date stamp of issuing office

2015-10-10

ADMISSION OF GUILT UNDER SECTION 57 OF ACT 51 OF 1977

I do hereby acknowledge that I am guilty of the offence(s) set out in this summons.

Signature

Identity number

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The amount of R deposited this day of in the year of

Licence/Receipt No.	Dated
for the amount of R produced.	

IMPORTANT

1. Should you intend making use of the post the documents must be posted on a date which will be early enough to ensure that it will reach those formerly mentioned on or before the mentioned payment date.
2. Only cash, a money order, a postal order or a cheque guaranteed by a bank, will be accepted.
3. The summons, signed by you, must accompany the fine.

ANNEXURE "A"

Case no:

/2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

COUNT 1

THAT the accused are guilty of the crime of **FRAUD** read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 18 October 2010 and at or near PRETORIA in the Regional Division of Gauteng the accused, did unlawfully, falsely and with the intent to defraud give out and pretend to Nic Coetzee and/or Susan Visser and/or Khethang Mokoena and/or the South African Revenue Service (SARS) and/or the National Treasury that SARS was liable to pay a sum of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178.11 to the Government Employees Pension Fund on behalf of Ivan Pillay which amount was a penalty payable by Pillay to the Government Employees Pension Fund for taking early retirement for his own personal reasons, by requesting, recommending and approving that SARS should pay the said amount through a memorandum dated 18 October 2010,

AND did there and then and by means of the said false pretences induce Nic Coetzee and/or Susanna Visser and/or Khethang Mokoena and/or the South African Revenue Services or the National Treasury to their/its actual prejudice to pay the sum of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178.11 to the Government Employees Pension Fund on behalf of Ivan Pillay;

WHEREAS when the accused so gave out and pretended they well knew that in truth the South African Revenue Service (SARS) was not liable to pay the amount of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178.11 to the Government Employees Pension Fund on behalf of Ivan Pillay thereby committing fraud.

ANNEXURE "B"

Case no:

/2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

Alternative to count 1

That the accused are guilty of Theft read with sections 1, 92(2), 250, 256 and 257 of Act 51 of 1977, further read with sections 51(2) of Act 105 of 1997

IN THAT upon or about 18th October 2010 and at or near Pretoria in the Regional Division of Gauteng, the accused did unlawfully and intentionally steal an amount of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178.11, the property or in the lawful possession of Nic Coetzee and/or Susanna Visser and/or Khethang Mokoena and/or the South African Revenue Services (SARS).

ANNEXURE "C"

Case no:

/2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

COUNT 2

THAT the accused are guilty of contravention of Section 86 read with section 1, 38, 39 and 45 of the Public Finance Management Act, Act 1 of 1999 and further read with Sections 1, 92(2), 250, 256 and 257 of Act 51 of 1977

IN THAT upon or about the date and place mentioned in count 1, accused 1 whilst being an Accounting officer for The South African Revenue Services (SARS), acting in concurrence with accused 2 and 3 wilfully and in a grossly negligent way, caused SARS to incur or failed to prevent irregular, fruitless and wasteful and unauthorised expenditure and thereby contravening the said sections of the Act.

ANNEXURE "D"

Case no:

/2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

Count 3

THAT the accused are guilty of the crime of FRAUD read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 7th February 2011 and at or near PRETORIA in the Regional Division of Gauteng the accused, did unlawfully, falsely and with the intent to defraud give out and pretend to Chrisna Susanna Visser and/or Human Resources of SARS and/or SARS that SARS was authorised to enter into an employment contract with Mr Visvanathan Pillay for a period of five (5) years commencing on 1 January 2011 and terminating on 31 December 2015;

AND did there and then by means of the said false pretences induce Chrisna Susanna Visser and of Human Resources of SARS and/or SARS to her /its prejudice to a remuneration package for a period of five (5) years instead of a remuneration package of three (3) years

WHEREAS when the accused so gave out and pretended, they well knew that in truth the South African Revenue Service (SARS) was only authorised to conclude a three (3) year contract with effect from 1 August 2010 with Mr Visvanathan Pillay and thereby committing fraud

ANNEXURE "E"

Case no:

/2016

THE STATE

VERSUS

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

Count 4

THAT the accused are guilty of the crime of **FRAUD** read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 1st April 2014 and at or near PRETORIA in the Regional Division of Gauteng the accused, did unlawfully, falsely and with the intent to defraud give out and pretend to Chrisna Susanna Visser and/or Human Resources of SARS and/or SARS that SARS was authorised to enter into an employment contract with Mr Visvananthan Pillay as Deputy Commissioner for a period of four (4) years commencing on 1 April 2014 and terminating on 31 December 2018;

AND did there and then by means of the said false pretences induce Chrisna Susanna Visser and of Human Resources of SARS and/or SARS to her /its prejudice to an annual remuneration package of One million nine Hundred and eighty nine thousands five Hundred and eighty

nine rands and fifty two cents for a period of four (4) years when there was no approved internal memo or letter authorising same.

WHEREAS when the accused so gave out and pretended, they well knew that in truth the South African Revenue Service (SARS) was under no obligation to enter into a new employment contract or extend the employment contract entered into on 7 February 2011 with Mr Visvanathan Pillay as it still had a period of a year to run to conclusion and thereby committing fraud.

CAPTAIN MF SEWELE

0714812406./0798899582

FINGERPRINT ARRANGED FOR 19 OCTOBER 2016

Priority Crimes Litigation Unit



Reference: 10/1/3/5/3SARS/PCLU1/2016(Rogue Unit)
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4 October 2016

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Dear Sir

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THE STATE VERSUS OUPA MAGASHULA, VISVANATHAN (IVAN) PILLAY AND PRAVIN GORDHAN INVESTIGATION INTO THE RETIREMENT BENEFIT PAID BY SARS ON BEHALF OF MR PILLAY INVESTIGATION OFFICER: BRIGADIER XABA

After a careful consideration of the evidence available in the docket and in consultation with the Director of Public Prosecutions, North Gauteng, and in accordance with section 24(3) of the National Prosecution Authority Act, 32 of 1998, it has been decided that the following persons:-

1. George Ngakane Virgil (Oupa) Magashula
2. Visvanathan (Ivan) Pillay and
3. Pravin Jamnadas Gordhan

must be prosecuted and arraigned in the Regional Court on the following charges:

Count 1: Fraud, in respect of all three accused

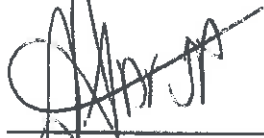
Count 2: Contravention of section 86 of the Public Finance Management Act, 1 of 1999, only in respect of Accused 1

Justice in our society, so that people can live in freedom and security

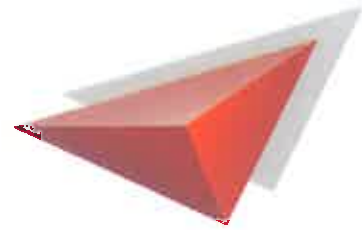
Count 3: Fraud, only in respect of Accused 1 and 2

Count 4: Fraud, only in respect of Accused 2 and 3

Yours sincerely



DR JP PRETORIUS SC
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE:



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08 September 2016

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ATTENTION: Adv Pretorius SC

Dear Mr Pretorius,

BROOKLYN CAS 427/05/2015 – THE HON. MINISTER PRAVIN GORDHAN

1. Thank you for your letter of 5 September 2016.
2. Our client's request to make representations is not made in terms of s 179(5)(d) of the Constitution. It is made to you as decision-maker in this case on the basis that rationality requires that you afford our client an opportunity for representations so as to best equip you to take your decision.
3. Our client fully responded to all the Hawks' enquiries by way of:
 - 3.1. His reply to General Ntlemenza's questions dated 30 March 2016, annexure A;
 - 3.2. His statement dated 23 August 2016, annexure B;
 - 3.3. Our letter to the Hawks dated 24 August 2016, annexure C; and
 - 3.4. Our statement released to the media on 24 August 2016, annexure D.
4. We trust that these documents form part of the Hawks' docket and that you will take them into consideration. Will you kindly confirm that our understanding is correct?
5. Paragraph 8 of your statement suggests that our client's comments, views and version will be taken into account only if they are incorporated in a warning statement. Will you kindly tell us whether that is so and, if so, why that should be so?

DIRECTORS

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6. We look forward to hearing from you.

Yours faithfully

GILDENHUYS MALATJI INC

Per: *Tebogo Malatji*

W267

(Transmitted electronically and thus not signed)

Priority Crimes Litigation Unit



Your ref: T MALATJI/BC

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5 September 2016

Email: tmalatji@gminc.co.za

Dear Mr Malatji

BROOKLYN CAS 427/05/2015: THE HON. MINISTER PRAVIN GORDHAN

1. Your letter dated 29 August 2016 with above reference which was addressed to the NDPP has been rerouted to us as the responsible Directorate to deal with it. Receipt of your letter is hereby acknowledged.
2. The aforementioned docket was received by the National Prosecuting Authority ('NPA') during the latter afternoon of 25 August 2016.
3. The docket is presently being perused by the prosecutors within the Priority Crimes Litigation Unit ('PCLU').
4. I am yet to be advised as to whether the investigation conducted by the Directorate for Priority Crimes Investigation ('DPCI') into this matter has been concluded.
5. I will make a decision in consultation with the Director of Public Prosecutions ('DPP'): Pretoria once the investigation has been concluded.

Justice in our society, so that people can live in freedom and security

6. Section 179(5)(d) of the Constitution provides the National Director of Public Prosecutions ('NDPP') with the discretion to:

"... review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the National Director of Public Prosecutions, from the following.

(i) The accused person.

(ii) The complainant.

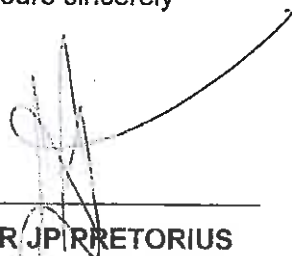
(iii) Any other person or party whom the National Director considers to be relevant."

7. As alluded to in the correspondence dated 25 August 2016, a decision to prosecute or not to prosecute your client or any other person(s) is yet to be made. In this regard, and at this stage, your client does not fall within the category of an 'accused person'. It will hence be premature to invoke the provisions of section 179(5)(d) of the Constitution.

8. It would be advisable that your client's comments, views and version are incorporated in a warning statement to be taken into account before a decision is made and such warning statement being part of the police docket in this instance.

9. I trust that you will find same in order.

Yours sincerely



DR. JP RRETORIUS

ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS

PRIORITY CRIMES LITIGATION UNIT

DATE: 9/11/2016



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29 August 2016

ATTENTION: ADV S ABRAHAMS

Dear Adv Abrahams,

BROOKLYN CAS 427/05/2015 – THE HON. MINISTER PRAVIN GORDHAN

1. We refer to the above matter and to our letters exchanged on 24 and 25 August 2016.
2. Our client has come to learn through Media reports that the Hawks had completed their investigations and have also handed the docket pertaining to the above matter to your office. We again reiterate our request and in light of your letter of 25 August 2016 request that you urgently confirm whether our client will be afforded the opportunity to make both written and verbal representations to you regarding a decision whether he should be prosecuted or not.
3. We look forward to your response as soon as circumstances permit.

Yours faithfully

GILDENHUYS MALATJI INC

Per: *Tebogo Malatji*

(Transmitted electronically and thus not signed)

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25 August 2016

Your ref: T MALATJI/BC
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Dear Mr Malatji

BROOKLYN CAS 427/05/2015: THE HON. MINISTER PRAVIN GORDHAN

Receipt of your letter, dated 24 August 2016, is acknowledged and the contents thereof noted.

Insofar as it relates to the request in paragraph 4 of your aforementioned letter, consideration will only be given thereto once the investigation has been concluded and the docket submitted to the National Prosecuting Authority for a decision on whether or not to institute a prosecution against any person(s).

Yours sincerely


ADV SK ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

DATE: 25-08-2016



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24 August 2016

ATTENTION: ADV S ABRAHAMS

Dear Adv Abrahams,

BROOKLYN CAS 427/05/2015 – THE HON. MINISTER PRAVIN GORDHAN

1. We refer to the above matter and confirm that we act on behalf of the Honourable Minister Pravin Gordhan, MP ("the Minister").
2. We refer to our letter of 18 May 2016 and the response thereto from Adv J P Pretorius SC dated 20 May 2016.
3. You will have received media reports to the effect that the Minister is now required to present himself before Brigadier N Xaba on 25 August 2016 for purposes of obtaining a warning statement from the Minister. We enclose the correspondence that was exchanged between ourselves and the National Head of the Directorate for Priority Crime Investigation on 18 May 2016 and responded to on 20 May 2016 for your records. We also enclose the correspondence relating to the request for the Minister to present himself for a warning statement, our response thereto and replies by both parties dated 21 and 24 August 2016 respectively for your records.
4. The Minister requests that when this matter is presented to you for a decision on whether to initiate a prosecution against him or not, he should be afforded the opportunity to make both written and verbal representations to you regarding your aforesaid decision.

5. We look forward to your response as soon as circumstances permit.

Yours faithfully

GILDENHUYS MALATJI INC

Per: *Tebogo Malatji*

W281

(Transmitted electronically and thus not signed)

Priority Crimes Litigation Unit



The National Prosecuting Authority
South Africa

20 May 2016

Your ref: T MALATJI/BC
01744844

GILDENHUYS MALATJI ATTORNEYS
P O BOX 619
PRETORIA
0001

ATTENTION: MR T MALATJI

Email: tmalatji@gminc.co.za

Dear Mr Malatji

BROOKLYN CAS 427/05/2015 – MINISTER PRAVIN GORDHAN

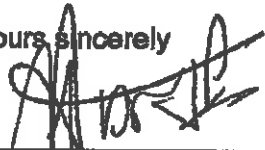
1. Your letter dated 18 May 2016 refers.
2. I am the Acting Special Director and Head of the Priority Crimes Litigation Unit in the National Prosecuting Authority. Brooklyn CAS 427/05/2015 was submitted to my office a number of weeks ago.
3. I appointed members of my office to peruse the docket and to advise me of the position. I have subsequently been advised that the investigation is incomplete.
4. To my knowledge, I can record that there is no investigation on a charge of "espionage" against your client, Minister Pravin Gordhan. That being said, I do not intend to respond to each and every averment of your aforementioned letter.
5. Regrettably, I am unable to comment on any information alleged to have been

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leaked to the media.

6. It is also unfortunate that I am unable, at this stage, to advise whether Minister Gordhan is a suspect in Brooklyn CAS 427/05/2015. It is inappropriate to inform any person that he or she is a suspect up until such time that a warning statement is required. In the event that the investigation reaches a stage that the evidence reveals that the Minister has a case to answer, a warning statement will have to be obtained from him in which he will be afforded an opportunity to respond to any criminal allegations.
7. Although ordinarily a decision to prosecute would be made by me in consultation with the relevant Director of Public Prosecutions concerned, in this instance a recommendation will be made to the National Director of Public Prosecutions, who will personally apply his discretion thereto.
8. In the event that the National Director of Public Prosecutions decides that the interest of justice best dictates that the Minister should be prosecuted, it will be endeavoured that the required notice would be afforded to your client, Minister Gordhan.

Yours sincerely



J.P. PRETORIUS SC
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 23 MAY 2016



GILDENHUYS MALATJI
A T T O R N E Y S

OUR REF

T MALATJI/BC
01744844

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(012) 428 8687
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YOUR REF

THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS
THE NATIONAL PROSECUTING AUTHORITY OF SA
VGM BUILDING (CNR WEST LAKE & HARTLEY)
123 WEST LAKE AVENUE
WEAVIND PARK
SILVERTON
PRETORIA

18 May 2016

ATTENTION: ADV S ABRAHAMS

Dear Adv Abrahams,

BROOKLYN CAS 427/05/2015 – THE HON. MINISTER PRAVIN GORDHAN

1. We act on behalf of the Honourable Minister of Finance, Mr Pravin Gordhan.
2. The media have over the last few days reported that the Hawks are investigating a charge of "espionage" against the Minister and that his arrest is imminent. These rumours are obviously distressing and a transparent attempt to intimidate the Minister. Your office apparently confirmed that there was an ongoing investigation but denied that a decision had been taken to prosecute the Minister. It is intolerable that more information about the Minister's fate seems to be leaked to the media than is provided to the Minister.
3. We accordingly call on you to clarify the Minister's position as a matter of urgency by providing us with the following information:
 - 3.1 Is the Minister a suspect in an investigation by the Hawks?
 - 3.2 If so, what is the offence of which he is suspected and what are the facts on which the suspicion is based?
 - 3.3 How far has the investigation progressed?
 - 3.4 Will the suspicion be put to the Minister and will he be given an opportunity to give his side of the case before it is decided whether to prosecute him?

DIRECTORS

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UMITHA RAMANATH (HUMAN RESOURCES)
INNO THIBE (OFFICE)
JENNIFER NKAASE (MARKETING)

- 3.5 Will the Minister be given notice as soon as a decision is taken to prosecute him?
4. We look forward to your response as soon as possible.

Yours faithfully

GILDENHUYS MALATJI INC

Per: *Tebogo Malatji*

W294

(Transmitted electronically and thus not signed)