

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA
Plaintiff,

vs.

CASE NO. 5:19-cr-5-Oc-28-PRL

JUSTIN LEWIS,
Defendant.

_____ /

**MOTION TO SUPPRESS AND REQUEST
FOR FRANKS HEARING**

COMES NOW the Defendant, **JUSTIN LEWIS**, by and through his undersigned attorney, and files his Motion to Suppress electronic equipment, documentation and information obtained, therefrom, seized in conjunction with Search Warrants applied for, issued and executed in conjunction with the prosecution of JUSTIN LEWIS, herewith, and in support of the request for an evidentiary hearing under *Franks v. Delaware*¹, states as follows:

STANDING:

A motion to suppress may be made only by a “person aggrieved by an unlawful search and seizure.” *Rakas v. Illinois*, 1978, 99 S.Ct. 421. That the Defendant, JUSTIN LEWIS, maintains “standing” to seek to exclude illegally obtained evidence.

Standing has been bestowed upon the Defendant by the government in the allegations regarding the Applications for the Search Warrants. The government

¹ *Franks v. Delaware*, 438 U.S. 154 [1978]

acknowledges the fact that the items sought to be seized, in totality, are [1] belonging to or associated with Mr. Lewis' personal and business documentation and/or [2] within the confines of his legal residence with the designated address of 13280 SW 61st Place Road, Ocala, Florida, [hereinafter "The Premises"].

Additionally, where a warrant application is based on "deliberate falsehood or reckless disregard for the truth", along with misstatements, a defendant has standing to contest the affidavit submitted. See, *United States v. McCarty*, 36 F.3d 1349,1357 [5th Circuit 1994].

CONSENT

Although consent does not readily appear to be an issue, herein, it is quite clear the Defendant did not consent into the intrusion, the search and seizure of his/her personal information and/or property. Consent involves no restraint on a person's liberty. It is characterized by the police seeking a person's voluntary cooperation through non-coercive questioning. Consent involves neither detention nor coercion. Thus, a consensual encounter is not a seizure under Fourth Amendment analysis. See also, *United States v. Hans*, 801 F.2d. 757, 761 (5th Cir. 1986); *United States v. Johnson*, 910 F.2d 1506, 1508 (7th Cir. 1990).

Should the government seek to rely upon consent to justify any lawfulness of its search, it has the burden of proving that the consent was freely and voluntarily given. *Bumper v. North Carolina*, 391 U.S. 543, 548, 88 S.Ct. 1788, 17921 (1968) n 12. (1968). The burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority, especially where there has been prior illegal activity by the government agents. *Id.* at n 13. Consent can also be tainted by the illegality of an initial

seizure which infects the search itself. *United States v. \$80,700.00 in United States Currency*, 781 F.Supp. 462 (N.D. Tex.1991). *See also, Norman v. State*, 379 So. 2d 643, 646-47 (Fla. 1980). The government, herein, never sought the Defendant's consent to address and seize his Verizon account information nor his gmail accounts or enter his "Premises", and seize his electronics, but the agents did so anyway.

GENERAL OVERVIEW AS TO:

1. That the multiple applications for search and seizure warrants, inclusive of Lewis' Verizon information [**Exhibit A**]; Lewis' gmails and related Google digital information [**Exhibit B**]; the E-Bay Search Warrant [**Exhibit E**], as well as the subsequent search and seizures executed upon the Lewis residence "Premises" [**Exhibit C**], and the follow-up warrant activity by the government seeking search warrants to examine the contents [**Exhibit D**] of the items seized from the Lewis residence are *addressed*, in accordance:

SUPPRESSION: ISSUE ONE AND TWO

2. During the period from August to October, the government sought and obtained a series of closely interrelated search and seizure warrants in the Northern District of Florida, under *ex parte* Case Numbers: 1:17-mj-47-GRJ [Google SW - Lewis gmail][September 2017]; 1:17-mc-7-GRJ [Verizon][August 2017]; 1:17-mc-22-GRJ [Ebay][September 2017]; 1:18-mc-3-GRJ [Ebay]; with the remainder being seizure warrants 1:18-mj-7-GRJ; 1:18-mj-8-GRJ; 1:18-mj-9-GRJ; 1:18-mj-10-GRJ; 1:18-mj-11-GRJ; 1:18-mj-12-GRJ; 1:18-mj-13-GRJ; 1:18-mj-14-GRJ; 1:18-mj-15-GRJ and 1:18-mj-16-GRJ, directed at various entities associated with Justin Lewis. Since it was the

initial efforts of the government to obtain this information; then subsequently relying on portions, thereof, to proceed further; incorporating the information contained, therein, into a designated affidavit [**Exhibit C**] for a search warrant directed at Justin Lewis' residence "Premises".

SUPPRESSION: ISSUE III

3. Subsequently, thereto, the government sought and obtained a search warrant directed at the Defendant's residence, 13280 SW 61st Place, Ocala, Florida, more particularly referenced as "The Premises" on February 6, 2018. [**Exhibit C**]

SUPPRESSION: ISSUE IV

4. That the government obtained follow-up search warrants under a Master Affidavit [**Exhibit D**]: Case Numbers: 5:18-mj-1058-PRL; 5:18-mj-1059-PRL; 5:18-mj-1060-PRL; 5:18-mj-1061-PRL; 5:18-mj-1062-PRL; 5:18-mj-1063-PRL; 5:18-mj-1064-PRL; 5:18-mj-1065-PRL; 5:18-mj-1066-PRL and 5:18-mj-1067-PRL, on June 22, 2018 relating to subsequent activity in obtaining information associated from the seizures of the electronic devices found on "The Premises" on February 6, 2018.

5. Having, also, obtained seizure warrants, previously referenced, under 1:18-mc-3-GRJ; 1:18-mj-7-GRJ; 1:18-mj-8-GRJ; 1:18-mj-9-GRJ; 1:18-mj-10-GRJ; 1:18-mj-11-GRJ; 1:18-mj-12-GRJ; 1:18-mj-13-GRJ; 1:18-mj-14-GRJ; 1:18-mj-15-GRJ and 1:18-mj-16-GRJ, by utilizing information previously obtained via **Exhibits A, B, C and E**, which are subject to suppression. See, *Wong Sun v. United States*, 83 S.Ct. 407, 371 [1973].

SUPPRESSION: ISSUE V²

6. It is quite clear by a reading of the Application to obtain the Search Warrant for E-Bay, that the telephone number being attributed to the Defendant, JUSTIN LEWIS, is incorrect.

7. Additionally, the Affidavit indicates that invoices via Pay-Pal are somehow associated with that number, with individuals selling data plans on line and depositing these into the Florida Credit Union [FCU], and then,

8. Specifically, paragraph 9 of the warrant, “attributes [727] 279-0008 belongs to Justin Lewis”.

9. Additionally, the warrant references Lewis speaking to “E-Bay representatives that he only was permitting his employees to use corporate accounts?”

10. This is a misstatement [as apparent carryover from the language appearing in the Verizon Warrant Application], since it is quite clear, predicated upon the prior affidavits [A] seeking contact for Verizon information that the allegations regarding “investigations” were associated with Verizon and the conversations were also associated with Verizon.

11. All of the foregoing are misstatements of predicated facts and misrepresentations associated with Justin Lewis and as such, should in fact be excised from the Application for Search Warrant. *Franks v. Delaware*, 438 U.S. 154 [1978].

12. That once excised, the Application for Search Warrants should fail, as the information sought are tied into non-sufficient predicates regarding specificity associated

² This was initially filed by amendment authorized by the Trial Court

with Justin Lewis.

JURISDICTION

Although search warrants may have been issued by other Courts [Northern District], this Court has jurisdiction to address the motion since the motion must be made in the Court of the District of Trial. See, *Oliver v. United States*, 239 F.2d 818, certiorari dismissed, 77 S.Ct. 865 [1957].

PRESENTATION IN SUPPORT OF MOTION TO SUPPRESS AND REQUEST FOR FRANKS HEARING

“Before a warrant for either arrest or search can issue require that the judicial officer issuing such a warrant be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant.” *Whiteley v. Warden*, 401 U.S. 560, 564, 91 S.Ct. 1031, 1034, 28 L.Ed.2d 306 (1970). This is because one of the focal points of the warrant process is to allow for “*informed* and deliberate determinations” of probable cause by a neutral and detached magistrate. *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964).

To *lie, conceal or misrepresent* [**emphasis added**] facts on an affidavit in support of an application for a warrant defeats this purpose. See, *United States v. Rule*, 594 F.Supp. 1223, 1240 (D.C. 1984)(non-disclosure of relevant information and enhancement of credibility of informant tainted warrant). In order to invalidate a warrant based upon a false or misleading affidavit, a defendant must show the person applying for the warrant “either deliberately or recklessly misled the magistrate and that without the falsehood, there would not be sufficient matter in the affidavit to support the issuance of the warrant.” *United States v. Davis*, 226 F.3d 346,351 (5th Cir. 2000).

In *Franks v. Delaware*, 438 U.S. 154, 164, 98 S.Ct. 2674, 2680 (1978), the Supreme Court noted that an attack on a warrant's veracity implicates the very language of the Warrant Clause. Its very premise depends upon an affiant acting in good faith: “[N]o [w]arrants shall issue, but upon probable cause, supported by Oath or affirmation . . .” *Franks*, 438 U.S. at 164-165, 98 S.Ct. at 2680, citing *United States v. Halsey*, 257 F.Supp. 1002, 1005 (S.D.N.Y.1966), *aff'd*, Docket No. 31369 (CA2, June 12, 1967) (unreported)(“[W]hen the Fourth Amendment demands a factual showing sufficient to comprise ‘probable cause,’ the obvious assumption is that there will be a *truthful* showing”... in the sense that the information put forth is believed or appropriately accepted by the affiant as *true*.”). The Court in *Franks* referenced that the warrant affidavit must set forth particular facts and circumstances underlying the existence of probable cause, so as to allow the magistrate to make an independent evaluation of the matter, since he is the one who must independently determine whether there is probable cause.

Thus, where the warrant application is based on “deliberate falsehood or reckless disregard for the truth” along with misstatements, a defendant has standing to contest the affidavit submitted. The warrant must be invalidated should the misrepresentations contained within the affidavit be material and intentional. *United States v. McCarty*, 36 F.3d 1349, 1357 (5th Cir.1994).

Assertions can be made with reckless disregard for the truth even if they involve minor details [**emphasis added**]. Recklessness is measured not by the relevance of the

information, but the demonstration of the willingness to affirmatively distort the truth, equating reckless disregard for the truth with a “high degree of awareness of [the statements] probable falsity.” *Lippay v. Christos*, 996 F.2d 1490,1501 [3rd Circuit 1993] [quoting *Garrison v. Louisiana*, 379 U.S. 64 [1964]]. Thus, the Defendant requests an Evidentiary Hearing regarding his allegations so that proof may be presented.³ Thus, the Defendant requests an Evidentiary Hearing regarding his allegations so that proof may be presented.⁴

GOOD FAITH EXCEPTION [NOT APPLICABLE]

In *United States v. Leon*, 104 S.Ct. 3405 [1984], it was held that evidence obtained in an objectively reasonable reliance on a subsequently invalidated search warrant, it is not to be excluded. *Id.* at 3421-3422.

However, the *Leon* good faith exception does not apply when the officer who initiated the contents of the warrant, submitted it to the Magistrate Judge for execution, was also the officer that executed the warrant. This is predicated upon the rationale that one cannot benefit by their own wrong-doing. In this case, the officer submitting the affidavits to various Magistrate Judges was in fact the author of the would-be probable cause affidavit; also the officer executing the warrants. Certainly, as such, he would be

³ See *Franks [citation omitted]*; also see, *United States v. Rios*, CA 10th 611 F.2d 1335 [1979] referencing hearing to be held

⁴ See *Franks [citation omitted]*; also see, *United States v. Rios*, CA 10th 611 F.2d 1335 [1979] referencing hearing to be held

charged of having full knowledge relating to the information being utilized to obtain the warrants, affording their execution. *Id.*

Thus, the Defendant requests an Evidentiary Hearing regarding his allegations so that proof may be presented.

That the Defendant respectfully submits in his support, by affidavit, his statements of claim of falsehood, non-disclosure, material and minor omissions, that rise to the level of misrepresentations, along with false statements of material fact, well addressing the validity of the warrant.

As to Issue I: The government, herein, filed an Affidavit in Support of an Application for a Search Warrant **[Exhibit A]**, associated with “an individual using the Verizon Wireless Telephone Number [727] 279-0008, posting advertisements on Craigslist and ebay . . .” **[See Exhibit A - Relevant Facts - paragraph 5]**. The affidavit also references the Telephone Number [727] 279-0008 as belonging to Justin Lewis. ***[Mr. Lewis alleges that this is a misstatement of material fact that is false and therefore should be excised]***. See, *Franks, Id.*

Paragraph 6, thereof, references an “eBay advertisement” being attributed to Justin Lewis. ***[Mr. Lewis alleges that the eBay and Craigslist associations being made to him are misstatements; being material in nature and should be excised]*** *Franks Id.*

Paragraph 9, thereof, attributing ownership of Razor Repair to Justin Lewis ***[Mr. Lewis alleges that imputing ownership of that company to him is a material misstatement and falsehood]***. Additionally, it should be further noted that subsequent

follow-up government articulated discovery has Razor Repair being owned by a third party. *Davis, Id.; Franks, Id.*

The allegations that Justin Lewis sold items on eBay or utilized Craigslist or that he maintained an eBay account, is a factual assertion that he disputes and that must be specifically addressed since it is either an intentional falsity and is misleading and clearly a violation under *Franks, Id.* and should be excised. The alleged Craigslist ad does not reference a phone number nor other information and as such, is a material non-disclosure, predicated upon opinion, without factual support in violation of *Gates*.⁵

It further appears that the government's Affidavit is predicated upon unsubstantiated representations of fact upon which *opinion* rests and, therefore, fails to establish sufficient probable cause to have the Verizon search warrant issued.

The allegations, as submitted, are misrepresentations, being false and being material and intentional, should be excised [see *Franks, Id.*]; and when so done, the applications fail, as does the warrant.

WHEREFORE, once the addressed allegations are deemed to be excised under *Franks, Id.*, the affidavit in support of the warrant seeking Lewis' Verizon information must fail.

That the material aspects of the affidavit are factually untrue; appear to be material misstatements. When removed, the affidavit fosters no legal assertions to supplement the

⁵ *Illinois v. Gates*, 103 S.Ct. 2317 [1983]

opinions furthered in support of the affiant of the relief sought. See, *Gates, Id.*; *Aguilar, Id.*; *Franks, Id.*

ISSUE II

Affidavit in Support of an Application for a Search Warrant [Google Email Address and Google Voice Number]

Predicated upon information obtained in August via the Verizon warrant, the government filed an Affidavit in Support of an Application for a Search Warrant, associated with the "Google E-mail Address Juslew352@gmail.com and Google Voice Number (727) 279-0008 that is Stored at Premises Controlled by Google, Inc." [See **Exhibit B**] in September; which is deemed part hereof and incorporated, herein, requesting access information to the Google Voice Telephone Number (727) 279-0008. The search warrant was subsequently obtained and executed.

That predicated upon the apparent chronological order of the government's activity, the Verizon subpoena and the subsequent information provided to the government appears to have initiated from Verizon since the application and warrant reference an August filing date.

The affidavit [**Exhibit B**] regarding the Lewis gmail and Google Voice Number, specifically addresses the following:

13280 SW 61st Place Road in Ocala, Florida, Lewis' residential address, as the principal place of business for Page Plus Unlimited [*paragraph 7*][*Page Plus Unlimited's business address was 7500 State Road 200 in Ocala, Florida [this is a material misstatement affecting the validity of the application and should be excised]*

“Verizon found evidence that Lewis’ companies did not actually have employees and . . .” *[paragraph 18] [this is a misrepresentation; Lewis did in fact have employees. As such, it should be excised]*

“I independently reviewed an archive version of the website for Wireless Management Solutions as of January 2016”. *[paragraph 20] [There was more than one archive version; this is contrary information. This is not a full disclosure]*

Paragraph 28 is a misstatement. *[Lewis has no eBay sale listing and, therefore, it should be excised]* and is misleading.

Paragraph 29, in total, *[does not reference Justin Lewis and as such, is superfluous and should be excised]*.

Paragraph 30 references Google and telephone numbers associated with a third party and not that of Justin Lewis. *Nonetheless, the information contained, therein, is “inappropriately” being attributed to Mr. Lewis and is a misrepresentation, misleading and, therefore, should be excised]*

Paragraph 32 references deposited funds credited into Lewis’ account from Paypal. “The eBay advertisement, Craigslist advertisement” *[Lewis states he did not advertise and this is a misrepresentation and should be excised]*⁶

Paragraph 35 references subscribers. “Such information can includes the subscriber’s full name, physical address, telephone numbers and other identifiers”. This

⁶ *Franks, Id.*

clearly support the forthcoming contention that the very provider would have direct access to all of Lewis' contact information, specifically his telephone number.

That *paragraph 36* references "In addition, e-mail providers often have records of the Internet Protocol address ("IP address") used to register the account and the IP addresses associated with particular logins to the account. Because every device that connects to the Internet must have an IP address, IP address information can help to identify which computers or other devices were used to access the e-mail account."

That *paragraph 39* references "Service establishment requires a United States telephone number".

Paragraph ____ references a conclusionary "There is probable cause to believe that the account and the telephone number described in attachment A were utilized . . ."

Attachment A then further specifically identifies the email address JusLew352@gmail.com and the Google Voice telephone number (727) 279-0008; the location of which can be readily determined, as previously discussed [via IP address] by the provider; yet, it does not, nor is it properly utilized in establishing the source telephone number regarding the address.

That the government's Attachment B I. a. references "The contents of all e-mails **fn⁷ associated with the account . . ." references what is to be seized.

⁷ ** Lewis attacks the utilization and referencing of his "e-mails" directly or as a source of opinion throughout the affidavit [See **Exhibit A; B; C**] since the legality of obtaining his e-mails has been challenged. **Note:** all emails, herein referenced are denoted by the symbols ** appearing next to their reference.

Roman numeral II under paragraph f. appears to be seeking “IP addresses, and other identifiers”.

A quick digression, herein, would allow a brief discussion in reference to Paragraph 18 U.S. Code, Section 2703 - required disclosure of customer communications or records in accordance with the Federal Rules of Criminal Procedure, allows a governmental entity to require the disclosure via provider of electronic communication service of the contents of a wire electronic communication, that is in electronic storage in an electronic communication system for 180 days or less, “only pursuant to a warrant” [emphasis added] issued using the procedures described in the Federal Rules of Criminal Procedure.

Subsection [b][1][A] allows same to be done without the required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure.

It is clear that the government did not provide prior notice to Justin Lewis of its efforts to obtain personal information sought - either Verizon or gmail and google related information.

Although unclear, in reading the sequence of events associated with the government’s preparation of the affidavits for the search warrants sought [**Exhibit A & B**], when the government did in fact intrude into the Defendant’s Verizon gmail and google information; whether within the 180 day period, referenced in Section [a] without pursuing a warrant. A deficient warrant predicated upon misstatements of material facts

or misrepresentations of material details relating to the information being utilized, as a predicate to obtain the warrant, is no warrant at all; and must fail. See *Franks, Id.*

Although a warrant was subsequently obtained to gain access related to the aforementioned activity of the Defendant's accounts - Verizon [**Exhibit A**], emails and telephone related activity [**Exhibit B**], it was obtained from patently invalid information and reckless assertions, not only as to the telephone number, but the identity of the subscriber and the related activity being attributed. Not only should the warrant, itself, fail and the time related restrictions associated with 18 U.S. Code, Section 2703, should come into play since the government would be proceeding under unlawful authority without a warrant! In either or both instances, the information obtained should be suppressed.

As previously indicated, it appears that Verizon located the eBay information with a designated phone number of (727) 279-0008, which, as previously referenced, appears on the account seizure warrant applications. It further appears that the Verizon information was incorrect and as so, was provided by the government relating to the eBay listing; which was incorrect. The government was then traveling on two fallacies - which were utilized, via warrant applications, and subsequent issued warrants to inappropriately obtain information utilized in its prosecution of Mr. Lewis.

It must be assumed that the government, either actually view the listing or Verizon's alleged copy of same? Since the government claims that they have "investigative means" and have determined that the phone number (727) 279-0008

belongs to Justin Lewis, which is not the case. **[Exhibit A Paragraph 9]** [Once again, this is a misstatement of material fact and as such, should be excised] *Franks, Id.*

It further appears that the government's service of a search warrant on eBay, believing the phone number belongs to Justin Lewis, somehow [?] finds a Craigslist ad that matches the phone number. An *assumption* [opinion] is made that this eBay activity is Mr. Lewis'. [This is a representation predicated upon opinion and should be excised] ; *Gates, Id.; Franks, Id.*

Subsequently after the fact, the FBI addresses its error - misstatement and misrepresentation of fact, regarding the service of a gmail search warrant with the phone number (727) 279-0008. Since it concludes, at some point, that this is not Justin Lewis' phone number predicated upon the fact that it does not appear in the subsequent search warrant? [See, E-Bay search warrants]

Nonetheless, a new gmail warrant now states that this eBay listing belongs to Justin Lewis and it further appears that the information contained in the warrant becomes interchanged [example: the eBay listing belongs to Ms. Maloney, with the phone number being Mr. Lewis'; the gmail phone number belonging to Ms. Maloney and the eBay listing belong to Mr. Lewis]. The inference being made, herein, is predicated upon two search warrant dates: one filed 8/25/17 and the other filed 4/19/18; supports the conclusion that the initial search warrant was obtained under "false pretenses and the information contained, therein, incorrect and subsequently had to be corrected?" The Lewis' gmail was initially erroneously presented as the primary and supporting evidence

for the government's warrant application, while his alleged eBay listing is never mentioned or found until the second search warrant?

Mr. Lewis' argument is furthered by referencing the government's affidavit **[Exhibit B]**, itself, identifying the relationship regarding the "data sought" to a specific electronic device being based upon identification of an IP address.

It should be well noted, that nowhere within the affidavit submitted for the seizure and subsequent search of the Defendant's gmail and alleged google telephone number [727] 279-0008 **[Exhibit B]** is an IP address established for the Defendant's residence "Premises", which became the subject matter of the government's subsequent application **[Exhibit C]** for a search warrant to seize electronic devices located, therein. "Premises"

There is no indication that an IP address was ever obtained, linking the Justin Lewis' Verizon emails and to the google telephone number [727] 279-0008; more particularly, the location of same being at the Lewis residence "Premises", disclosed.

That the government's efforts in obtaining emails associated with google telephone number [727] 279-0008 were clearly erroneous. The telephone number listed, is listed to a third party, and has an IP address associated with 7500 Southwest Highway 200 in Ocala, Florida, and not 13280 SW 61st Place Road, Ocala, FL "Premises", the residence of Justin Lewis.⁸

⁸ The issue is carried over and discussed in greater detail regarding Suppression Issue III.

Extensive information, obtained by a tainted application for the issuance of a search warrant [**Exhibits A & B**] is further obtained for the warrant and as such, it fails.

WHEREFORE, without excised endeavors, the affidavits utilized to obtain the warrant are tainted and are a nullity. Excising the mistakes; misinformation and unsupported opinions even further, strengthens this already credulous argument since it would make the affidavit “non seismic”⁹

**SUPPRESSION: AS TO ISSUE III
[Supporting Facts and Argument]**

That the government, herein, relied on its affidavit in support of an application under Rule 41 for a warrant to search and seize, directed at Justin Lewis’ residence located at 13280 SW 61st Place Road in Ocala, Florida “Premises”, and that the warrant and seizure did in fact occur and take place on the 7th day of February, 2018. See, **Exhibit C** attached, hereto: [**Exhibit C: Application for Search Warrant**]¹⁰

⁹ To paraphrase an *opinion*, the affiant, in his presentation to the Magistrate Judge. See, f.n.32

¹⁰ **NOTE:** That the government’s affidavits in support of the search warrant [**Exhibits A & B**] are attached, hereto, and made part, hereof, by reference.

However, the government’s affidavit in support of the search warrant regarding the Lewis residence “Premises” has been incorporated, within, the body of the Motion to Suppress, and has been referenced by the Defendant with specific allegations towards portions, thereof, relating to untruthfulness, misstatements or distortion of the truth, all being specifically *italicized* and addressed. It has, also, been marked as an ancillary **Exhibit C** and attached, hereto, for the purposes of direct Court reference.

That the government’s master Affidavit relating to the subsequent search warrant for review of the internal information obtained in the electronic items

The information obtained from the previous executed search warrants [**Exhibits A, B & E**] was then carried over and incorporated, part and parcel, into the Affidavit for a Search Warrant for the Lewis “Premises” [see **Exhibit C**], which is made part hereof and assimilated, herein, and is addressed in accordance.

PREFACE [CAVEAT]

The Affidavit in Support of the Application for “Verizon” Search Warrant [Exhibit A] maintains a *patent* deficiency on its face, as previously discussed, and as such, those deficiencies are carried over utilizing a falsehood of telephone number of (727) 279-0008 into its Google and eBay investigatory activity, which in turn is also tainted, as previously discussed, as to the information provided to the Magistrate Judge. That the information contained in **Exhibits A, B & E**, were carried over in the government’s application for a search warrant relating to the Lewis’ residence “Premises” which is now further discussed:

The “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct. 1371, 1380 (1980). The Fourth Amendment protects “[t]he right of people to be secure in their persons... papers, and effects, against unreasonable searches and seizures” and also

seized from the Lewis “Premises” is attached, hereto, and referenced, accordingly, and marked as **Exhibit D**.

requires warrants be “particular[ized] and supported by probable cause.” *Id.*, 445 U.S. at 583-584, 100 S.Ct. at 1378-1379.

The Affidavit [**Exhibit C**] regarding the Lewis residence, states as follows:

AFFIDAVIT IN SUPPORT OF AN APPLICATION
UNDER RULE 41 FOR WARRANT TO SEARCH AND SEIZE

I, Brannon Baxter, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the premises known as 13280 SW 61" Place Road, Ocala, Florida, 34481 , hereinafter "the Premises," further described in Attachment A, for the things described in Attachment B.

2. I am a Special Agent with the Federal Bureau of Investigation (FBI). I have been an FBI Special Agent for more than thirteen years and am currently assigned to the Jacksonville Field Office, Gainesville Resident Agency. I have previously been assigned to both the New Haven (Connecticut) Field Office and the Miami (Florida) Field Office. My duties and responsibilities have included investigating crimes including mail fraud, wire fraud, money laundering, and a variety of other complex financial crimes. I have also assisted in the prosecution of those crimes. I have received training regarding complex financial frauds, including wire fraud and mail fraud. I have received training and have experience with the execution of search and seizure warrants.

3. The facts set forth in this affidavit are based on my own personal knowledge;

knowledge obtained from other individuals during my participation in this investigation; interviews of cooperating witnesses; my review of documents related to this investigation; communications with others who have personal knowledge of the events and circumstances described herein; and information gained through my training and experience. Because this affidavit is submitted for the limited purpose of obtaining a search and seizure warrant, it does not set forth each and every fact that I or others have learned during the course of this investigation.

FACTUAL BACKGROUND

4. At all times relevant to this affidavit, Justin Lewis ("Lewis") was a resident of Ocala, Florida, and operated a number of companies, including Page Plus Unlimited, LLC ("Page Plus Unlimited"). Linda Maloney ("Maloney") is Lewis's mother. At all times relevant to this affidavit, Maloney also operated a number of companies, including Razor Repair ("Razor Repair"). Nicole Sorrentino ("Sorrentino") is Lewis's girlfriend. Lewis and Sorrentino reside together at the Premises to be searched.

5. Page Plus Unlimited was incorporated in the State of Florida in December of 2016.¹¹ Records with the State of Florida identify Lewis as the CEO for Page Plus Unlimited and the Premises as the principal address and mailing address

¹¹ **Defendant states:** Done at the request of Verizon representative [**therefore, not a full disclosure**] *Rule, Id.*

for Page Plus Unlimited.

6. Razor Repair was not incorporated in the State of Florida. Multiple online sources establish that *Razor Repair conducted business at 7500 State Road 200 in Ocala. That business location was owned by Linda Maloney, who operated other businesses at that same address.*¹²

7. Verizon Wireless ("Verizon Wireless" or "Verizon") is a telecommunications company that is a wholly owned subsidiary of Verizon Communications, legally known as Cellco Partnership. Verizon is the largest telecommunications provider in the United States and is headquartered in Basking Ridge, New Jersey.

PROBABLE CAUSE

Lewis Enters Into Contracts With Verizon Wireless In Which He Promises Not To Resell Wireless Services

8. In September of 2015, Justin Lewis, d/b/a Razor Repair, entered into a corporate contract With Verizon Wireless (hereinafter, the "Razor Repair Contract"). The contract identifies Justin Lewis as Razor Repair's authorized contact. Verizon Wireless submitted the contract to Lewis via his e-mail address, JusLew352@gmail.com. Verizon Wireless tracked the progress of the contract's approval through Lewis's e-mail, noting the dates the contract was sent, viewed, e-

¹² **Defendant states: It should be noted, that Justin Lewis maintained no proprietary interest in *Razor Repair*.**

signed by Lewis using an electronic device, and returned to Verizon Wireless, all of which occurred on September 28, 2015.¹³

9. In November of 2015, Justin Lewis, d/b/a Page Plus Unlimited, entered into a corporate contract with Verizon Wireless (hereinafter, the "Page Plus Unlimited Contract"). The contract identified Lewis as Page Plus Unlimited's authorized contact and the Premises as the business address. Verizon Wireless submitted the contract to Lewis via his e-mail address, JusLew352@gmail.com. Verizon Wireless tracked the progress of the contract's approval through Lewis's email, noting the dates the contract was sent, viewed, e-signed by Lewis using an electronic device, and returned to Verizon Wireless, all of which occurred on November 20, 2015.

10. The Razor Repair Contract and Page Plus Unlimited Contract (hereinafter referred to collectively as the "Contracts") allow the customer (Razor Repair and Page Plus Unlimited) to purchase wireless service and equipment at discounted prices for its employees' business use and machine-to-machine data service for its own business use. It also allows the customer's employees to receive discounts on their personal lines of wireless service. The Contracts allow the customer to purchase unlimited data plans at a rate much lower than such plans can

¹³ Affiant omits the business address associated with the contract was 7500 Southwest Highway 200 in Ocala [as opposed to the "Premises". Also, it should be noted that there is no mention of "no reselling" in the email.

be purchased by non-corporate customers. For example, many of the lines obtained by Razor Repair and Page Plus Unlimited cost a flat rate of \$11 .99 plus \$29.99 for plan features, further reduced by an 8% corporate plan discount, netting a cost of approximately \$40 per line, a rate substantially reduced compared to individual unlimited data plans.¹⁴

11. *The contracts prohibit third parties from purchasing wireless service or equipment under the Contracts. [This is a misstatement and should in fact be excised. Franks, Id.¹⁵] The Contracts also prohibit the customer from reselling wireless service or using machine-to-machine lines bundled with, or embedded into, products or services that the customer sells to third parties. Verizon regularly conducts internal audits to identify potential resellers.*

Verizon's Discovery of Lewis's Reselling Activities

12. *In November of 2015, Verizon identified Lewis as a potential reseller.¹⁶* Verizon utilized data analytics software to identify Verizon customers with a high number of lines per account and having a high volume of data usage (exceeding 25 gigabytes per month). On average, users associated with Lewis's two companies

¹⁴ There are no factually unlimited data plans. They do not exist. This is a misstatement.

¹⁵ *Rule, Id.*

¹⁶ **Defendant states: It is a query to the veracity of the follow-up allegations when in fact, if this was known at the time, why was the contract not terminated?**

exceeded 230 gigabytes of data used per month. Users exceeding 20 gigabytes of monthly data use represent the top 1% of data users on Verizon's network. A Verizon representative categorized Lewis's data consumption as "the top 1% of the top 1%."

13. As part of their investigation, Verizon conducted open source research on Lewis and his companies. *Verizon's internal investigation into Lewis's two companies showed that neither company maintained more than three employees. Verizon identified eBay advertisements for unlimited Verizon data that they traced to Lewis through the listed telephone number in that advertisement. [This is a false statement. There was no eBay listing for Mr. Lewis nor a referencing telephone number for Mr. Lewis and this should be excised].* Verizon discovered a business website for another of Lewis's companies, *Wireless Management Solutions, which offered unlimited data plans with no contract. [This is conjecture (opinion) and is misleading. It distorts the truth. There were no carrier names listed. It was just a website, not a company. The statement should be excised].*¹⁷

14. Lewis' advertisements showed Lewis offered data plans for as much as \$200 per month. Lewis typically paid Verizon approximately \$40 per month for each unlimited data line he obtained from the company. *[This is a false statement and should be excised; Lewis never advertised]*¹⁸ In support of this investigation, Verizon provided

¹⁷ *Franks, Id.*

¹⁸ *Franks, Id.*

data showing Lewis had obtained hundreds of unlimited data lines for each of his two companies. Verizon provided a calculation showing it had incurred losses of potential revenue approximating \$6 million due to Justin Lewis's conduct as a reseller of Verizon Verizon's data services.¹⁹ ***[The remaining portion of the paragraph is misleading and should be excised].***²⁰

15. Lewis obtained approximately \$90,000.00 worth of subsidized smartphones (at prices approximating 25% of retail costs) through his corporate agreements with Verizon. Verizon “suspected”²¹ Lewis similarly sold those phones over the internet and that the phones were not utilized by corporate employees of either Razor Repair or Page Plus Unlimited.²² ***[This is not supported by any factual allegations, herein, or anywhere else in the affidavit, and is, therefore, opinion. This should be excised]***²³

16. In *January of 2017*, Verizon issued termination letters to Lewis's two

¹⁹ Defendant states, once again, Verizon apparently encouraged its alleged losses by allowing Lewis to conduct his alleged activities for an additional thirteen (13) months, thus compounding their losses - which in reality, were their gains, at the expense of Lewis.

²⁰ *Franks, Id.*

²¹ *Id.* [see, *Illinois v. Gates*, 103 S.Ct. 2317,2332 [1983]]

²² Defendant states, additionally, if Verizon was of the belief - over thirteen (13) months of an investigation, that Mr. Lewis was re-selling, without Verizon’s permission, why would they encourage him to purchase so much equipment. which was not disclosed to the Magistrate Judge.

²³ *Gates, Id.*

companies, *citing unauthorized reselling activity as the justification for termination. [This is a somewhat misleading statement. The letter directed itself to equipment with a “one sentence” mention of reselling. Additionally, factually, Lewis was never terminated until after his arrest in July of 2018].*²⁴ The following week, Lewis contacted V.F. at Verizon, who was the Director of Sales Compliance. V.F. spoke with Lewis on at least four occasions. *During those conversations, Lewis claimed to have 78 physical storefronts where he sold cellular products. [This is a misstatement and distortion]* Lewis claimed the telephones and data lines were provided as business expenses and that Lewis was "overly generous" in handing out the data plans to his employees at those physical stores. *Lewis provided a nonsensical explanation [affiant’s opinion and should be excised]*²⁵ about why he entered into two corporate agreements with Verizon, including one with Razor Repair, which he acknowledged was his mother's company (instead of just one with Page Plus Unlimited).²⁶ Lewis said the Wireless Management Solutions website was a dormant website for a business idea he had since abandoned.²⁷ Prior to the communications

²⁴ *Gates, Id.*

²⁵ *Gates, Id.; Franks, Id.*

²⁶ Defendant states **this is a mis-characterization**. If the explanation was so nonsensical, why not terminate instead of offering current pricing? **This description is not germane, predicated upon opinion and should be excised.** *Franks, Id.*

²⁷ Defendant states it should be noted that it was abandoned in 2013 as opposed to the imputation that it was most recently abandoned.

with V.F., Lewis communicated with an Ocala-based Verizon representative who reported that Lewis told him Page Plus operated stores all over Florida and Georgia.

[This, again, is a misstatement of fact. Lewis' company is Page Plus Unlimited, not Page Plus. Page Plus operates stores in Florida and Georgia and is totally unrelated to Page Plus Unlimited, Mr. Lewis' company. Again, this is a misstatement of fact and should be excised].²⁸

17. I independently reviewed an archived version of the website for Wireless Management Solutions as of January 2016. *The homepage for that website included a slogan "Never a Contract: The No Contract Company." The website also advertised that the company offered plans for tethering data for \$199.99 with no contract, no text messages, and no voice services. [That the information contained, therein, is superfluous and unrelated to the activity complained about. There was no carrier listed on the website. This has nothing to do with Verizon, it is an intentional misleading distortion and, therefore, it should be excised.]*²⁹ The website also contained an "Our Mission and Purpose" section which provides: "The purpose of WMS is to provide the public with better broadband options compared to your limited and expensive tiered options. *We are an account reseller and management company. [This is a confirmation that Page Plus Unlimited and Page Plus Cellular are in fact license resellers, via contract of June 2015 via a third party with authority to resell*

²⁸ *Franks, Id.*

²⁹ *Franks, Id.*

*wireless services for Verizon, T-Mobile, AT&T, Sprint, etc. Therefore, the purpose of the statement is a mis-characterization of the facts and as such, should be excised.]*³⁰

We believe unlimited bandwidth should be for all.” The website contained an image of two hands holding a contract while tightly bound by rope with a diagonal red line through the center of the image. *Funds for service obtained through the website were to be paid through Paypal. [This is a false statement. There existed no Paypal nor check out button on its January 2016 site. That information should in fact be excised].*³¹

18. Page Plus Unlimited had a valid Federal Employee Identification Number (FEIN). According to the State of Florida Division of Corporations, Page Plus Unlimited's FEIN was 47-5545056. The application Lewis submitted to Verizon included the FEIN as 47-4967751 for Razor Repair. The *FEIN 47-4967751* was not listed in association with any business within the Florida Department of State, Division of Corporation's database ("Sunbiz"). Likewise, Razor Repair was not incorporated in the State of Florida; a search of Sunbiz for Razor Repair yielded no results.

19. The Florida Department of Economic Opportunity (Florida DEO - formerly the Florida Department of Labor) maintained corporate employee records, including wage and tax records. I submitted a request for employee and wage

³⁰ *Gates, Id.*

³¹ *Franks, Id.*

records for both Page Plus Unlimited and Razor Repair³² by submitting the FEINs Lewis provided to Verizon to the Florida DEO. On August 28, 2017, I received notice that the Florida DEO did not possess any records regarding employees for either of the companies.

20. I have collected and reviewed records from numerous financial institutions, but I have identified *almost [opinion]* no evidence of Lewis maintaining employees.³³ In total, only one individual received funds from any of those accounts suggestive of employment. That "sub-contractor" received fifteen checks from Lewis spanning a period from June through September of 2017, with those checks totaling \$5,558.01. That relationship appears to be informal, *as Lewis wrote on the memo line of one of those checks "slave" [This is an assumption (opinion) and a misstatement and should be excised. The nomenclature was written by a third party, recipient; even so, it is a character without purpose]*³⁴; while all the other checks broadly referenced sub contract work.

Lewis Acquires New Entities To Conceal His Reselling Scheme

³² **Razor Repair, originally referenced in paragraph 6, was owned solely by Linda Maloney and Page Plus operated at the same store.**

³³ Almost implies that there was some evidence. It is being presented in the Negative as a misrepresentation, although a minor detail, creates a deliberate distortion.

Andrew Mitchell and Jeremiah Holfman were in fact employees of Justin Lewis.

³⁴ *Gates, Id.; Franks, Id.*

21 . Following Verizon's discovery of his reselling activities through Razor Repair and Page Plus Unlimited, *Lewis acquired [this is a misstatement - it was Andrew Mitchell] two new corporate entities, International Technology Solutions and Paxton Industries [Paxton Industries account was declined. No contract was signed. Non-disclosure omission and should be excised]*³⁵, and did so through the use of an alias, to conceal his identity and his reselling activities from Verizon *[this is an opinion and misstatement and should be excised]*³⁶.

22. On September 29, 2017, I executed a search warrant on Lewis's e-mail *[***³⁷ *the predicate upon which the search warrant was obtained is challenged (see Suppression Issues I and II referencing Exhibits A & B and thus, tainted; as such, would carry over to the "legality" of support information in an effort to establish probable cause for the issuance of the search warrant at the Lewis residence "Premises". See, Wong Son] account juslew352@gmail.com I identified numerous pertinent e-mails [**] during review of those records relating to Lewis's reselling scheme and his efforts to fraudulently conceal his reselling activities from Verizon [This is an opinion and conjecture on the part of the affiant and as such, should be excised]*³⁸,

³⁵ See, *McCarty, Id.*; *Davis, Id.*; *Franks, Id.*

³⁶ *McCarty, Id.*; *Gates, Id.*; *Franks, Id.*

³⁷ ** Once again, the emails were illegally obtained. As referenced: see Defendant's f.n. 6

³⁸ *Gates, Id.*; *Franks, Id.*

including e-mails relating to *Lewis's acquisition of International Technology Solutions and Paxton Industries. [This is a misstatement. The activity was that of Andrew Mitchell and as such, it should be excised.]*³⁹

23. International Technology Solutions was incorporated in the state of Wyoming in October of 2015 by Capital Administrations, doing business at 1712 Pioneer Ave, Cheyenne, Wyoming. In January of 2017, *Lewis began e-mail ** communications with Wyoming Corporate Services (WCS) to acquire International Technology Solutions [done on behalf of Andrew Mitchell. The information is misleading and should be excised] and on January 18, 2017, paid \$1 ,095.00 to WCS for the company. Lewis utilized his e-mail account ** jus1ew352@gmail.com to obtain virtual office space in a building in Cheyenne, Wyoming for International Technology Solutions. Lewis represented himself to be an individual with the initials "A.M." in his communications with WCS. WCS mailed documents to A.M. [false] at 13280 SW 61st Place Road in Ocala, Florida, which is Lewis's residential address and the PREMISES to be searched.*

24. On February 8, 2017, International Technology Solutions entered into a contract with Verizon that was substantially similar to the Page Plus Unlimited and Razor Repair Contracts. The contract prohibited reselling wireless services. *The contract was signed by A.M. Lewis used the identity of A.M. in correspondence between Verizon and International Technology Solutions to prevent Verizon from*

³⁹ *Franks, Id.*

*knowing Lewis was associated with the company. [This is a mis-characterization. It implies that Lewis is in fact A.M. and that he signed A.M.'s name. Not only is this an opinion in an effort to distort, but it is misleading state of fact and it is untrue and should be excised.]*⁴⁰

25. Paxton Industries was incorporated in the State of Delaware in February of 2016 by the Resident Agents Inc., doing business at 8 The Green, Dover, Delaware. In February and March of 2017, Lewis exchanged a series of e-mails with the Delaware Registered Agent to *acquire* Paxton Industries. *[Lewis acquired nothing. A.M. acquired. This is a misstatement of fact and should be excised]*⁴¹ Lewis also obtained virtual office space for Paxton Industries at the 8 The Green, Dover, Delaware address.⁴² On March 29, 2017, Lewis received an e-mail** from the Delaware Registered Agent via his juslew352@gmail.com e-mail address, addressed to A.M., stating "your Delaware phone number is 302-xxx-6445. We will forward all calls to 352-xxx-5718." 352-xxx-5718 is Lewis's telephone number. On June 29, 2017, Lewis sent an e-mail to Nicole Sorrentino which included an image of the *two page Articles of Incorporation for Paxton Industries*.⁴³

⁴⁰ *Franks, Id.*

⁴¹ *Franks, Id.*

⁴² On behalf of third parties - Andrew Mitchell, and thus a non-disclosure

⁴³ *Franks, Id.*

26. *On March 22, 2017, Paxton Industries entered into a contract with Verizon that was substantially similar to the Page Plus Unlimited and Razor Repair Contracts. This contract also prohibited reselling wireless services. The contract was signed by A.M. The A.M. signature was a digital reproduction of the A.M. signature used for the International Technology Solutions contract. [Paxton Industries was not set up as an account. Any subsequent activity was set up by third parties. That this paragraph is a misstatement and distortion of the truth and as such, should be excised]*⁴⁴

27. Lewis is Facebook friends with A.M. In January of 2017, Lewis emailed himself from Kaoss22@gmail.com to juslew352@gmail.com a copy of A.M.'s driver's license.' *Lewis similarly e-mailed himself multiple versions of A.M.'s resume. [This is a misstatement. Lewis did email himself A.M.'s driver's license and his resume. This is a mis-characterization and a distortion of fact and should be excised]*⁴⁵ Those e-mails ** occur within one week of Lewis's communications with the Wyoming registered agent to *acquire [opinion]* International Technology Solutions and one month before Lewis's negotiations with the Delaware registered agent to acquire Paxton Industries.

⁴⁴ *Franks, Id.*

⁴⁵ *Gates, Id.; Franks, Id.*

Defendant states that A.M. was looking for job employment and requested assistance from Lewis in preparing his resume. An alternate to the affiant's imputed reference.

28. Verizon provided me with a multi-tabbed spreadsheet containing data on Paxton Industries. One tab included a screenshot from Paxton Industries' website, identifying the company as a "team of Consultants and thought leaders specializing in Business Transformation, Business Process Consulting, Information Technology (IT) Consulting, and Operational Excellence." The address on the website is the same virtual office address identified in Lewis's e-mails, located in Dover, Delaware. Another tab in the Verizon spreadsheet showed a loss of potential revenue for the unlimited data provided through that contract approximating \$25,000.⁴⁶ Points of contact for the account have included Nicole Sorrentino via the e-mail address Nicole.S@Libertymedicalmanagement.com, A.M. via addresses that reference A.M.'s first or last name with e-mail domain addresses of @globaltechit.net and @paxtonindustries.com, and Justin Lewis via the address juslew352@gmail.com.⁴⁷

29. *On October 5, 2017, Verizon complied with a request to reassign a telephone line from the Page Plus Unlimited account to the Paxton Industries account, which suggests that Lewis is operating both companies in furtherance of his scheme to defraud. [This is predicated upon the affiant's opinion.⁴⁸ Additionally, this is*

⁴⁶ **Defendant states the amount is inflated.**

⁴⁷ **Defendant states it is inconsistent if concealment is the plan alluded to by the affiant.**

⁴⁸ *Gates, Id.*

*false and should be excised]*⁴⁹

30. In June of 2017, Lewis and Sorrentino acquired Liberty Medical Management from Wyoming Corporate Solutions. Liberty Medical Management was incorporated in Wyoming and possessed virtual office space in the same building as International Technology Solutions. A June 2017 e-mail ** exchange between Lewis and Sorrentino showed the two collaborating about a telephone script for Liberty Medica Management, with prompts for buttons 1-4 on the phone for physicians or patients engaging in medical studies. Sorrentino was legitimately employed by the Magnolia Research Group, which conducted medical clinical trials. Verizon representatives confirmed that a *corporate agreement between Verizon and Liberty Medical Management existed [This portion is a false statement should be excised]*⁵⁰ and had approximately 10 corporate lines assigned to it and that Verizon sustained losses through data use from that corporate account.

**Lewis' Other Statements in E-Mail Communications Regarding
His Reselling Activities and His Scheme to Defraud Verizon**

31. There is a probable cause to believe that *Lewis possesses electronic devices that contain evidence of his scheme to defraud [this is conjecture, once again, what devices and their location?]*⁵¹ *This is false and should be excised]*⁵². E-mails ** I obtained in response to the search warrant for juslew352@gmail.com show that while Lewis was reselling Verizon unlimited data he knew Verizon was making efforts to identify and terminate reselling activity occurring in violation of its contracts. **[Opinion]**

⁴⁹ *Franks, Id.*

⁵⁰ *Franks, Id.*

⁵¹ *Gates, Id.*

⁵² *Gates, Id.*

32. *About one month after Lewis entered into the Razor Repair Contract and just prior to the date of the Page Plus Unlimited Contract, both of which expressly prohibit reselling [this factual allegation is independent and should not be coordinated with any other conjecture (opinion) by the affiant. It is manipulating and a mis-characterization and should be excised]*⁵³, Craigslist submitted to juslew352@gmail.com an automated response on October 30, 2015, indicating a posting had been flagged for *removal for violation of Craigslist's terms of service. That posting was titled "Selling [this is a mis-characterization. The selling was under everything wireless account. It should be noted that the statement specifically and strategically omits identifying "what business entity". Furthermore, everything wireless had a reseller contract before 2013. Therefore, the allegations, if not totally false, are clearly distorting and misleading and should, therefore, be excised]*⁵⁴ my Verizon home based business 3000.00 FIRM" and stated the following: "Over the years I have been collecting Unlimited Data Lines from Verizon and reselling them. I currently have 7 lines that I am looking to sell at 428 dollars a line. The lines cost about 123 dollars⁵⁵ each month (total 860.00 per month). You can resell these line (sic) for 200+ each as a tiered 80 gig plan goes for 800 dollars per month (per Verizon). The lowest you could make in profit is about 80 dollars per line. Don't believe check eBay?! Basically that means you could pay off your initial investment in about 5 months."

33. *Lewis's statement in the advertisement [Lewis did not advertise. Additionally,*

⁵³ *Rule, Id.; Franks, Id.*

⁵⁴ *Lippay, Id.; McCarty, Id.*

⁵⁵ The previous amount referenced forty dollars and thus, an inconsistency.

*what advertisement? This is misleading and should be excised]*⁵⁶ that he had been reselling prior to November of 2015 is corroborated by evidence I obtained from a number of financial institutions after serving them with grand jury subpoenas. According to those records, *Lewis received deposits from unlimited data customers prior to the Page Plus Unlimited Contract and the Razor Repair Contract.* The investigation is ongoing concerning how Lewis was obtaining unlimited data plans for these customers from Verizon.

34. In a five e-mail exchange occurring July 21-22 of 2016, Lewis communicated with "Chris" via the e-mail address info@RVmobileinternet.com (*some of Lewis's internet advertisements for unlimited data indicated the deal was "great for truckers and RV users"*) ***[Lewis never advertised. This statement intentionally imputes unrelated activity to Lewis. This statement is false, misleading and should be excised]***.⁵⁷ The e-mail nickname for that address was RV Mobile Internet Resource Center. An open source query for RV Mobile Internet Resource Center identified a website including a YouTube video from "Chris and Cherie" explaining the purpose of their website, which offered tech solutions to persons traveling the open roads in addition to information sharing between other travelers. ***[In fact, the entire paragraph is unrelated to Lewis, is misleading and should be excised]***⁵⁸

35. On July 21, 2016, in an e-mail ** to "Chris" regarding a Verizon termination letter, Lewis stated, "[t]his was from a seller that was leasing the lines out from Verizon that got caught. He is 1 of 3 sellers that we currently know of that have been shut down. Please do not mention anything about myself or this e-mail."

⁵⁶ *McCarty, Id.; Franks, Id.*

⁵⁷ *Franks, Id.*

⁵⁸ *Franks, Id.*

Lewis indicated he would send the letter to Chris as soon as Chris agreed to some non-disclosure conditions about the use of the letter. On July 21, 2016, Chris sent an e-mail to Lewis agreeing to the aforementioned non-disclosure terms. *On July 21, 2016, Lewis sent Chris a copy of the Verizon termination letter [This has nothing to do with Lewis. It is simply the referencing of communication information. As such, it is misleading and should be excised]*⁵⁹, which was dated July 13, 2016, and was signed by a Verizon "Senior Analyst in Executive Relations (whose name was redacted in the image)." *The letter indicated the termination was for reselling activity. [Once again, this is a misstatement by omission and should be excised. The documentation fails to acknowledge the fact that Lewis had a reseller's license under Page Plus and should be excised]*⁶⁰

36. In an e-mail to Chris on July 22, 2016, Lewis stated, "[t]here are a couple of very LARGE resellers. We pass information between each other regularly. If you haven't noticed, the smart ones got off eBay. *Verizon is currently buying the devices and finding out who the numbers belong to and canceling the account because ultimately this was a violation of Verizon's TOS (to resell services). [Once again, there's a failure to acknowledge that Lewis is operating under a reseller's license; a non disclosure omission and misleading and should be excised]*⁶¹ I believe its section 8. 1 ." Later, Lewis added: "PLEASE KEEP ACCOUNT SPECIFICS AND DATES CONFIDENTIAL AS WE DON'T WANT TO INCRIMINATE SOMEONE AS THESE DETAILS CAN SPECIFIC (sic) AND LEAD CORP TO A CERTAIN INDIVIDUAL." *[Taken out of context. A non-disclosure intended to distort and*

⁵⁹ *Gates, Id.*

⁶⁰ *Franks, Id.*

⁶¹ *Franks, Id.*

should be excised]⁶²

37. Lewis also had e-mail ** communications with one of his customers, Stuart Wacker whose e-mail address contains "Stoobie777." Wacker also appears to be another reseller. Wacker was occasionally associated with the nickname SouthSideData in Lewis's ** e-mail.

38. *On July 24, 2016, Lewis sent Wacker an e-mail ** that contained the following: "[to all clientele: We have received multiple reports about Verizon shutting down high usage users in an attempt to regain the threshold of tiered and expensive data structuring. ., let me be clear on this and tell you: REST ASSURED, WE ARE NOT AFFECTED BY THIS. WE HAVE, BEEN ASSURED THAT OUR ACCOUNTS AS RESELLERS AND GOVERNMENT ACCOUNTS WILL NOT HAVE THE ISSUE OF DATA CAPPING. WE CONFIRMED THIS WITH OUR MASTER REP WHO HOLDS A SENIOR POSITION AT VERIZON. THIS REP HAS BEEN ON OUR SIDE SINCE THE BEGINNING." Later in that e-mail **, Lewis stated: "[t]he only good part of this is if you are a current customer of ours and as long as monthly payment is made, consider yourself lucky, you will be able to keep your unlimited data plan." [This is misleading. Lewis does have a reseller's agreement under Page Plus Unlimited. Therefore, it is a misrepresentation and should be excised since it has nothing to do with Lewis' accounts]*⁶³

39. Lewis received \$92,959.62⁶⁴ from Stoobie's Electronics, presumably operated by Stuart Wacker, who utilized the e-mail address Stoobie777, as previously referenced. The funds from Stoobie's Electronics were deposited into a

⁶² *Davis, Id.; Franks, Id.*

⁶³ *Lippay, Id.*

⁶⁴ **Defendant states: this is exaggerated and should be \$12,000.00**

Paypal account maintained by Nicole Sorrentino.

40. Based on *Verizon's termination of Lewis's contracts [It should be noted that the contracts were never terminated. There is an indication that they would be. They weren't terminated until Lewis' arrest. As such, the statements are of a non-deliberately omitted material non-disclosure, misleading and should be excised]*⁶⁵, statements from *V.F.*⁶⁶, and review of the corporate contracts themselves, *Lewis knew he was neither an authorized reseller nor did he or his companies possess a "government account." [This is an opinionated statement; false in nature and should be excised]*⁶⁷. Further, *I have not uncovered any evidence that Lewis's reselling activity was approved by a Senior Representative at Verizon. [This is a misstatement and should be excised; what the agent fails to reference is the fact that Page Plus Unlimited was in fact acting as a reseller, and as such, it is a material non-disclosure and a distortion]*⁶⁸

41. A few days after the July 24, 2016 e-mail **, Lewis shared a communication with his clients reporting there was at least a temporary termination of his data plans for his customers, which he was attempting to resolve with Verizon, contrary to the statements made in the e-mail.

42. On January 2, 2017, in another e-mail to Wacker, Lewis stated, "I have some vital information for you. Verizon is cracking down on everybody. One hint is don't upgrade lines anymore... He just had an account with 25 lines go down.⁶⁹ I still have yet to get a letter or anything." Wacker invited Lewis to text and Lewis

⁶⁵ *Franks, Id.*

⁶⁶ **Defendant states: V.F. advised Lewis he perceived him as a "wholesale company"**

⁶⁷ *Gates, Id.; McCarty, Id.; Franks, Id.*

⁶⁸ *Franks, Id.*

⁶⁹ **Defendant states: this is referencing another reseller**

then provided Wacker a Skype username.

43. The communications with Chris, including the transmission of the letter terminating the unknown parry's account for reselling activity, were at least six months prior to Lewis's own receipt of similar letters. Lewis's communication with Wacker was approximately one month prior to Lewis's receipt of termination letters from Verizon.

44. During a review of e-mails ** obtained via the search of juslew352@gmail.com, a number of significant e-mails ** were identified showing Lewis used or intended to use the Premises in furtherance of the *fraud and further establishing probable cause that the Premises contains evidence of the fraud, including [This is predicated upon opinion]*⁷⁰:

a. A monthly mail forwarding agreement between Wyoming Corporate Services and International Technology Solutions, signed by "A.M." instructing that International Technology Solutions mail should be delivered to the Premises *[this is a misstatement and should be excised]*.⁷¹

b. A Registered Agent Services Agreement between Capital Administrations LLC and "A.M.," doing business as International Technology Solutions, with the Premises identified as the address;

c. A monthly mail forwarding agreement between Wyoming

⁷⁰ See *Gates, Id.* Also, it should be noted that the representations are predicated upon *emails* that were obtained, predicated upon information that was tainted, as previously referenced throughout Issues I and II **[Exhibit A & B]**

⁷¹ *Franks, Id.*

Corporate Services and Liberty Medical Management, signed by Nicole Sorrentino, instructing that Liberty Medical Management mail should be delivered to the Premises;

d. A Commercial Office Lease Agreement between Delaware Company House ILLC, whose address was 8 The Green, Dover, Delaware and Paxton Industries, "The Lessee," with the Premises identified as the address;

e. A "Member Enrollment Agreement for Wireless Services" between Sprint Solutions, Inc. ("Sprint") and Justin Lewis, doing business as Page Plus Unlimited. Lewis provided the Premises as Page Plus Unlimited's operating address;

f. A Mobile Business Agreement between AT&T and Page Plus Unlimited that identified the *Premises as the address for Page Plus Unlimited [this is a false statement and should be excised - the address for Page Plus Unlimited was 7500 State Road 200, Ocala, Florida. There was no agreement ever signed]*⁷²

g. Verizon Wireless bills with the Premises identified as a mailing address for Lewis;

h. Three bills with a mailing address for Lewis at the Premises

⁷² *McCarty, Id.; Franks, Id.*

from Los Angeles, California, based E-Wireless Communications, charging Lewis between \$121-\$124 per telephone line in October and November of 2015. The October bill showed the previous month's balance of \$860.00 had been paid. A December 2015 bill from E-Wireless Communications showed that Lewis was charged only \$1.04 . *In short, it appears prior to Lewis's contract(s) with Verizon he was paying approximately \$120 per line for data he was later selling to his customers, and after negotiating the fraudulent contracts with Verizon he only paid \$40 per line.* Further, once Lewis negotiated the terms of the corporate contract with Verizon allowing for the acquisition of unlimited data lines for \$40 per line, he ceased to pay the \$121-\$124 per line he had been paying to E-Wireless. ***[False allegation and should be excised]*** *Franks, Id.*

45. In summary, Lewis's e-mail ** communications obtained from Google included thousands of sent e-mails. Many of those e-mails were in furtherance of the scheme to defraud Verizon. Lewis sent e-mails related to management of the lines he obtained from Verizon, both to Verizon and parties to whom Lewis assigned the lines, facilitation of payment for those lines (including bills and invoices), the incorporation of *fictitious entities* ***[the entities cannot be fictitious if in fact they have been legally registered. This is a mis-characterization predicated upon opinion and should be excised]***⁷³ used to further cause financial harm to Verizon, maintenance of

⁷³ See, *Rule, Id.*; *Gates, Id.*; *Franks, Id.*

records related to Lewis's customers (via attached spreadsheets and lists of phone related data), and *tactics used to evade detection [these are conclusions and assumptions on the part of the affiant and, therefore, they should be excised]*⁷⁴ from Verizon.

46. Lewis submitted 553 e-mails ** to the domain @verizonwireless.com, 159 e-mails to the domain @unlimitedville.com, 22 e-mails to the domain @wirelessmanagementsolutions.com, 2 e-mails to the domain @unlimiteddata.com, 7 e-mails to the domain @wyomingcompany.com, 3 e-mails to the domain @companiesinc.com, and 7 e-mails to the domain @rvmobileinternet.com.⁷⁵

47. There were thousands of e-mails ** to the domain @gmail.com, many of which included substantive communications related to the scheme as well. *Lewis sent many e-mails to himself, himself as "A.M.," [This is false and is predicated upon opinion; should be excised]*⁷⁶ Nicole Sorrentino, and Linda Maloney. Lewis's e-mails to Sorrentino addressed customer payments, customer assignments to the various corporations involved in the scheme, troubleshooting customer internet access issues,

⁷⁴ *Gates, Id.; Franks, Id.*

⁷⁵ As previously indicated, all of Lewis' emails were inappropriately obtained and as such, should be suppressed and thus, excised from the application for search warrant regarding the "Premises". The information obtained from the emails has been identified by the utilization of ** throughout the warrant applications.

⁷⁶ *Gates, Id.*

telephone device hardware data, and the incorporation of the *fictitious corporations [once again, fictitious applies that they are non-existent. Also, the statement is predicated upon opinion. This is a misstatement and should be excised]*⁷⁷. Lewis's e-mails **to Maloney included instructions on communications with customers, troubleshooting customer internet access issues, and invoicing.

48. Lewis's e-mails ** included pertinent e-mail attachments including Adobe .pdf files, Microsoft Excel Files, and Microsoft Word files. These files were used to organize the vast amounts of data related to the *fraudulent [legal conclusion; predicated upon opinion and should be excised]*⁷⁸ activity, typically by listing customer names, their assigned telephone numbers, which of Lewis's companies the customer's line was affiliated with, the rate of payment the customers agreed to pay, and other similar information. Bills, invoices, receipts for payment, instructions on how to pay, scripts for services and hardware available to customers, incorporation documents for corporations used to harm Verizon, contracts and agreements regarding the operation of those corporations, and a variety of other related documents were observed during the review of the e-mail** production.

49. *There is probable cause to believe that Lewis used wireless telephone*

⁷⁷ *Davis, Id.; Franks, Id.*

⁷⁸ Additionally, there is no factual explanation of how Lewis was allegedly defrauding Verizon. *Rule, Id.; Davis, Id.; Gates, Id.; Franks, Id.*

*devices in furtherance of his scheme to defraud and that such devices contain evidence of the scheme. Over 1,000 e-mails ** contained "Sent from my iPhone" following the signature line of the communication. Lewis was responsible for many of those communications, including, among others, e-mails ** to Unlimitedville addressing billing and customer management, "MikeyLew" (presumed to be Michael Lewis) regarding administration to lines on Verizon accounts, Verizon data customers regarding billing and connectivity issues, and the RV Mobile Internet Resource Center regarding Verizon data blockages. Lewis exchanged numerous messages ** with Nicole Sorrentino, whose communications were also signed "Sent from my iPhone," about many facets of the fraudulent scheme, including billing, assigning customers and lines to specific accounts, and exchanges of Ebay shipping labels (presumably for the shipment of hardware such as Jetpacks to data customers). Because the examination of "Sent from my iPhone" messages was not exhaustive, there are probably many more examples of how Lewis and Sorrentino communicated with their smartphone devices in furtherance of the fraudulent scheme. **[The entire paragraph is nothing more than conjecture⁷⁹, predicated upon assumptions which are not supported in fact. They are mis-statements and as such, should be excised.]⁸⁰***

⁷⁹ Rule, Id.; Davis, Id.; Franks, Id.

⁸⁰ Rule, Id.; Davis, Id.; Franks, Id.

50. *Review of one of Lewis's Capital One Credit Card statements showed the purchase of at least six Apple Powerbook devices between October 2015 and April 2017. [This statement is misleading and false and distorts the truth.⁸¹ Lewis' credit card statement does not itemize purchases via description. It is based upon conclusion and should be excised]⁸².*

51. Lewis maintained a text file of a chat with a bank representative. That chat related to Lewis's complaint about the volume of checks he was receiving each month and the hassle of negotiating those checks. Lewis requested means to have checks automatically processed by the financial institution instead of having to be signed by him personally, which the representative explained was logistically not possible, as his endorsement was required. Chats are communications over the internet requiring computer hardware and internet access. Saving a text file of this type requires hardware and a storage medium, such as a hard drive. *[This is an inaccurate statement and is addressed in Defendant's supplemental argument]*

52. In my training and experience, I understand access to electronic mail is completed through hardware devices including desktop computers, tablets, and smartphones. Spreadsheet documents, such as those maintained by Lewis (as evidenced by those seen in the e-mail communications) can contain hundreds or even thousands of cells of data. Those documents are commonly stored and edited

⁸¹ *Franks, Id.*

⁸² *Davis, Id.; Franks, Id.*

based upon changes observed in the data being managed. Retention of these documents allows for continued edit of the data maintained in the spreadsheet. For example, databases maintained by Lewis included a column designating whether or not a line was "disabled." *Although Lewis did maintain a Google Cloud account, and there were records stored within that account, there were numerous files observed as attachments not located within Lewis's Cloud storage account. [This statement is materially false. Lewis maintained a Google drive and Google sheets in the cloud. Therefore, the remaining paragraph information is false and superfluous and should be excised.]*⁸³ *Insofar as those documents were retained for the purpose of orchestrating the scheme to defraud Verizon [opinion], and must be stored somewhere other than Lewis's Cloud account, the files must be maintained in an electronic medium*⁸⁴. Further, because management of spreadsheet documents via smartphone is *impractical [readily not so and can be accomplished without much effort]*⁸⁵ it stands to reason Lewis maintains other device(s) for that purpose.⁸⁶ *[should be excised]*

Lewis's Receipt of Funds from Unlimited Data Clients

⁸³ *Rule, Id.; Davis, Id.*

⁸⁴ Predicated upon opinion. *Gates, Id.; Franks, Id.*

⁸⁵ *Rule, Id.; Davis, Id.; Franks, Id.*

⁸⁶ Predicated upon opinion. *Gates, Id.; Franks, Id.*

53. Lewis received funds from hundreds of resale clients by multiple modalities and those funds were deposited into multiple accounts maintained by Lewis, Sorrentino, or Maloney. For the accounts I have reviewed to date, the total amount deposited in those accounts *exceeds \$3 million* (that total does include some inter-account transfers).

54. Between August 2015 and September 2017, Lewis received \$573,780.04 from Transfirst, a credit card processing company. Transfirst deposited these funds into Lewis's bank accounts at Ally Bank and Bank of the Ozarks.

55. Lewis also accepted payment directly into bank accounts. Banks directly receiving funds from Lewis's unlimited data customers include, but are not necessarily limited to, Ally Bank, Bank of the Ozarks, Centerstate Bank, Florida Credit Union, Fidelity Investments, and SunTrust Bank.

56. An e-mail Lewis submitted to a prospective customer on April 17, 2016, explains some of the various other methods customers could pay Lewis for unlimited data. In Lewis's response, he indicated discounted rates were available to customers who employed an E-pay service to pay for their monthly data plan. Lewis's e-mail then explained how to pay via the "Cash" by Square telephone app, "Google Wallet," "Chase Quick Pay," "Pop Money" bank transfers, "Paypal (Friends and Family)," and Personal or Business checks. Lewis finally stated "...we would be more than happy to utilize whatever works best for you. As long as we are not charged a

fee, we have no problem with accepting payment in that manor (sic)." Financial analysis has established Lewis did receive funds by each of these methods as well as others not listed.

57. Lewis did not maintain a Paypal account in his own name to receive funds from the sale of Verizon unlimited data plans. Instead, Lewis received funds exceeding \$400,000.00 from Sorrentino's Paypal account. Funds from this account were transferred to Sorrentino's SunTrust bank account and then to Lewis's Ally Bank account and Lewis's Florida Credit Union account. *Lewis also received funds from a Paypal account in Maloney's name. [This is a false statement and should be excised. Lewis received no money from Paypal in Maloney's name]*⁸⁷

58. Finally, Lewis has also unlawfully provided Verizon wireless services and products to customers of at least one other company. This company, which is operated by S.W., runs a website at Unlimitedville.com. Lewis received payments in excess of \$281,282.00 from Unlimitedville.com and/or S.W. These payments were deposited into Lewis's Ally Bank account ending in 9314 and his SunTrust account ending in 1977, and Sorrentino's Paypal account. Lewis and S.W. exchanged hundreds of e-mail communications regarding the management of data plan lines associated with Unlimitedville's arrangement with Lewis. Lewis shared spreadsheets with S.W. cataloguing the customers Lewis provided unlimited data to in association

⁸⁷ *Rule, Id.; Franks, Id.*

with Unlimitedville.

59. Lewis maintained banking relationships with no less than eight financial institutions, not including Paypal⁸⁸, even though the Paypal account operated by Nicole Sorrentino was associated with Lewis's residential address and his Florida Credit Union bank account. Seven financial institutions provided documentation to show Lewis provided the address of the Premises when opening the account and as a mailing address. All of those institutions received funds derived from the *fraudulent activity associated with Verizon unlimited data plans. [Once again, this is opinion and assumption and as such, should be excised]*⁸⁹

60. In addition, I have discovered at least two bank accounts controlled by Lewis in the name of the *fictitious entities [the entities cannot be fictitious if in fact they have been legally registered. This is a mis-characterization and should be excised]* International Technology Solutions and Paxton Industries, with "A.M." listed as the signatory on the accounts. *[A.M. did in fact sign on the accounts. The imputation that there was something sinister is predicated upon opinion. Therefore, it should be excised]*⁹⁰. Lewis also obtained money derived from the sale of Verizon unlimited data

⁸⁸ This is contrary to the previous representation attributing the Paypal account to Lewis. As such, either one is a misrepresentation [*Rule, Id.*] and is therefore misleading [*see, McCarty, Id.*] and should be excised. [*see, Franks, Id.*]

⁸⁹ *Gates, Id.*

⁹⁰ *Gates, Id.*

plans from accounts controlled by Nicole Sorrentino (via her Paypal account and SunTrust account) and Linda Maloney (via her Paypal account and Centerstate Bank account). ***[This is a false statement and should be excised]***⁹¹.

61. *There is probable cause to believe Lewis used financial transactions involving accounts in the names of others to conceal or disguise the source, origin, nature, ownership, or control of the proceeds his fraudulent conduct from his victims and others in violation of 18 U.S.C. § 1956(a)(1). ***[This is a factual misstatement and being false, is solely opinionated and, therefore, it should be excised]***⁹².*

62. *There is probable cause to believe that records from all of the accounts addressed above exist at the Premises. ***[This is a factual misstatement and being false, is solely opinionated and, therefore, should be excised]***⁹³*

TECHNICAL TERMS

63. Based on my training and experience, I use the following technical terms to convey the following meanings:

a. Internet: The Internet is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the

⁹¹ *Franks, Id.*

⁹² *Gates, Id.; Aguilar, Id.*

⁹³ Note: There is insufficient probable cause to have a nexus established between any documentation sought and the Lewis' "Premises". See the forthcoming argument.

Internet, connections between devices on the Internet often cross state and international borders, even when the devices communicating with each other are in the same state.

b. Storage medium: A storage medium is any physical object upon which computer data can be recorded. Examples include hard disks, RAM, floppy disks, flash memory, CD-ROMs, and other magnetic or optical media.

COMPUTERS, ELECTRONIC STORAGE, AND FORENSIC ANALYSIS

64. As described above and in Attachment B, this application seeks permission to search for records that might be found on the Premises, in whatever form they are found. One form in which the records might be found is data stored on a computer's hard drive or other storage media. Thus, the warrant sought would authorize the seizure of electronic storage media or, potentially, the copying of electronically stored information, all under Rule 41(e)(2)(B).

65. *Probable cause.* I submit that *if [the utilization clearly establishes the uncertainty and thus creates a “fishing expedition”]⁹⁴* a computer or storage medium is found on the Premises, there is probable cause to believe the records identified in Attachment B will be stored on that computer or storage medium, for at least the

⁹⁴ *Gates, Id.; Aguilar, Id.*

following reasons:⁹⁵

a. Based on my knowledge, training, and experience, I know that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person “deletes” a file on a computer, the data contained in the files does not actually disappear; rather, that data remains on the storage medium until it is overwritten by new data.

b. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space – that is, in space on the storage medium that is not currently being used by an active file – for long periods of time before they are overwritten. In addition, a computer’s operating system may also keep a record of deleted data in a “swap” or “recovery” file.

c. Wholly apart from user-generated files, computer storage media – in particular, computers’ internal hard drives – contain electronic evidence of how a computer has been used, what it has been sued for, and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory “swap” or paging files. Computer users typically do not erase or delete

⁹⁵ It follows that a police officer cannot make unilateral decisions about the materiality of information, or, after satisfying him or herself that probable cause exists, and merely inform the Magistrate or Judge of inculpatory evidence. See, *Wilson v. Russo*, 212 F.3d 781,787 [3rd Circuit 2000], in either of the related search applications.

this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.

d. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or “cache”.

e. Based on information previously addressed in this affidavit, I am aware that computer equipment was used to facilitate the execution of the fraudulent scheme to profit from the resale of Verizon unlimited data plans by Lewis and others. *There is reason to believe that there is hardware used in furtherance of that scheme currently located on the Premises. [This is conjecture. (See, Gates, Id.) In fact, there is no indication, whatsoever, establishing an IP address for any internet related equipment associated with Lewis’ operating email address of juslew352@gmail.com to be located at “The Premises”. This should be excised. The affiant may not rely on purely conclusionary assertions in the absence of any factual basis for them. (See, Gates, Id) Herein, the affiant is making representations predicated upon “ifs”; “mights”; “possibilities”; “could bes”]*⁹⁶

66. *Forensic Evidence.* As further described in Attachment B, this application seeks permission to locate not only computer files that might serve as direct evidence of the crimes described on the warrant, but also for forensic electronic evidence that establishes how computers were used, the purpose of their use, who used them, and when. *There is probable cause to believe that this forensic electronic*

⁹⁶ See, paragraph number 65; 66; 69 in the government’s application for search warrant for the “Premises”.

evidence will be on any storage medium in the Premises because: [this is clearly opinion but without substantiation and should be excised]⁹⁷

a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers, e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the computer was in use. Computer file systems can record information about the dates files were created and the sequence in which they were created, although this information can later be falsified.

b. Forensic evidence on a computer or storage medium can also indicate who has used or controlled the computer or storage medium. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, registry information, configuration files, user profiles, e-mail, e-mail address books, "chat, instant

⁹⁷ *Gates, Id.*

messaging logs, photographs, the presence or absence of malware, and correspondence (and the data associated with the foregoing, such as file creation and last-accessed data may be evidence of who used or controlled the computer or storage medium at a relevant time.

c. A person with appropriate familiarity with how a computer works can, after examining this forensic evidence in its proper context, draw conclusions about how computers were used, the purpose of their use, who used them, and when.

d. The process of identifying the exact files, blocks, registry entries, logs, or other forms of forensic evidence on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. While it is possible to specify in advance the records to be sought, computer evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

e. Further, in finding evidence of how a computer was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium. For example, the presence or

absence of counter-forensic programs or anti-virus programs (and associated data) may be relevant to establishing the user's intent.

66. *Necessity of seizing or copying entire computers or storage media.* In most cases, a thorough search of a premises for information that *might be stored*⁹⁸ on storage media often requires the seizure of the physical storage media and later off-site review consistent with the warrant. In lieu of removing storage media from the premises, it is

sometimes possible to make an image copy of storage media. Generally speaking, imaging is the taking of a complete electronic picture of the computer's data, including all hidden sectors and deleted files. Either seizure or imaging is often necessary to ensure the accuracy and completeness of data recorded in the storage media, and to prevent the loss of the data either from accidental or intentional destruction. This is true because of the following:

a. The time required for an examination. As noted above, not all evidence takes the form of documents and files that can be easily viewed on site. Analyzing evidence of how a computer has been used, what it has been used for, and who has used it requires considerable time, and taking that much time on premises could be unreasonable. As explained above, because the warrant calls for forensic electronic evidence, it is exceedingly likely that it will be necessary to thoroughly examine storage media to obtain evidence. Storage media can store a large volume of information.

⁹⁸ *Gates, Id.*

Reviewing that information for things described in the warrant can take weeks or months, depending on the volume of data stored, and would be impractical and invasive to attempt on-site.

b. Technical requirements. Computers can be configured in several different ways, featuring a variety of different operating systems, application software, and configurations. Therefore, searching them sometimes requires tools or knowledge that might not be present on the search site. The vast array of computer hardware and software available makes it difficult to know before a search what tools or knowledge will be required to analyze the system and its data on the premises. However, taking the storage media off-site and reviewing it in a controlled environment will allow its examination with the proper tools and knowledge.

c. Variety of forms of electronic media. Records sought under this warrant could be stored in a variety of storage media formats that may require off site reviewing with specialized forensic tools.

68. *Nature of examination.* Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant sought would permit seizing, imaging, or otherwise copying storage media that reasonably appear to contain some or all of the evidence described in the warrant, and would authorize a later review of the media or information consistent with the warrant. The later review may require techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of

a hard drive to human inspection in order to determine whether it is evidence described by the warrant.

69. Because several people share the Premises as a residence, “*it is possible*” that the Premises will contain storage media that are predominantly used, and perhaps owned, by persons who are not suspected of a crime. “*If*” it is nonetheless determined that it is possible that the things described in this warrant “*could be*” found on any of those computers or storage media, the warrant applied for would permit the seizure and review of those items as well. ***[It should be noted: the above referenced italics clearly establishes an uncertainty and more of a possibility. It is offense to the spirit of Payton, Id.]***

70. Lewis maintains several companies⁹⁹ at the Premises, at least one of which appears to function as a legitimate business. The seizure of computers at the Premises may limit the companies' ability to conduct its legitimate business. As with any search warrant, I expect that this warrant will be executed reasonably. Reasonable execution will likely involve conducting an investigation on the scene of what computers, or storage media, must be seized or copied, and what computers or storage media need not be seized or copied. *Where appropriate, officers will copy data, rather than physically seize computers, to reduce the extent of disruption. [This clearly is a misstatement. Law enforcement took everything. Did not have any equipment in order to reproduce via photocopy, etc. of the documentation seized].* If

⁹⁹ Lewis actually maintained two companies on the “Premises”

companies so request, the agents will, to the extent practicable, attempt to provide the employees of the companies with copies of data that may be necessary or important to the continuing function of the companies' legitimate business. If, after inspecting the computers, it is determined that some or all of this equipment is no longer necessary to retrieve and preserve the evidence, the government will return it.

CONCLUSION

71. Based on the foregoing facts and my training and experience, *there is probable cause [This infringes upon the province of the neutral magistrate via Wilson at*

Id.] to believe that Justin Lewis and his co-habiting girlfriend Nicole Sorrentino have engaged in, and are engaging in a scheme to defraud Verizon, and have violated 18 U.S.C. § 1343 (wire fraud) and 18 U.S.C. § 1956(a)(1) (*money laundering*).

[There is no information in the affidavit submitted, herein, that alludes to, alleges or suggests that any money laundering occurred. In fact, there is no reference, whatsoever, that federal income tax returns were not filed on the receipts of the money. This is totally conjecture, opinion and without foundation and as such, is scandalous and should be excised].¹⁰⁰

72. Based upon my experience and training in the investigation of financial frauds and money laundering, I know that people involved in the type of criminal

¹⁰⁰ *Gates, Id.; Franks, Id.*

activity stated above often maintain financial and business records in their offices, and in computers in their offices, and keep records for extended periods of time. It is also usual and customary for companies to create and store business records at their business locations. I also know that those engaging in this type of criminal activity also use their place of residence to store (a) proceeds derived from the illegal activity and (b) assets purchased using proceeds, both of which are forfeitable to the government in this case under 18 U.S.C. §981(a)(1)(c) and 28 U.S.C. §2461.

There is also *probable cause to believe [lacks any factually articulated predicate]* that evidence, fruits, and instrumentalities of the above crimes, as described in Attachment B (incorporated herein), are maintained at the location more fully described in Attachment A (incorporated herein). I submit that this affidavit supports probable cause for a warrant to search the Premises described in Attachment A and seize the items described in Attachment B. *[This is an unsupported conclusion that, in itself, does not give rise to the presence of the items to be seized on the Premises. See, United States v. Hatcher, CA 6th 473 F.2d 321 (1973)].*

(Note: The signature and attestation clause of the affiant has been specifically omitted [see Exhibit C for signature])

**DEFENDANT'S EXTENDED ARGUMENTS
[EXHIBIT III]**

It should be noted that the Affidavit numbered paragraph 65, clearly established

the uncertainty of the placing of electronic equipment sought by law enforcement inside the Justin Lewis' residence, "The Premises". There is no information, in the four corners of the application, for a search warrant relating to Mr. Lewis' home ["Premises] that has any effort, whatsoever, being made to establish an *IP address* associated with the telephone number[s] associated with the electronic devices and the email address of the defendant. As previously discussed, herein, there is no telephone number associated by the service provider regarding an email contact so that an IP address can in fact be associated with a numerical identifiable entity; and that in turn being traced to a specific set of electronic devices [computers], at a specific location address, "The Premises".

Furthermore, what initiated this entire process was a series of tainted affidavits which allowed for the receipt of an execution of search warrants. That the initial application for search warrants [**Exhibits A & B**¹⁰¹] have been challenged as being tainted and sufficiently defective to negate the issuance of follow-up warrants relating to the Defendant's emails and eBay information. As such, that information was inappropriately utilized in conjunction with preparing the affidavit for search warrant [**Exhibit C**] concerning the Defendant's residence "Premises" and therefore, that alone, without even addressing the other factual deficiencies of non-disclosure;

¹⁰¹ It should be noted that amendment regarding Exhibit E - E-Bay search warrant has been addressed.

misrepresentation; distortions; etc., [as addressed by *Franks, Id.*] are sufficient for suppression.

The IP address system allows computers to recognize one another and transfer data over the Internet. When one logs onto the Internet, the computer will be assigned an IP address by the Internet service provider. The IP address assignment will be stored in a log that is maintained by the Internet service provider. This IP address will generally be attached to data that is sent from the computer to its destination (e.g. web server). If the IP address is obtained from the destination web server, then the address can be traced back to the Internet service provider. The Internet service provider's logs should identify which customer was using that IP address. From there, the IP address can be traced to the customer's computer.

Obviously, Lewis was readily identified via his email and as such, the location of the information presented to the Magistrate Judge could clearly had been identified for its source.

Although the *concept* of an IP address is alluded to in the affidavit, there is no information, whatsoever, establishing any criteria or identifying any information allegedly obtained and associated with Mr. Lewis as disseminating from his residence "Premises" or any criteria establishing the would-be storage of same.

Therefore, the information referenced in the motion, herein, specifically

addressing the paragraphs footnoted [see fn¹⁰²] clearly established a total uncertainty of what is to be found at the residence, if anything.

In referencing paragraph 65 in the affidavit [**Exhibit C**], the agent states: “probable cause”. I submit that “*if*” a computer or storage medium is found on the premises, there is probable cause to believe the records identified in Attachment B¹⁰³ will be stored on the computer or the storage medium, for the following reasons:

Once again, “*if*” establishes the very uncertainty of the likelihood upon which law enforcement seeks intrusion into the home of Mr. Lewis; in defiance of the precept contained in *Payton v. New York* . . . “The physical entry of the home is the chief’s evil against which the wording of the Fourth Amendment is directed.”

Paragraph 66 [**Exhibit C**] in the application seeks permission to locate “not only computer files “*that might*” serve as direct evidence of the crimes described on the warrant, but other items [yet, without specificity]. Once again, the uncertainty of the existence of the electronic hardware to be sought without any type of nexus establishing its presence at the residence, is an uncertainty that cannot be ignored.

In Paragraph 67 [**Exhibit C**], the Affiant states “In most cases, a thorough search of a premises for information that “*might*” . . . Once again, the uncertainty of what is

¹⁰² Paragraphs 65 “*if*”; 65[c] “reason to believe”; 66 “might be found on the Premises”; 69 “if it is possible”; 71 “*if*” - are just prime examples.

¹⁰³ **Defendant’s references accordingly in attachment, hereto.**

or is not located at “The Premises.

SUPPRESSION ISSUE IV [EXHIBIT D]

That the “Premises” search warrant issued under 5:18-mj-1008-PRL, became the predicate for seizure of the Defendant’s computers and various electronic data obtained.

Once again, it should be well noted, that the affidavit for probable cause for the “Premises” warrant [**Issue III**] was predicated upon a faulty application for the Verizon [**Exhibit A**] and Google [**Exhibit B**] search warrants, which were tainted, then that deficiency carries over henceforth.

That as a result of that seizure and the resulting information obtained, the government sought a follow-up search of various contents contained, therein, via warrants referenced in 5:18-mj-1058-PRL thru 5:18-mj-1067-PRL.

That the determination of the sufficiency of the warrant application, its authorization, execution on “The Premises” and the resulting search, thereof, will determine, as to whether or not the documentation sought and obtained referencing the issuance of subsequent warrants, aforementioned: in 5:18-mj-1058-PRL thru 5:18-mj-1067-PRL, herein, are also subject to suppression.

Previously issued seizure warrants: 1:17-mc-7-GRJ; 1:17-mc-22-GRJ; 1:18-mj-7-GRJ; 1:18-mj-8-GRJ; 1:18-mj-9-GRJ; 1:18-mj-10-GRJ; 1:18-mj-11-GRJ; 1:18-mj-12-GRJ; 1:18-mj-13-GRJ; 1:18-mj-14-GRJ; 1:18-mj-15-GRJ and 1:18-

mj-16-GRJ, must also fail since they were predicated upon facts that were obtained and tainted, based on prior illegal activity associated for obtaining search warrant[s] on affidavits, which are deficient. “Fruit of the poisonous tree”; see, *Wong Sun* [without citation].

That if the court determines that the initial warrant, allowing for the search and seizure of the items from the Defendant’s “Premises”, issued on February 6, 2018 was legally “tainted” from the government’s initial and material efforts in seeking the Defendant’s Verizon and gmail information was legally insufficient, then any subsequent application and obtaining of any subsequent search warrants from any aforementioned prior source must automatically fail. *Wong Sun v. United States*, 83 S.C. 407, 371 [1963]. If there is a direct relationship between an illegal search and the acquisition of subsequent evidence, the subsequent evidence will be suppressed. *Brown v. Illinois*, 95 S.Ct. 2254 [1975].

Since the “assumptions” appearing in the Affidavit for Search Warrant [“Premises”], herein, provide no sense of certainty that the equipment to be sought [See Government’s Exhibit B attached to Defendant’s composite Exhibit C] actually are located on “The Premises” or that it contains the information to be gathered, the Court may revisit *de novo* “misstatements” in a “misappropriated” factual commentary in the affidavit relating to obtaining a search warrant. *Gates, Id.* [citation omitted].

It follows that a police officer cannot make unilateral decisions about the

materiality of information, or, after satisfying him or herself that probable cause exists, and merely inform the Magistrate or Judge of inculpatory evidence. See, *Wilson v. Russo*, 212 F.3d 781,787 [3rd Circuit 2000], in either of the related search applications.

To determine whether the government's search warrant for execution on at Defendant's home meets the particularity requirement, a court must inquire whether the officer, who must rely upon the warrant in executing it, would reasonably know what items are to be seized. *United States v. Layne*, 43 F.3d 127, 132 [5th Circuit 1995][citation omitted].

The search warrant regarding Issue III, herein, is completely lacking in specificity as it relates to any description of the contents of the items to be seized. It "assumes" general computers; computer files or communication devices of broad nature even exist on the property, have evidentiary value. It does not describe the files to be viewed or duplicated.¹⁰⁴ Even so, there is a "general reference" to a multitude of electronic orientated equipment without any specificity as to what is to be found or even "if" the equipment exists on the "Premises"; more concerning that the would be equipment is even associated with the alleged activity investigated. Once again, there is

¹⁰⁴ This does not appear to be a case where the affidavit was attached to the warrant?

an insufficient allegation that Lewis' IP address, "if" associated or generated from the premises - and no effort was made.

In *United States v. Leary*, 846 F.2d 592 [10th Circuit 1988], the court explained the general standard for evaluating when the Fourth Amendment's particularity requirement has been met:

A description is sufficiently particular when it enables the searcher to reasonably ascertain and identify the things authorized to be seized. Even a warrant that describes the items to be seized in broad or generic terms may be valid when the description is as specific as the circumstances and the nature of the activity under investigation permit. However, the fourth amendment requires that the government describe the items to be seized with as much specificity as the government's knowledge and circumstances allow, and warrants are conclusively invalidated by their substantial failure to specify as nearly as possible the distinguishing characteristics of the goods to be seized.

Id. at 600 [internal quotations and citations omitted]. See also *United States v. Abrams*, 615 F.2d 541,543 [1st Circuit 1980] [holding a warrant was not sufficiently particular because "[t]he officer's discretion was unfettered, there is no limitation as to time and there is no description as to what specific records are to be seized."]. Herein, every and any electronic orientated piece of equipment at the "Premises" was sought - no utilization of discretion or direction.

A district court, in making a determination whether a warrant is sufficiently particular, will consider the following factors: [1] whether probable cause exists to seize all items of a particularly described in the warrant; [this is something that has

been challenged, herein] [2] whether the warrant set out the objective standards by which executing officers can “differentiate” items subject to seizure from those which are not; [emphasis added] officers themselves admit that they are unable to do so; and [3] whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued. *United States v. Adjani*, 452 F.3d 1140, 1147-1148 [9th Circuit 2006]. After one considers the facts against these stated concerns, the answer is obvious. Herein, the government relies on a litany of emails uncovered in its prior warrant efforts. However, in its absence, there is no identifying IP address related to the source of the emails associated with “The Premises”.

There was no direction given officers in regards to seizure (and search) of the computer or “if” they are even to be found on the Lewis premises. The decision of *United States v. Carey*, 172 F.3d 1268, 1271 [10th Circuit 1999], in which the Court applied the particularity requirement to the search of computer files, has been referred to in subsequent decisions dealing with seizures of computers and files extracted therefrom:

The underlying premise in Carey is that officers conducting searches (and the magistrates issuing warrants for those searches) cannot simply conduct a sweeping, comprehensive search of a computer's hard drive. Because computers can hold so much information touching on many different areas of a person's life, there is a greater potential for the “intermingling” of documents and a consequent invasion of privacy when police execute a search for evidence on a computer Thus, when officers come across

computer files intermingled with irrelevant computer files, they may seal or hold the computer pending approval by a magistrate of the conditions and limitations on a further search of the computer ... Officers must be clear as to what it is they are seeking on the computer and conduct the search in a way that avoids searching files of types not identified in the warrant.

None of the aforementioned occurred at the scene. Neither should an unrestricted seizure of every piece of electronic equipment be condoned. [emphasis added]

United States v. Riccardi, 405 F.3d 852, 862 (10th Cir. 2005), citing *United States v. Walser*, 275 F.3d 981, 986 [10th Circuit 2001] [deeming warrant to be lacking in particularity where it authorized seizure of the computer but did not limit the search of the computer to evidence of specific federal crimes or specific types of material]. See also *United States v. Decker*, 956 F.2d 773, 778 -779 [8th Circuit 1992][where warrant identified UPS package but otherwise did not identify the items to be seized, resulting in an impermissible general search and seizure] [although, herein, the government subsequently did seek authorization for a specific subsequent search related to child pornography]. As such, the search warrant was also invalid because it did not satisfy the Fourth Amendment's particularity requirement as well, since there clearly appears to be a consideration of form over substance.

“The point of the **Fourth Amendment**, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. It’s protection consists in requiring that those inferences be drawn by a neutral and detached Magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out

crime.” *Johnson v. United States*, 333 U.S. 10,13-14, 68 S.Ct. 367 [1948] [cited in *Payton v. New York*, 445 U.S. 573 [1980].

Although the warrant issue for Lewis’ residence and quite detailed in establishing “form as opposed to “substance”, it is nothing more than seeking authorization to grab what you can find - a shopper’s list. A reading of the warrant, leaves much of the decision-making as to what items were to be seized (and searched) to the whim of the agents and officers involved. It is without dispute that a search warrant must describe items to be seized with particularity sufficient to prevent “a general, exploratory rummaging in a person's belongings.” *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 91 S.Ct. 2022 , 2038, 29 L.Ed.2d 564 (1971) (plurality); *Andresen v. Maryland*, 427 U.S. 463, 480, 96 S.Ct. 2737, 2748, 49 L.Ed.2d 627 (1976). *See also, Supreme Video, Inc. v. Schauz*, 15 F.3d 1435, 1439 (7th Cir.1994)(“[t]he requirement that search warrants particularly describe the things to be seized is a bedrock of Fourth Amendment jurisprudence, and when the basis for a seizure is the ideas contained therein, the most scrupulous exactitude is required in crafting the warrant.”). Once, again, “Neither . . .” *Carry, Id.*

That this Court is requested to conduct an evidentiary hearing, in conjunction with the Motion to Suppress, to determine what specific statements were utilized to establish the probable cause, more particularly the veracity of the allegations concerning the “if” and “mights” that appear, more particularly, in the various paragraphs, therein, and if those

statements were correct or if they were misstatements of fact; as such, were of a nature that without their presence or correctness within the affidavit, an issuing magistrate would not have determined sufficient probable cause existed for the issuance of the warrant.

WHEREFORE, the Defendant. **JUSTIN LEWIS**, has made a threshold showing that a substantial factual allegations, material in nature, were either not fully disclosed; disclosed in a misleading manner along with factual misrepresentations, both in a presentation of opinion, when if reviewed and excised, a neutral magistrate would be challenged to find probable cause, thus negating the execution of same and the follow-up illegal seizure of the Defendant's property in violation of his *Fourth Amendment* rights.

Respectfully submitted this 11th day of March, 2019.

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JACK R. MARO, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Suppress has been furnished by E-SERVICE TRANSMISSION this 11th day of March, 2019, to: **WILLIAM S. HAMILTON, AUSA.**

/s/ Jack R. Maro

JACK R. MARO, ESQUIRE