

## **PRELIMINARY STATEMENT**

Joseph LaForte respectfully moves to suppress the fruits of the search of his residence at 564 Fernandale Lane, Haverford, Pennsylvania. Suppression is warranted pursuant to the Fourth Amendment of the U.S. Constitution because probable cause was insufficient to establish a nexus between the criminal offenses alleged and the search of Mr. LaForte's home.

## **STATEMENT OF FACTS**

On July 23, 2020, Magistrate Judge Linda K. Caracappa signed a search warrant for four properties, including Mr. LaForte's home at 564 Fernandale Lane, Haverford, Pennsylvania (the "Residence").<sup>1</sup> The search warrant was supported by an affidavit sworn to that same day by FBI Agent John Murray (The "Affidavit").<sup>2</sup> Pursuant to that warrant, during the search of the Residence on July 28, 2020, agents reportedly recovered cash in excess of \$500,000 and several firearms. These items were not within the scope of the initial search warrant. Agent Murray promptly submitted a new affidavit, now referencing the cash and firearms already discovered in the search, in support of authorization to seize these items. (The Supplemental Affidavit)<sup>3</sup> A supplemental search warrant was issued on July 28, 2020.<sup>4</sup>

The focus of the investigation culminating in the search of the Residence, and several other locations, was the "activities surrounding Complete Business Solutions Group ('CBSG')

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<sup>1</sup> The search warrant, dated July 23, 2020, and rider, is attached as Exhibit A to the Affirmation of Alan S. Futerfas, dated August XX, 2022.

<sup>2</sup> A copy of the Affidavit, dated July 23, 2020, is attached to the Futerfas Affirmation as Exhibit B.

<sup>3</sup> The Supplemental Affidavit, dated July 28, 2020, and rider, is attached to the Futerfas Affirmation as Exhibit C. The Supplemental Affidavit states at paragraph 6: "As summarized below and in the Affidavit, there is probable cause that this cash is evidence of filing false tax returns and money laundering. There is also probable cause to believe that the firearms are evidence of a violation of being a felon in possession of a firearm."

<sup>4</sup> The search warrant, dated July 28, 2020, is attached to the Futerfas Affidavit as Exhibit D.  
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d/b/a Par Funding which holds itself out to be a Merchant Cash advance (or ‘MCA’) and factoring lender.” (Aff. at ¶ 4)(CBSG is referred to also as “Par” herein.) The Affiant claimed that Mr. LaForte and others engaged in a variety of offenses in connection with the activities of CBSG, including purportedly defrauding investors by understating CBSG’s default rate and overstating the rigor of its underwriting, underreporting federal income taxes for income earned from CBSG, and laundering the purportedly illegal proceeds of the business of CBSG including through limited liability companies (LLC’s).

Based on these allegations, the Affidavit claims there was probable cause to find that the conduct of Mr. LaForte and others violated 18 U.S.C. § 371 (conspiracy); 18 U.S.C. § 892 (making extortionate extensions of credit and conspiracy to do so); 18 U.S.C. § 894 (collection of extensions of credit by extortionate means); 18 U.S.C. § 1951 (interference with commerce by threats or violence); 18 U.S.C. § 1341 (mail fraud); 18 U.S.C. § 1343 (wire fraud); 18 U.S.C. § 1028 (identity theft; 15 U.S.C. §§ 78j(b), 78ff and C.F.R. § Q40.10b-5 (employment of manipulative and fraudulent devices); 26 U.S.C. § 7201 (tax evasion); 26 U.S.C. § 7203 (failure to file); 26 U.S.C. § 7206 (fraud and false statements regarding Internal Revenue Code), and 18 U.S.C. § 1956(h)(money laundering conspiracy) (Affidavit at ¶ 4(a)-(g)).

At issue in this motion to suppress is the insufficiency of probable cause to support a claim that documents or other evidence of the criminal offenses alleged would be found at the Residence. (See Aff. at ¶¶ 264-268). The Affiant offers no evidence to suggest that Mr. LaForte or anyone else conducted business at the Residence or that any records relating to the business activities of CBSG were sent to or maintained at the Residence. Rather, as the Affiant implicitly and explicitly acknowledges, CBSG is a professional business with accountants, lawyers and

account representatives that generates multimillion dollars in yearly revenue and conducts its business affairs at offices populated by professional staff.

The Affidavit identifies four properties to search. Three of these properties are identified throughout the Affidavit as offices associated with CBSG:

20 N. 3rd Street, Basement, 1st Floor, 2nd Floor, Philadelphia, Pennsylvania;  
22 N. 3rd Street, Basement, 1st Floor, 2nd Floor, Philadelphia, Pennsylvania;  
205 Arch Street, Second Floor, Philadelphia, Pennsylvania.

The fourth property -- 568 Ferndale Lane, Haverford, Pennsylvania -- is identified as the residence for Mr. LaForte and his wife, Lisa McElhone.

The Affiant states: “CBSG has been identified by the FBI as having its primary place of business located at 20 and 22 North 3rd Street, Philadelphia, Pennsylvania, through business records and physical surveillance.” (Aff. at ¶ 40) The Affiant identifies offices associated with CBSG at 20 North 3rd Street in Philadelphia which has three floors, including a reception area, a floor with cubicles and a third floor with conference rooms. (Aff. at ¶ 97)<sup>5</sup> Adjacent to this address is 22 North 3rd Street, where “multiple employees” work for CBSG and receive wages from an entity called Full Spectrum Processing (“FSP”). (Aff. at ¶ 47) The Controller for CBSG, James Klenk, and others identified by the Affiant, work at that location. (Id.) The address of 205 Arch Street has been identified as a mailing address and office for both

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<sup>5</sup> As Mr. LaForte explained at a deposition, North 3rd Street is the official address for Par Funding, the entity that conducts the business of CBSG. (Aff. at ¶ 216). The entity “CBSG” is a Delaware corporation (Aff. at ¶ 39) which registered its principal place of business in Florida in 2019 (Aff. at ¶¶ 42, 43). The FBI identified 20 and 22 North 3rd Street, Philadelphia, Pennsylvania as CBSG’s principal place of business through physical surveillance and business records. (Aff. at ¶ 40) In addition, 205 Arch Street, 2nd floor, Philadelphia, Pennsylvania is identified as the principal place of business of Full Spectrum Processing, the mailing address for CBSG (Aff. at ¶¶ 40, 42)

FSP and CBSG. (Aff. at ¶¶ 41-43, 226) According to the Affiant, Mr. LaForte met with a client of CBSG to discuss an MCA matter. (Aff. at ¶ 110)

The Affidavit further indicates that the business of CBSG was substantial and employed professional financial and legal services. In particular, the Affiant identifies an accounting firm in Colorado, Rod Ermel & Associates, Inc. -- that “has done work for CBSG” – and is the mailing address for the financial records of several bank accounts for entities allegedly associated with CBSG. (See Aff. at ¶¶ 53, 58, 60). The Affiant identifies both in-house counsel<sup>6</sup> and outside counsel<sup>7</sup> who have engaged in “hundreds” of legal matters on behalf of CBSG.

The Affiant states that criminal investigators for the IRS “have reviewed the tax returns and tax return information” of Mr. LaForte, Ms. McElhone, “and several related entities, including Eagle Six Heritage, Full Spectrum Processing, Recruiting & Marketing Resources and Fast Advance Funding.” (Aff. at ¶ 231) They have also “reviewed tax returns and tax information related to LaForte and McElhone’s real estate holdings.” (Id.). This includes eighteen LLC entities that Ms. McElhone owns “100%.” (Aff. at ¶ 231 and n. 76) In addition, “investigators have reviewed voluminous bank records obtained during the investigation.” (Aff. at ¶ 231) The investigators determined that Mr. LaForte and Ms. McElhone received millions of dollars from the business of CBSG in tax years 2016 – 2019. In particular, the Affiant states, they purchased real estate totaling approximately \$33 million in 2018 – 2019. (Aff. at ¶ 235)

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<sup>6</sup> See Aff. at ¶ 55 n. 25. According to “John Hartley’s Pennsylvania Bar registration, “Hartley's employer is listed as CBSG, 20 North 3rd Street, Philadelphia, Pennsylvania (Attorney ID 47106); Aff. at n. 49 p. 65: “John Hartley has represented CBSG in hundreds of matters and has been determined to be an in-house counsel for CBSG”.

<sup>7</sup> See Aff. at ¶ 56: John Hartley and Brett Berman “have been identified as regularly representing CBSG.” (See Aff. at ¶¶ 220, 221, 249)

This showing by the Affiant makes abundantly clear that documents pertaining to the business and proceeds of CBSG would be found at locations other than the Residence. The Residence is not the mailing address for any entity, business activity or transaction mentioned by the Affiant. Nor does the Affiant allege that any documents related to the probable cause showing were ever brought to, or maintained at, the Residence.

Rather, the Affiant presents a discrete enumeration of allegations in support of probable cause that evidence of the alleged offenses would be found at the Residence. For the reasons discussed below, the probable cause showing to search the Residence is not merely insufficient but wholly lacking, and suppression is warranted.

### ARGUMENT

#### **PROBABLE CAUSE IS INSUFFICIENT TO SHOW THAT EVIDENCE OF THE OFFENSES ALLEGED WOULD BE FOUND AT 563 FERNDAL LANE. THE SEARCH, AND ALL FRUITS, SHOULD BE SUPPRESSED. AT A MINIMUM, A HEARING IS WARRANTED**

##### **A. THE LEGAL STANDARD: PROBABLE CAUSE**

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV. The threshold requirement for issuance of a warrant is probable cause. *Illinois v. Gates*, 462 U.S. 213 216, 103 S.Ct. 2317 (1983). In reviewing a search warrant application, and considering all of the circumstances described in the affidavit, there must be sufficient evidence presented that demonstrates that there is a “fair probability” that evidence of a crime will be located before validating a warrant. *Id.* at 238; *United States v. Ritter*, 416 F.3d

256, 262–63 (3d Cir. 2005). Probable cause is a ‘fluid concept’ that ‘turn[s] on the assessment of probabilities in particular factual contexts.’” *United States v. Stearn*, 597 F.3d 540, 554 (3d Cir. 2010), quoting *Gates*, 462 U.S. at 232.

### **1. The Nexus Requirement**

A magistrate must determine that there is a “fair probability that ... evidence of a crime will be found in a particular place.” *Gates*, 462 U.S. at 238, quoting *Jones v. United States*, 362 U.S. 257, 271, 80 S.Ct. 725 (1960)). “Probable cause requires a “sufficient nexus between the contraband to be seized and the place to be searched.” *United States v. Loy*, 191 F.3d 360, 365 (3d Cir. 1999). However, “direct evidence linking the residence to the criminal activity is not required to establish probable cause.” *United States v. Burton*, 288 F.3d 91, 103 (3d Cir.2002). Rather, “probable cause to search can be based on an accumulation of circumstantial evidence that together indicates a fair probability of the presence of contraband at the home of the arrested.” *Id.*; see also *United States v. Jones*, 994 F.2d 1031, 1056 (3d Cir. 1993)(“probable cause can be, and often is inferred by considering the type of crime, the nature of the items sought, the suspect's opportunity for concealment and normal inferences about where a criminal might hide stolen property”) (internal citations and quotations omitted)).

Where narcotics offenses are being investigated, “the Third Circuit Court of Appeals has consistently stated that “evidence ... is likely to be found where the [drug] dealers reside.” *Burton*, 288 F.3d at 103, citing *United States v. Whitner*, 219 F.3d 289, 297 (3d Cir. 2000). “Evidence associated with drug dealing needs to be stored somewhere, and ... a dealer will have the opportunity to conceal it in his home. After all, a dealer could logically conclude that his residence is the best, and probably the only, location to store items such as records.,] ... cash, ... guns, ... and large quantities of drugs to be sold.” *Stearn*, 597 F.3d at 558. However, even in drug

investigations, there must be some demonstrable “nexus” between the drug dealer's home and the crimes committed. *Stearn*, 597 F.3d at 558-59

Where, however, the offenses under investigation are financial crimes committed through legitimate businesses— i.e. not drug trafficking -- there is no rationale to infer that evidence will be found in the target’s home. *See United States v. Rankin*, 442 F. Supp.2d 225, 231 (E.D.Pa 2006). “One's home is sacrosanct, and unreasonable government intrusion into the home is ‘the chief evil against which the wording of the Fourth Amendment is directed.’” *Zimmerman*, 277 F.3d at 432, *quoting Payton v. New York*, 445 U.S. 573, 585, 100 S.Ct. 1371 (1980). Upon review of a search warrant affidavit seeking evidence of underreporting federal income tax, the *Rankin* Court noted:

there is surprisingly scant authority in this Circuit on the issue of probable cause to search for evidence of tax crimes or documents more generally. Of course, even if a well-established body of authority existed, review of a probable cause determination must be rooted in common sense and based on the totality of circumstances in each case.

*Id.* at 231. The *Rankin* Court found sufficient evidence to search defendant’s home for documents based upon, *inter alia*,

particular facts showing that Rankin received and stored financial records at his home. Specifically, IRS mail covers revealed that Rankin received certain financial documents, such as bank statements and utility bills, at his home. In addition, given that the allegations against Rankin involved underreporting income earned from his business activities at Dangerous Curves and Ashburner Inn, the IRS surveillance of him carrying a briefcase from his home suggests he could be transporting relevant evidence between those businesses and his home.

*Id.* at 234; *cf. United States v. Tozer*, 2009 WL 3698549, \*4 (E.D.MI 2009)(“surveillance of Mr. Tozer on one date carrying unidentified papers from his vehicle into the business does not establish a nexus between the business and the alleged crime”); *see also United States v. Marranca*, 98 Fed. Appx. 179, 2004 WL 1179350, \*3 (3d Cir. 2004) (sufficient nexus existed

between defendant's residence and alleged criminal activity where affidavits demonstrated that defendant made numerous pickups of what appeared to be gambling proceeds and receipts during the day that he took to his place of business and his residence).

## **2. The Good Faith Exception**

Even if a reviewing court determines that there was an insufficient basis for the showing of probable cause that a crime was committed, the remedy of suppression may be avoided on limited grounds of good faith. *United States v. Leon*, 468 U.S. 897, 920, 104 S.Ct. 3405 (1984).

“[T]he good faith exception requires a sincerely held and objectively reasonable belief that the warrant is based on a valid application of the law to all known facts.” *Zimmerman*, 277 F.3d at 438, quoting *United States v. Reilly*, 76 F.3d 1271, 1273 (2d Cir. 1996). “The test for whether the good faith exception applies is ‘whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization.’” *United v. Stearn*, 597 F.3d at 561, quoting *Zimmerman*, 277 F.3d at 438 (quoting *Leon*, 468 U.S. at 922 n. 23).

Under the good faith exception rule, “[t]he mere existence of a warrant ... suffices to prove that an officer conducted a search in good faith and justifies application of the good faith exception.” *United States v. Hodge*, 246 F.3d 301, 307-8 (3d Cir. 2001), citing *Leon*, 468 U.S. at 922. The government bears the burden of establishing that the good faith exception applies. *Leon*, 468 U.S. at 924. There are four circumstances where “an officer's reliance on a warrant would not be reasonable and would not trigger the [good faith] exception.” *Zimmerman*, 277 F.3d at 436, quoting *Hodge*, 246 F.3d at 308. These four circumstances are:

- (1) The magistrate issued the warrant in reliance on a deliberately or recklessly false affidavit;
- (2) the magistrate abandoned his judicial role and failed to perform his neutral and detached function;
- (3) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or
- (4) the warrant was so facially

deficient that it failed to particularize the place to be searched or the things to be seized.

*Zimmerman*, 277 F.3d at 436-37, citing *Leon*, 468 U.S. at 923. “If, of course, just one is present, application of the good faith exception will not be triggered.” *Zimmerman*, 277 F.3d at 437.

Where, therefore, the affiant has failed to provide any basis to believe that evidence will be found at the place to be searched, such as the subject’s home, then the good faith exception is not available. *Zimmerman*. 277 F.3d at 437; see *United States v. Laughton*, 409 F.3d 744, 748-49 (6th Cir. 2005)(good faith exception did not apply because there was not “some modicum of evidence, however slight, to connect the criminal activity described in the affidavit to the place to be searched”); *United States v. Tozer*, 2009 WL 3698549 at \*4 (good faith exception does not apply where there was “no nexus connecting the alleged criminal activity with the places to be searched”).

The *Zimmerman* case is particularly relevant here. The Third Circuit found that the Affiant’s efforts to paint the subject in the worst possible light could not offset, or somehow compensate for, the lack of probable cause to search the subject’s home for evidence of the crimes alleged. Consequently, the officer’s reliance on the search warrant affidavit was not “reasonable.”

. . .while the warrant also specifically authorized a search for child pornography, nothing in the affidavit indicated that such pornography was ever in Zimmerman's home. Any reasonably well-trained officer in the “stationhouse shop would recognize as clearly insufficient” the affidavit that was presented to the magistrate. *United States v. Williams*, 3 F.3d 69, 74 (3d Cir. 1993). When a police officer has “not presented a colorable showing [of probable cause], and the warrant and affidavit on their face preclude reasonable reliance, the reasoning of *Leon* does not apply.” *United States v. Hove*, 848 F.2d 137, 140 (9th Cir.1988).

It bears mention that Sergeant O'Connor crafted the affidavit to portray Zimmerman in the worst possible light. In that single-spaced, seven-page affidavit, O'Connor described in great detail the sexual misdeeds that Zimmerman allegedly committed against his students but which had nothing to do with whether there was

pornography in his home. It is not until the next to the last line of the fifth page of the affidavit, however, that O'Connor even mentioned pornography, much less anything that might provide probable cause to search for pornography in Zimmerman's home . . . Perhaps this is why the affidavit is loaded with lurid—and irrelevant-accusations...

“Good faith is not a magic lamp for police officers to rub whenever they find themselves in trouble.” *United States v. Reilly*, 76 F.3d 1271, 1280 (2nd Cir. 1996). ... No objectively reasonable police officer could believe that, despite the magistrate's authorization, the law did not prohibit a search of Zimmerman's home for pornography, child and adult. It follows that the good faith exception does not apply and the fruits of the search must be suppressed.

*Zimmerman*, 277 F.3d at 437 (emphasis added).

## **B. THE SHOWING OF NEXUS TO SEARCH THE RESIDENCE**

The Affidavit makes a few discrete assertions in support of probable cause that evidence of the criminal offenses under investigation would be found in the Residence (See Aff. at ¶¶ 264-268) The entirety of this showing is set forth here with the names of corporate entities highlighted and discussed in detail below.

265. This residence was purchased under the name of **BLUE VALLEY HOLDINGS, LLC** in June 2016. As noted above, a Form SS4 was filed with the IRS declaring that LISA McELHONE was sole owner of this entity. Furthermore, the FBI subpoenaed and received the closing documents from the title company that processed the settlement. Agents reviewed the records and observed that LISA McELHONE's signature is on the closing documents. At least one document, the Escrow Invoice, featured the names of "LISA and JOE McELHONE." According to the title records, McELHONE presented a check for \$2,119,554.15 that was drawn from the account of **HERITAGE BUSINESS CONSULTING, INC.** According to Florida Department of State corporation records, HERITAGE's registered agent as of April 2019 is LISA McELHONE.

266. During this investigation, agents obtained records from FedEx for 568 Ferndale Lane. The records show regular deliveries addressed to LISA McELHONE. The records also show a shipment from American Express to "**LIBERTY FINANCIAL JOSEPH McELHONE**," 568 Ferndale Lane, Haverford, PA 19041 on May 8, 2019. On November 3, 2017, July 8, 2018, and March 18, 2019, shipments were sent from American Express to "**RECRUITING & MAKT RES LISA McELHONE**" at 568 Ferndale Lane, Haverford, Pennsylvania.

267. A vehicle registration search showed the following vehicles registered to LISA McELHONE at 568 Ferndale Lane, Haverford, Pennsylvania: 2020 Land Rover, 2019 Mercedes Benz sedan, 2019 Porche, 2019 Cadillac Escalade, and a 2016 Chevrolet. On January 30, 2020, FBI agents observed a male matching JOSEPH LAFORTE's description entering the Cadillac Escalade, with Pennsylvania vehicle tag KLF 8214, parked in front of 20-22 North 3rd Street. The vehicle then travelled from that location to approximately half a mile from 568 Ferndale Lane. This same vehicle was observed by the FBI parked at the residence on February 5, 2020, February 10, 2020, and March 24, 2020.

268. As referenced above, LISA McELHONE was listed on the ENT bank accounts for **EAGLE SIX** and **HERITAGE**, and the address provided for her was 568 Ferndale Lane, Haverford, Pennsylvania.

(Aff. at ¶¶ 265-268)(emphasis added).

**1. Blue Valley Holdings LLC (“Blue Valley”)**

Blue Valley, the corporate entity that the Affiant claims purchased the Residence (Aff. at ¶ 265), was allegedly used by Mr. LaForte and Ms. McElhone to commit tax offenses. (Aff. at ¶¶ 231-233) Under a heading entitled “Violations of 26 U.S.C. § 7206 (Internal Revenue Code)”, the Affiant alleges that an investigation has identified millions of dollars in unreported income based upon a review of several tax returns. Specifically, criminal investigators for the I.R.S.

reviewed the tax returns and tax return information of Joseph LaForte and Lisa McElhone and several related entities, including . . . Eagle Six, Heritage, Full Spectrum Processing, Recruiting & Marketing Resources and Fast Advance Funding. In addition, criminal Investigators have reviewed tax returns and tax information related to LaForte and McElhone’s real estate holdings, including Blue Valley Holdings LLC . . . . Furthermore, investigators have reviewed voluminous bank records obtained during the investigation.

(Aff. at ¶ 231)<sup>8</sup> Blue Valley was one of 18 real estate holding companies identified here. (Id.) Ms. McElhone was identified as the sole owner of each of these holding companies in a Form SS4 filed with the IRS. (Aff. p. 94 n. 76.)

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<sup>8</sup> Blue Valley appears in only three paragraphs of the Affidavit: ¶¶ 231, 233, and 265.

In support of the probable cause showing of criminal offenses, the Affiant presents a chart contrasting Mr. LaForte and Ms. McElhone’s reported income with their purported expenditures over three years – 2016, 2017 and 2018. (Aff. at ¶ 233) The income was based upon their personal tax returns in 2016 and 2017 and joint tax returns in 2018. Their expenditures were derived from “two sources (i) bank records and (ii) the closing documents for real estate transactions referenced previously in this affidavit during the discussion concerning Eagle Six, Heritage and Blue Valley Holdings.” (Id.) This review by the criminal investigators yielded “approximately \$2.7 million of unreported income in 2016, approximately \$10.7 million in 2017 and approximately \$1.1 million in 2018.” (Id.)

Based upon this review, the Affiant states that there was “probable cause to believe that Joseph LaForte and Lisa McElhone committed tax crimes in violation of 26 U.S.C. § 7206 (fraud and false statements).” (Aff. at ¶ 231) Elsewhere, in connection with allegations of money laundering with respect to proceeds of CBSG, the Affiant states:

As a combined result of the fraudulent activities described above, CBSG has obtained millions of dollars in fraudulent proceeds, some of which has been routed from CBSG to McELHONE through the name and use of EAGLE SIX, HERITAGE, BLUE VALLEY HOLDINGS . . .

(Aff. at ¶ 245, see id. at ¶ 243)

## **2. Heritage Business Consultants**

The Affidavit mentions Heritage Business Consultants (“Heritage”) because a check was drawn from a bank account for this entity by Blue Valley to purchase the Residence. (Aff. at ¶ 265) The Affidavit identifies Heritage as a corporation formed in Florida in 2013 listing Ms. McElhone as president and secretary. (Aff. at ¶ 59) Its primary place of business is identified at 50 South 116th Street in Philadelphia, PA. (Id.)

In February 2019, Heritage opened a bank account with a community credit union (“ENT”) located in Colorado. (Aff. at ¶ 60, see ¶ 58) The “primary address” provided for this account was the business address for Rod Ermel Associates (“Ermel”), an accounting firm in Colorado Springs – 2 N. Nevada Ave Ste 1100. (Aff. at ¶ 60, see ¶ 58) Ms. McElhone was identified as the principal/owner of the account whose personal address was identified as the Residence. (Id.)

Heritage is one of the holding companies through which the Affiant claims that Mr. LaForte and Ms. McElhone allegedly committed tax crimes. (See Aff. at ¶ 62, 73, 231)

### **3. Eagle Six Consultants**

Eagle Six opened an ENT bank account in February 2019, identified the business address of Ermel, the accounting firm in Colorado Springs, as the “primary address” for this account, and identified Ms. McElhone as the President whose primary address is the Residence. (Aff. at ¶ 58) Florida records show that Eagle Six is registered in Florida, and its resident agent and president are both Lisa McElhone, with an address of 107 Quayside Drive, Jupiter, Florida. (Aff. at ¶ 57)

Like Heritage, Eagle Six is one of the holding companies through which the Affiant claims that Mr. LaForte and Ms. McElhone allegedly committed tax crimes. (See Aff. at ¶ 231) The Affiant states that bank records show a “high volume of transactions between and among CBSG, McElhone, Heritage and Eagle Six.” (Aff. at ¶ 62) Between August 26, 2014 and July 31, 2019, funds totaling “at least \$88 million were transferred from CBSG to entities controlled by Lisa McElhone, Jamie McElhone or James LaForte. Eagle Six received funds totaling approximately \$14.7 million, Heritage received funds totaling \$38.4 million . . .” (Aff. at ¶ 62 see id. at ¶ 65)

The Affidavit claims that the evidence shows that “Eagle Six and Heritage are intertwined with CBSG,” and “CBSG proceeds have been sent through these entities to acquire significant assets.” (Aff. at ¶ 73) This “provides probable cause that Joseph LaForte and Lisa McElhone committed various tax offenses.” (Id.) The Affiant claims further that purchasing properties in the names of various entities “is also believed to be an attempt by Joseph LaForte to avoid payment of the \$14 million in restitution he was ordered to pay in connection with his mortgage fraud conviction in Nassau County.” (Aff. at ¶ 73, see id. at ¶ 7)

#### **4. Liberty Financial**

According to the Affidavit, Liberty Financial is a company that Ms. McElhone incorporated in January 2011 as its president, with an address in Philadelphia, Pennsylvania. (Aff. at ¶ 21) The company was purportedly in the business of providing loan modifications for distressed homeowners (Id.) It was allegedly the subject of customer complaints to the Federal Trade Commission between 2010 and 2012. (Aff. at ¶ 21) One complainant allegedly spoke to Mr. LaForte who was using the alias “Joe Mackey.” (Id.) Liberty Financial is discussed in Section II(A), entitled “Subject Individuals,” as background in a description of Lisa McElhone. (See Aff. at p.7, II.A.2 “Lisa McElhone”) Liberty Financial is not one of the “Subject Entities.” (Aff. at ¶ 4, see Aff. pp. 17-35) Nor is Liberty Financial mentioned in the section of the Affidavit setting forth the probable cause showing. (See Aff. pp. 35-11, entitled: “Probable Cause that Crimes were Committed”)

#### **5. Recruiting and Marketing Resources**

The Affidavit identifies Recruiting and Marketing Resources (“Recruiting and Marketing”) as a company founded by Ms. McElhone’s mother, who is listed as an officer, with Ms. McElhone listed as its president. (Aff. at ¶ 48) It was incorporated in Pennsylvania in 2008.

(Id.) The Affidavit states that, in 2017, Recruiting and Marketing Resources, in addition to Full Spectrum Process (“FSP”), began paying the salaries of employees of CBSG. (Aff. at ¶ 38, and p. 84 n. 62, see ¶ 37) It is not surprising, then, that Recruiting and Marketing received about \$5 million in funds from CBSG (see Aff. at ¶ 62) even though the Affiant describes these payments as part of pattern of large and frequent transactions between CBSG and entities controlled by Ms. McElhone, her sister, Jamie McElhone, and Mr. LaForte’s brother, James LaForte. (Id.)

The Affiant claims that Mr. LaForte committed perjury when he claimed to be employed by Recruiting and Marketing in a deposition in December 2019 in a civil suit brought by a merchant, Fleetwood Services LLC, before the Honorable Juan Sanchez in the Eastern District of New York in December 2019. (Aff. at ¶¶ 207-212). The Affiant asserts that Mr. LaForte not only committed perjury, in violation of 18 U.S.C. § 1621, but also sought to “hide his association with CBSG, its fraudulent collection efforts, and its attempts to raise capital through fraud,” as well as his and his brother's involvement in the company, its physical location, and his knowledge of the various entities involved with CBSG.” (Aff. at ¶ 208)

**C. NO NEXUS FOR THE SEARCH OF THE RESIDENCE**

Based on the forgoing, the Affidavit fails to provide any basis to believe that evidence of the criminal offenses alleged would be found at the Residence. For purposes of this argument, the probable cause showing as to the alleged offenses themselves is not at issue. Rather, even if there were sufficient probable cause to believe that one or more individuals had committed any of the offenses under investigation, the Affiant utterly fails to provide even a modicum of proof that any evidence of such crimes would be found at the Residence, let alone a sufficient showing of probable cause.

As discussed above, the Affidavit shows that CBSG, in July 2020, was a large, profitable MCA business with three different offices in Philadelphia --- all of which were properties that the Affidavit sought to searched in addition to the Residence. To the extent that the Affidavit identifies the mailing address for any entity or individual associated with CBSG, any such addresses are not the Residence. Indeed, the Affiant makes no claim that records pertaining to any subject entities are sent to, or maintained at, the Residence. Nor does the Affiant claim that Mr. LaForte or Ms. McElhone has ever conducted business at the Residence or transported documents or other evidence to or from the Residence.

The Affiant's purported showing of probable cause is essentially a mirage which, upon inspection, evaporates. The fact that Mr. LaForte and Ms. McElhone were seen driving to or from the Residence does nothing more than establish that they live there. *Tozer*, 2009 WL 3698549 at \*4 (nexus to search home deficient where "items found [in the trash] only established that the home belonged to Defendant. None of the items found were the financial records of the business"). Notably, the Affiant makes no claim that Mr. LaForte and Ms. McElhone ever entered or left the Residence with a document or other evidence of any kind.

To the extent that the Affiant identifies entities – Heritage and Eagle Six – that it claims are subjects of the probable cause showing, these entities identified Rod Ermel in Colorado as the "primary residence" for their Colorado ENT bank accounts. Ms. McElhone allegedly provided the bank with the Residence as her address because she was the account owner. But that notation has no bearing on where documents pertaining to those accounts would be sent or maintained: documents are sent to Rod Ermel. The Affidavit makes not claim that documents pertaining to Heritage were sent to, or maintained at, the Residence.

Apart from claiming that Blue Valley was the corporate name used to purchase the Residence, the Affiant makes no claim that documents or other evidence about this entity were sent to, or maintained at, the Premises.

As for Liberty Financial, the Affiant makes no claim that this entity has any connection to the allegations under investigation. Importantly, it is not part of the probable cause showing. Liberty Financial is described as a loan modification business that preceded Ms. McElhone and Mr. LaForte's subsequent involvement in CBSG. It offers purely background information and lurid accusations. The Affiant nonetheless offers Liberty Financial to support a hopeless quest for nexus to search the Residence, because of a single mailing allegedly sent to the Residence addressed with this entity's name. (Aff. at ¶ 266) This purported proof is a mailing from American Express addressed to "Liberty Financial Joseph McElhone." (Id.) The Affiant uses the word "shipment" to denote, perhaps, some package containing contraband or at least some quantity of unknown documents.

But American Express is a credit card company. It sends credit cards (and junk mail concerning credit cards) -- not narcotics. Notably, the Affiant does not claim that the Residence is the mailing address for monthly statements, or that mailings were sent on a monthly basis. Rather, the Affiant implicitly concedes that only one delivery was ever sent. No amount of mental gymnastics can contort the mailing of a credit card from American Express under the name "Liberty Financial" into a shipment of documents concerning the business activities of Liberty Financial.

The claimed nexus between the residence and the three American Express "shipments," spread over three years, addressed to "Recruiting & MAkt Res Lisa McElhone," suffers from the same inadequacy as the American Express delivery to "Liberty Financial Joseph McElhone."

The Affidavit similarly provides no evidence that records pertaining to the business affairs of Recruiting and Marketing were ever sent to, or maintained at, the Residence. (Aff. at ¶ 266) The Affiant implicitly acknowledges that these three mailings -- one each year between 2017 and 2019 -- are not monthly statements. A delivery from American Express to an individual in the name of a particular company is not a mailing that contains evidence about the business activities of that company, let alone evidence about the criminal offenses involving the allegations in the Affidavit.

For the foregoing reasons, the Affidavit provides no basis to believe that evidence of the crimes under investigation will be found at the Residence. Thus, the search, and all fruits, must be suppressed.

### **CONCLUSION**

For the foregoing reasons, the requested relief should be granted in its entirety.

Dated: New York, New York  
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Respectfully submitted,

Alan S. Futerfas