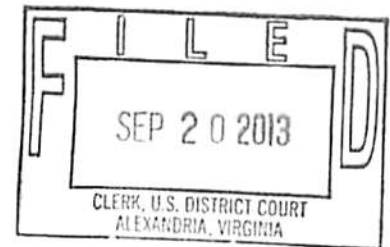


DOCKET 11

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



IN THE MATTER OF THE
APPLICATION OF THE UNITED
STATES AUTHORIZING THE USE OF
A PEN REGISTER/TRAP AND TRACE
DEVICE ON AN ELECTRONIC MAIL
ACCOUNT

NO. 1:13 EC 297

IN THE MATTER OF THE SEARCH
AND SEIZURE OF INFORMATION
ASSOCIATED WITH
ED_SNOWDEN@LAVABIT.COM
THAT IS STORED AND CONTROLLED
AT PREMISES CONTROLLED BY
LAVABIT LLC

NO. 1:13 SW 522

IN RE GRAND JURY SUBPOENA

NO. 13-1

EX PARTE AND UNDER SEAL

**MOTION OF THE UNITED STATES TO UNSEAL CERTAIN DOCUMENTS
RELATED TO LITIGATION WITH LAVABIT, LLC, AND SEALED STATEMENT OF
REASONS THAT OTHER INFORMATION SHOULD REMAIN UNDER SEAL**

The United States, by and through its undersigned attorneys, hereby requests that the Court partially unseal certain pleadings and orders that were filed in the above-captioned matters. The government originally requested the Court seal these documents because their public release would damage an ongoing criminal investigation. Since that time, Lavabit, LLC, and its proprietor, Ladar Levison, shut down its e-mail service. In addition, Mr. Levison made numerous public statements that his decision to shut down was in response to government attempts to obtain data related to a user or users of his service (a statement which, as discussed further below, Lavabit had previously represented it was prohibited from making due to the Court's sealing orders). The shutdown, and the attendant publicity generated by Mr. Levison

and his counsel's numerous media appearances, ended the government's ability to obtain evidence from any e-mail account hosted by Lavabit, LLC and alerted the target of the government's ongoing investigative actions. Thus, a substantial amount of the damage the government cited in its earlier sealing requests has been done. As such, the government hereby requests the Court partially unseal certain pleadings, as explained in more detail below.

BACKGROUND

The United States is conducting a criminal investigation of Edward Snowden for violations of numerous criminal statutes. On June 14, 2013, a criminal complaint was filing charging Snowden with violations of 18 U.S.C. §§ 641, 793, and 798. Snowden remains a fugitive. As part of the investigation, the United States discovered a number of e-mail accounts believed to be used by Mr. Snowden that were hosted at the domain lavabit.com. That domain belongs to Lavabit, LLC, which, prior to August 8, 2013, offered e-mail services to the general public.

As part of the investigation into Snowden, the United States began to investigate the e-mail accounts believed to belong to him that were provided by Lavabit. On June 8, 2013, a grand jury subpoena was issued to Lavabit requesting billing and subscriber information for one Lavabit e-mail account (ed_snowden@lavabit.com). Lavabit provided the information requested in the subpoena, via e-mail, on June 8. On June 10, 2013, the United States obtained an order pursuant to 18 U.S.C. § 2703(d) directing Lavabit to provide, within ten days, additional records and information about the same Lavabit e-mail account. The Application and Order were sealed, and Mr. Levison was directed not to disclose the Order to any other person other than his attorney. Mr. Levison received the Order on June 11, 2013. He responded, by mail, on June 27,

2013. Mr. Levison provided very little of the information sought by the June 10, 2013 Order. For example, Mr. Levison provided no transactional records for the account.

On June 28, 2013, the United States obtained a pen register/trap and trace order for this Lavabit e-mail account (Dkt. No. 1:13 EC 297). The pen register application and Order were sealed. That same day, agents of the Federal Bureau of Investigation met with Mr. Levison to discuss the grand jury subpoena, the June 27, 2013 § 2703(d) Order, and pen register Order. Mr. Levison told the agents he would not comply with the pen register order and that he wanted to speak with an attorney. Later that same day, the United States obtained an Order from Magistrate Judge Theresa C. Buchanan directing Lavabit to comply with the pen register Order forthwith. Lavabit still did not comply with the pen register order.

On July 9, 2013, the United States requested that this Court enter an Order to Show Cause why Lavabit and Mr. Levison should not be held in contempt for failing to comply with the pen register order. A hearing on the United States motion was held on July 16, 2013.

On July 11, 2013, the United States issued a grand jury subpoena requiring Mr. Levison to appear before the grand jury on July 16, 2013. Mr. Levison was directed to bring copies of Lavabit's encryption keys, and any other information necessary to accomplish the installation and use of a pen register/trap and trace device pursuant to the June 28, 2013 pen register Order.

On July 16, 2013, prior to the hearing on the United States' request for an Order to Show Cause, this Court authorized a search warrant, issued pursuant to 18 U.S.C. § 2703, commanding Lavabit to produce any information necessary to decrypt communications sent to and from the Lavabit e-mail account listed in the pen register Order (Dkt. No. 1:13 SW 522). The search warrant, application, and affidavit in support were sealed, and Lavabit was ordered not to disclose the search warrant.

At the July 16, 2013, hearing, Mr. Levison appeared *pro se*. Mr. Levison agreed to allow the United States to install a pen register/trap and trace device on his system. He did not provide any decryption assistance, nor did he provide copies of Lavabit's encryption keys. The United States withdrew the grand jury subpoena and Mr. Levison did not appear before the grand jury. After the hearing, this Court placed the grand jury subpoena that Mr. Levison had received under seal.

On July 25, 2013, Lavabit and Mr. Levison, through counsel, moved to quash the withdrawn subpoena and search warrant 1:13 SW 522. He also moved to unseal four categories of documents, which Mr. Levison described as "records concerning the United States government's attempt to obtain certain encryption keys": (1) all orders and documents filed in this matter¹ before the Court's issuance of the July 16, 2013 Sealing Order; (2) all orders and documents filed in this matter after the issuance of the July 16, 2013 Sealing Order; (3) all grand jury subpoenas and search and seizure warrants issued before or after issuance of the Sealing Order; and (4) all documents filed in connection with such orders or requests for such orders. As a basis for unsealing, Mr. Levison argued that the sealing order "unjustly restrained [him] from contacting Lavabit subscribers who could be subjected to government surveillance. . . ." Mot. for Unsealing of Sealed Court Records and Removal of Non-Disclosure Order and Mem. of Law in Supp. of Mot. 1-2, 5 ("Lavabit Mot. to Unseal").

On August 1, 2013, this Court held a hearing on Lavabit's motions. The motions were denied by written Order. The Court also ordered Mr. Levison and Lavabit to provide Lavabit's

¹ Mr. Levison's pleading did not define the "matter" at issue. However, the document was filed with a caption that included docket numbers 1:13 EC 297, 1:13 SW 522, and Grand Jury No. 13-1.

encryption keys and any other information necessary to accomplish the use of the pen register/trap and trace device to the government no later than 5 p.m. on August 2, 2013.

Mr. Levison did not provide the keys in a usable format by the Court's deadline.² On August 5, 2013, the United States moved for sanctions against Mr. Levison and Lavabit. That same day, the Court ordered that if Lavabit and Mr. Levison did not comply with the Court's directive by noon on August 5, 2013, the Court would impose a fine of \$5,000 each day until Lavabit complied.

On August 7, Mr. Levison provided a usable version of Lavabit's encryption keys to the United States. On August 8, 2013, Mr. Levison ceased operating Lavabit, LLC. He posted a message to the website "lavabit.com" which stated, in part: "I have been forced to make a difficult decision: to become complicit in crimes against the American people or walk away from nearly ten years of hard work by shutting down Lavabit. After significant soul searching, I have decided to suspend operations." Mr. Levison's statement on the website concluded with a request for donations.

Mr. Levison's decision to shut down Lavabit drew significant media attention, and Mr. Levison and his attorney subsequently gave numerous media interviews relating to his decision. A list of some of those interviews is attached to this pleading as Exhibit 24. Within a day of Mr. Levison's public announcement, The Guardian published a statement, purported to be from Edward Snowden, the target of the investigation, lauding Lavabit's decision. Glenn Greenwald, "E-mail service used by Snowden shuts itself down, warns against using US-based companies," *The Guardian*, August 9, 2013, available at

² Mr. Levison had provided an illegible, printed version of the encryption keys, which was useless.

<http://www.theguardian.com/commentisfree/2013/aug/09/lavabit-shutdown-snowden-silicon-valley> (last accessed Sept. 5, 2013).

On August 15, 2013, Lavabit filed two notices of appeal. Both notices of appeal indicated that Lavabit and Mr. Levison would appeal the Court's August 1 and August 5 Orders. One notice of appeal was captioned with docket numbers 1:13 EC 297 and 1:13 SW 522. The other notice of appeal was captioned with Grand Jury No. 13-1. The Fourth Circuit has consolidated the appeals.

At present, the United States seeks to partially unseal the following documents:

Document	Case Number	Exhibit No.
18 U.S.C. § 2703(d) Order	1:13 EC 254	1
Pen Register Order	1:13 EC 297	2
Motion for Entry of an Order to Compel	1:13 EC 297	3
Order Compelling Compliance Forthwith	1:13 EC 297	4
Motion of the United States for an Order to Show Cause	1:13 EC 297	5
Order to Show Cause	1:13 EC 297	6
Summons	1:13 EC 297	7
Grand Jury Subpoena dated July 11, 2013	13-1; 13 GJ 2527; 13-2451	8
Search Warrant	1:13 SW 522	9
Order to Seal	1:13 SW 522	10
18 U.S.C. § 2705(b) Order	1:13 SW 522	11
USA Supplement to Motion for Order to Show Cause	1:13 EC 297	12
Hearing Transcript		13

Order Denying Motion to Unseal	1:13 EC 297	14
Motion to Quash Subpoena and Search Warrant and Memorandum of Law in Support of Motion	1:13 EC 297; 1:13 SW 522; No. 13-1	15
Motion for Unsealing of Sealed Court Records and Removal of Non-Disclosure Order and Memorandum of Law in Support of Motion	1:13 EC 297; 1:13 SW 522; No. 13-1	16
Response of the United States in Opposition to Lavabit's Motion to Quash Subpoena and Motion For Unsealing of Sealed Court Records	1:13 EC 297; 1:13 SW 522; No. 13-1	17
Hearing Transcript		18
Order Denying Motions	1:13 EC 297; 1:13 SW 522; No. 13-1	19
Motion for Sanctions	1:13 EC 297; 1:13 SW 522; No. 13-1	20
Order [Imposing Sanctions]	1:13 EC 297; 1:13 SW 522; No. 13-1	21
Notices of Appeal	1:13 EC 297; 1:13 SW 522; No. 13-1	22
Notice of Appeal (Amended)	1:13 SW 522	23

Redacted versions of each document are attached to this pleading as exhibits 1-23.

ARGUMENT

Lavabit no longer provides e-mail services to the target of the government's investigation. Moreover, Lavabit has notified the target of the government's investigation regarding the government's interest in the target's Lavabit accounts. Lavabit's failure to provide e-mail service means that the target's Lavabit e-mail accounts are no longer viable sources of information or evidence in the government's investigation. Lavabit's notification of the user

means that the damage from user notification, such as the destruction of electronic evidence by the target, has likely already occurred. Thus, some of the reasons for sealing certain sealed pleadings no longer apply. The United States therefore requests that certain documents be partially unsealed.

However, the criminal investigation into Snowden's disclosures of classified national defense information remains ongoing, and Lavabit's violations of the sealing order have not entirely eliminated the reasons for sealing documents that are at issue in this matter. The justifications for sealing outlined in the government's original motion still apply to certain categories of information, and such information should remain sealed. The United States hereby reasserts (and incorporates by reference) those justifications as to the following categories of information:

1) Investigative Facts, Including Applications for Legal Process and Affidavits in Support of Those Applications. The above-captioned matters, which relate to a pen register, search warrant, and grand jury subpoena, include pleadings outlining the government's ongoing criminal investigation into the unauthorized disclosure of classified information. Though the target of the investigation has been charged with certain offenses, the government's investigation into his criminal conduct is ongoing. The government continues to investigate the scope of Snowden's unlawful activity, as well as whether he conspired with others. As such, the documents in this category, which contain recitations of the basis for obtaining the orders sought and their relevance to the investigation, contain "sensitive nonpublic facts," the disclosure of which could damage the ongoing investigation. This is sufficient justification for sealing. *See In re Application of the United States of America for an Order Pursuant to 18 U.S.C. Section 2703(d)*, 707 F.3d 283, 293-94 (4th Cir. 2013); *see also ACLU v. Holder*, 673 F.3d 245, 253 (4th

Cir. 2011) (noting government has compelling interest in protecting the integrity of ongoing investigations).

The United States has also redacted the specific accounts targeted by the government. Though these accounts, due to Mr. Levison's actions, are no longer operational, knowledge of the specific accounts known to the government could alert the target as to what information the government has, or does not have, about his activities. This could allow him to alter or destroy electronic evidence stored in other places. Such action would damage the investigation and thus this information should remain sealed. *See In re Application*, 707 F.3d at 293-94.

2) The Identities of Law Enforcement Personnel Involved in the Ongoing Investigation.

The United States has redacted the identities of court and law enforcement personnel. Law enforcement personnel are redacted because, in other investigations into the disclosure of classified information, individuals who did not support the investigation attempted to harass individuals working on the case by publishing their home addresses, work telephone numbers, and work e-mail addresses, and encouraged others to directly contact them. Some individuals also researched court personnel and placed personal information about such personnel on the internet. As such, this information has been redacted to minimize disruption to the investigation and to the operation of the courts. This is a valid justification for sealing. *See, e.g., United States v. Ramey*, 791 F.2d 317, 318-20 (4th Cir. 1986) (noting that a case may be sealed for legitimate prosecutorial needs and that protection of witness identities is a valid justification for sealing an indictment).

3) Information Required to be Sealed by Law. Some information contained in the records should be sealed by operation of law. For instance, some of the facts contained in various applications is derived from the returns of grand jury subpoenas, which should be sealed

pursuant to Federal Rule of Criminal Procedure 6(e). Other documents contain the address of Mr. Levison's personal residence, which is where his business is headquartered. This is personal information which must be redacted pursuant to the E-Government Act of 2002. *See* E.D. Va. Local R. 49.

One document specifically bears mention in this category: the grand jury subpoena issued to Mr. Levison. This subpoena was issued to Mr. Levison but later withdrawn after the government obtained a search warrant for the same information. Mr. Levison never appeared before the grand jury, and the government's interest in the information sought by the subpoena will be revealed by the unsealing of the government's search warrant. Thus, the government does not believe that the grand jury subpoena needs to remain sealed at this time. To the extent the court believes the release of the subpoena would disclose a "matter before the grand jury," the government seeks permission from the Court to disclose the subpoena as part of the record, if necessary, in the Court of Appeals.

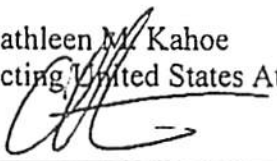
CONCLUSION

For the foregoing reasons, the United States requests that the Court sign the proposed order (Exhibit 25) partially unsealing the documents described in this motion, and authorize the release of the redacted versions attached to this pleading as Exhibits 1-23. A redacted version of the proposed order suitable for public release is attached as Exhibit 26.

Respectfully submitted,

Kathleen M. Kahoe
Acting United States Attorney

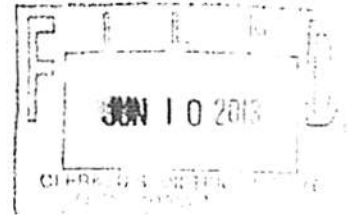
By:



Andrew Peterson
Assistant United States Attorney
United States Attorney's Office
Eastern District of Virginia
Alexandria, VA 22314
703-299-3700
Andy.peterson@usdoj.gov

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA



IN RE APPLICATION OF THE
UNITED STATES OF AMERICA FOR
AN ORDER PURSUANT TO
18 U.S.C. § 2703(d)

MISC. NO. 1:13 EC 254

Filed Under Seal

ORDER

The United States has submitted an application pursuant to 18 U.S.C. § 2703(d), requesting that the Court issue an Order requiring Lavabit LLC, an electronic communications service provider and/or a remote computing service located in Dallas, TX, to disclose the records and other information described in Attachment A to this Order.

The Court finds that the United States has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

The Court determines that there is reason to believe that notification of the existence of this Order will seriously jeopardize the ongoing investigation, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, or notify confederates. *See* 18 U.S.C. § 2705(b)(2), (3), (5).

IT IS THEREFORE ORDERED, pursuant to 18 U.S.C. § 2703(d), that Lavabit LLC shall, within ten days of the date of this Order, disclose to the United States the records and other information described in Attachment A to this Order.

IT IS FURTHER ORDERED that Lavabit LLC shall not disclose the existence of the application of the United States, or the existence of this Order of the Court, to the subscribers of the account(s) listed in Attachment A, or to any other person, unless and until otherwise

authorized to do so by the Court, except that Lavabit LLC may disclose this Order to an attorney for Lavabit LLC for the purpose of receiving legal advice.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court.

/s/
John F. Anderson
United States Magistrate Judge

June 10, 2013
Date

A TRUE COPY, TESTED:
CLERK, U.S. DISTRICT COURT

BY

DEFO/7 CLERK

ATTACHMENT A

I. The Account(s)

The Order applies to certain records and information associated with the following email account(s): [REDACTED]

II. Records and Other Information to Be Disclosed

Lavabit LLC is required to disclose the following records and other information, if available, to the United States for each account or identifier listed in Part I of this Attachment ("Account"), for the time period from inception to the present:

- A. The following information about the customers or subscribers of the Account:
 - 1. Names (including subscriber names, user names, and screen names);
 - 2. Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses);
 - 3. Local and long distance telephone connection records;
 - 4. Records of session times and durations, and the temporarily assigned network addresses (such as Internet Protocol ("IP") addresses) associated with those sessions;
 - 5. Length of service (including start date) and types of service utilized;
 - 6. Telephone or instrument numbers (including MAC addresses);
 - 7. Other subscriber numbers or identities (including the registration Internet Protocol ("IP") address); and
 - 8. Means and source of payment for such service (including any credit card or bank account number) and billing records.
- B. All records and other information (not including the contents of communications) relating to the Account, including:
 - 1. Records of user activity for each connection made to or from the Account, including log files; messaging logs; the date, time, length, and method of connections; data transfer volume; user names; and source and destination Internet Protocol addresses;
 - 2. Information about each communication sent or received by the Account, including the date and time of the communication, the method of communication, and the source and destination of the communication (such as source and destination email addresses, IP addresses, and telephone numbers).

CERTIFICATE OF AUTHENTICITY OF DOMESTIC BUSINESS RECORDS
PURSUANT TO FEDERAL RULE OF EVIDENCE 902(11)

I, _____, attest, under penalties of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this declaration is true and correct. I am employed by Lavabit LLC, and my official title is _____. I am a custodian of records for Lavabit LLC. I state that each of the records attached hereto is the original record or a true duplicate of the original record in the custody of Lavabit LLC, and that I am the custodian of the attached records consisting of _____ (pages/CDs/kilobytes). I further state that:

- a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth, by, or from information transmitted by, a person with knowledge of those matters;
- b. such records were kept in the ordinary course of a regularly conducted business activity of Lavabit LLC; and
- c. such records were made by Lavabit LLC as a regular practice.

I further state that this certification is intended to satisfy Rule 902(11) of the Federal Rules of Evidence.

Date

Signature

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN THE MATTER OF THE APPLICATION)	
OF THE UNITED STATES OF AMERICA)	
FOR AN ORDER AUTHORIZING THE)	(Under Seal)
INSTALLATION AND USE OF A PEN)	
REGISTER/TRAP AND TRACE DEVICE)	1:13 EC 297
ON AN ELECTRONIC MAIL ACCOUNT)	

ORDER

This matter having come before the Court pursuant to an Application under 18 U.S.C. § 3122, by [REDACTED], Assistant United States Attorney, an attorney for the Government as defined by Fed. R. Crim. P. 1(b)(1), requesting an Order under 18 U.S.C. § 3123, authorizing the installation and use of a pen register and the use of a trap and trace device or process ("pen/trap device") on all electronic communications being sent from or sent to the account associated with [REDACTED] that is registered to subscriber [REDACTED] at Lavabit, LLC (hereinafter referred to as the "SUBJECT ELECTRONIC MAIL ACCOUNT"). The Court finds that the applicant has certified that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation into possible violation(s) of 18 U.S.C. §§ 641, 793(d), and 798(a)(3) by [REDACTED].

IT APPEARING that the information likely to be obtained by the pen/trap device is relevant to an ongoing criminal investigation of the specified offense;

IT IS ORDERED, pursuant to 18 U.S.C. § 3123, that a pen/trap device may be installed and used by Lavabit and the Federal Bureau of Investigation to capture all non-content dialing, routing, addressing, and signaling information (as described and limited in the Application), sent from or sent to the SUBJECT ELECTRONIC MAIL ACCOUNT, to record the date and time of the initiation and receipt of such transmissions, to record the duration of the transmissions, and to record user log-in data (date, time, duration, and Internet Protocol address of all log-ins) on the

SUBJECT ELECTRONIC MAIL ACCOUNT, all for a period of sixty (60) days from the date of such Order or the date the monitoring equipment becomes operational, whichever occurs later;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123(b)(2), that Lavabit shall furnish agents from the Federal Bureau of Investigation, forthwith, all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen/trap device unobtrusively and with minimum interference to the services that are accorded persons with respect to whom the installation and use is to take place;

IT IS FURTHER ORDERED that the United States take reasonable steps to ensure that the monitoring equipment is not used to capture any "Subject:" portion of an electronic mail message, which could possibly contain content;

IT IS FURTHER ORDERED that Lavabit shall be compensated by the Federal Bureau of Investigation for reasonable expenses incurred in providing technical assistance;


IT IS FURTHER ORDERED that, in the event that the implementing investigative agency seeks to install and use its own pen/trap device on a packet-switched data network of a public provider, the United States shall ensure that a record is maintained which will identify: (a) any officer(s) who installed the device and any officer(s) who accessed the device to obtain information from the network; (b) the date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information; (c) the configuration of the device at the time of its installation and any subsequent modification thereof; and (d) any information which has been collected by the device. To the extent that the pen/trap device can be set to automatically record this information electronically, the record shall be maintained electronically throughout the installation and use of the pen/trap device. Pursuant to 18 U.S.C. § 3123(a)(3)(B), as amended, such record(s) shall be provided ex parte and under seal to this Court within 30 days of the termination of this Order, including any extensions thereof;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123(d), that this Order and the Application be sealed until otherwise ordered by the Court, and that copies of such Order may be

furnished to the Federal Bureau of Investigation, the United States Attorney's Office, and Lavabit;

IT IS FURTHER ORDERED that Lavabit shall not disclose the existence of the pen/trap device, or the existence of the investigation to any person, except as necessary to effectuate this Order, unless or until otherwise ordered by the Court.

SO ORDERED:

 /s/
Theresa Carroll Buchanan
United States Magistrate Judge

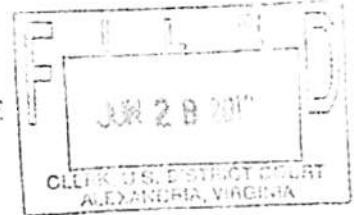
Hon. Theresa C. Buchanan
United States Magistrate Judge

Date: 6/18/13

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division



IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER AUTHORIZING THE) (Under Seal)
INSTALLATION AND USE OF A PEN)
REGISTER/TRAP AND TRACE DEVICE) 1:13 EC 297
ON AN ELECTRONIC MAIL ACCOUNT)

MOTION FOR ENTRY OF AN ORDER TO COMPEL

The United States, by and through its undersigned counsel, hereby requests the Court enter an Order directing Lavabit, LLC, to comply with the Court's June 28, 2013 Pen Register/Trap and Trace Order. In support of the motion the United States declares as follows:

1. On June 28, 2013, at approximately 4 p.m., this Court entered an Order pursuant to 18 U.S.C. § 3123 authorizing the installation and use of a pen register and the use of a trap and trace device ("pen/trap device") on all electronic communications being sent from or sent to the electronic mail account [REDACTED]. That e-mail account is controlled by Lavabit, LLC.

2. In its Order, the Court found that the information to be collected by the pen/trap device would be relevant to an ongoing criminal investigation. In addition, the Court ordered Lavabit "shall furnish agents from the Federal Bureau of Investigation, forthwith, all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen/trap device."

3. The Federal Bureau of Investigation served a copy of the Order on Lavabit that same afternoon. A representative of Lavabit stated that it could not provide the requested information because the user of the account had enabled Lavabit's encryption services, and thus

Lavabit would not provide the requested information. The representative of Lavabit indicated that Lavabit had the technical capability to decrypt the information but that Lavabit did not want to "defeat [its] own system."

4. The representative of Lavabit did not comply with the Order, and indicated he first wanted to seek legal advice.

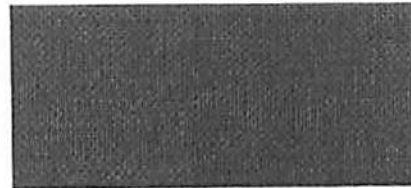
5. The Pen Register and Trap and Trace Act gives this Court the authority to order a provider to assist the government in the execution of a lawful pen register or trap and trace order, including by providing information. Section 3122 of Title 18, United States Code, provides in part: "An order issued under this section-- ... shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title." Section 3124(a) provides, "Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service... shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference... if such

assistance is directed by a court order as provided in section 3123(b)(2) of this title." Section 3124(b) contains a similar provision governing trap and trace orders.

Wherefore, the United States requests an Order directing Lavabit to comply forthwith with the Court's June 28, 2013 Order.

Respectfully submitted,
NEIL H. MACBRIDE
United States Attorney

By:

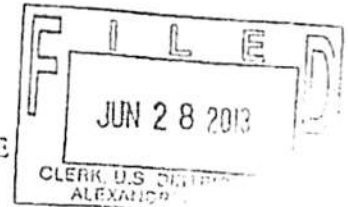


Assistant United States Attorney

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division



IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER AUTHORIZING THE) (Under Seal)
INSTALLATION AND USE OF A PEN)
REGISTER/TRAP AND TRACE DEVICE) 1:13 EC 297
ON AN ELECTRONIC MAIL ACCOUNT)

ORDER COMPELLING COMPLIANCE FORTHWITH

WHEREAS, on June 28, 2013, at approximately 4:00 p.m., this Court entered an Order pursuant to 18 U.S.C. § 3123 authorizing the installation and use of a pen register and the use of a trap and trace device ("pen/trap device") on all electronic communications being sent from or sent to the electronic mail account [REDACTED] which is an e-mail account controlled by Lavabit, LLC ("Lavabit"); and

WHEREAS, this Court found that the information obtained by the pen/trap device would be relevant to an ongoing criminal investigation; and

WHEREAS, the Court's Order directed that Lavabit "shall furnish agents from the Federal Bureau of Investigation, forthwith, all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen/trap device;" and

WHEREAS, Lavabit informed the Federal Bureau of Investigation that the user of the account had enabled Lavabit's encryption services and thus the pen/trap device would not collect the relevant information; and

WHEREAS, Lavabit informed the FBI that it had the technological capability to obtain the information but did not want to "defeat [its] own system;"

IT IS HEREBY ORDERED that Lavabit LLC is directed to comply forthwith with the Court's June 28, 2013 Order, and provide the Federal Bureau of Investigation with unencrypted data pursuant to the Order. To the extent any information, facilities, or technical assistance are under the control of Lavabit are needed to provide the FBI with the unencrypted data, Lavabit shall provide such information, facilities, or technical assistance forthwith.

Failure to comply with this Order shall subject Lavabit to any penalty within the power of the Court, *including the possibility of criminal contempt of Court.* *TJB*

SO ORDERED.

6/28/13


TSJ
 Theresa Carroll Buchanan
~~United States Magistrate Judge~~
Hon. Theresa C. Buchanan
United States Magistrate Judge

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division



IN THE MATTER OF THE)	FILED UNDER SEAL
APPLICATION OF THE UNITED)	
STATES OF AMERICA FOR AN ORDER)	No. 1:13EC297
AUTHORIZING THE USE OF A PEN)	
REGISTER/TRAP AND TRACE DEVICE)	
ON AN ELECTRONIC MAIL ACCOUNT)	

**MOTION OF THE UNITED STATES
FOR AN ORDER TO SHOW CAUSE**

The United States, through the undersigned counsel, pursuant to Title 18, United States Code, Section 401, hereby moves for the issuance of an order directing Ladar Levison, the owner and operator of Lavabit LLC, an electronic communications service provider, to show cause why Lavabit LLC has failed to comply with the orders entered June 28, 2013, in this matter and, as a result, why this Court should not hold Mr. Levison and Lavabit LLC in contempt for its disobedience and resistance to these lawful orders. The United States further requests that the Court convene a hearing on this motion on July 16, 2013, at 10:00 a.m., and issue a summons directing Mr. Levison to appear before this Court on that date. In support of this motion, the United States represents:

1. The United States is conducting a criminal investigation of [REDACTED]



[REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

On June 10, 2013, the United States obtained an order pursuant to 18 U.S.C. § 2703(d) directing Lavabit LLC to provide, within ten days, additional records and information about [REDACTED] email account. Mr. Levison received that order on June 11, 2013. Mr. Levison responded by mail, which was not received by the government until June 27, 2013. Mr. Levison provided very little of the information sought by the June 10, 2013 order.

3. On June 28, 2013, the United States obtained a pen register/trap and trace order on [REDACTED] email account, a copy of which is attached together with the application for that order.

4. On June 28, 2013, FBI special agents met Mr. Levison at his residence in Dallas, Texas, and discussed the prior grand jury subpoena served on Lavabit LLC and the pen register order entered that day. Mr. Levison did not have a copy of the order when he spoke with the agents, but he received a copy from the FBI within a few minutes of their conversation. Mr. Levison told the agents that he would not comply with the pen register order and wanted to speak to an attorney. It was unclear whether Mr. Levison would not comply with the order because it was technically not feasible or difficult or because it was not consistent with his business practice of providing secure, encrypted email service for his customers.

5. On June 28, 2013, after this conversation with Mr. Levison, the United States obtained an Order Compelling Compliance Forthwith, which directed Lavabit to comply with the pen register order. Copies of that motion and order are attached.

6. Since June 28, 2013, the FBI has made numerous attempts, without success, to speak and meet directly with Mr. Levison to discuss the pen register order and his failure to provide "all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen/trap device" as required by that order. As of this date, Lavabit LLC has not complied with the order.

7. The United States requests that the Court enter the attached proposed order directing Mr. Levison to show cause why Lavabit LLC has failed to comply with the pen register order and why, therefore, he should not be held in contempt. The United States requests that this show cause hearing be scheduled for July 16, 2013, at 10:00 a.m., and that a summons be issued directing Mr. Levison to appear before this Court on that date.

8. The June 10, 2013 Section 2703(d) Order and the June 28, 2013 pen register order remain under seal. In addition, these orders provide that Lavabit LLC shall not disclose the existence of the government's applications and the orders to the subscriber [REDACTED] or to any other persons unless otherwise authorized to do so by court order, except that Lavabit LLC may disclose the orders to an attorney for the purpose of obtaining legal advice regarding these orders. The United States requests that these documents remain under seal, that the non-disclosure

provisions of the orders remain in effect, and that this motion and order and any subsequent pleadings and/or proceedings regarding this motion also be sealed.

Respectfully submitted,

Neil H. MacBride
United States Attorney

By: 

United States Attorney's Office
Justin W. Williams U.S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
Phone: 703-299-3700

PROPOSED
ORDER TO SHOW CAUSE

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN THE MATTER OF THE)	UNDER SEAL
APPLICATION OF THE UNITED)	
STATES OF AMERICA FOR AN ORDER)	No. 1:13EC297
AUTHORIZING THE USE OF A PEN)	
REGISTER/TRAP AND TRACE DEVICE)	
ON AN ELECTRONIC MAIL ACCOUNT)	

ORDER TO SHOW CAUSE

Upon motion of the United States pursuant to Title 18, United States Code, Section 401, good cause having been shown, IT IS HEREBY ORDERED:

1. Ladar Levison, the owner and operator of Lavabit LLC, an electronic communications service provider, shall appear before this Court on July 16, 2013, at 10:00 a.m., at which time he shall show cause why Lavabit LLC has failed to comply with the orders entered June 28, 2013, in this matter and why this Court should not hold Mr. Levison and Lavabit LLC in contempt for its disobedience and resistance to these lawful orders;

2. The Clerk's Office shall issue a summons for the appearance of Mr. Levison on July 16, 2013, at 10:00 a.m. The Clerk's Office shall provide the Federal Bureau of Investigation with a certified copy of the summons for service on Mr. Levison and Lavabit LLC.

3. The Federal Bureau of Investigation shall serve the summons on Mr. Levison together with a copy of the Motion of the United States for an Order to Show Cause and a certified copy of this Order to Show Cause.

4. The sealing and non-disclosure provisions of the June 10, 2013 Section 2703(d) order and the June 28, 2013 pen register order shall remain in full force and effect. Mr. Levison

and Lavabit LLC shall not disclose the existence of these applications, motions, and court orders, including this Order to Show Cause, to the subscriber or to any other persons unless otherwise authorized to do so by court order, except that Lavabit LLC may disclose the orders to an attorney for the purpose of obtaining legal advice regarding these orders.

5. This Order, the Motion of the United States for an Order to Show Cause, and any subsequent pleadings and proceedings regarding this matter shall be placed under seal until further order of this Court.

Entered in Alexandria, Virginia, this ____ day of July, 2013

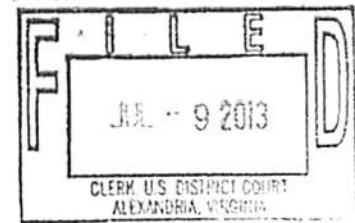
Claude M. Hilton
United States District Judge

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN THE MATTER OF THE) UNDER SEAL
APPLICATION OF THE UNITED)
STATES OF AMERICA FOR AN ORDER) No. 1:13EC297
AUTHORIZING THE USE OF A PEN)
REGISTER/TRAP AND TRACE DEVICE)
ON AN ELECTRONIC MAIL ACCOUNT)



ORDER TO SHOW CAUSE

Upon motion of the United States pursuant to Title 18, United States Code, Section 401,
good cause having been shown, IT IS HEREBY ORDERED:

1. Ladar Levison, the owner and operator of Lavabit LLC, an electronic
communications service provider, shall appear before this Court on July 16, 2013, at 10:00 a.m.,
at which time he shall show cause why Lavabit LLC has failed to comply with the orders entered
June 28, 2013, in this matter and why this Court should not hold Mr. Levison and Lavabit LLC in
contempt for its disobedience and resistance to these lawful orders;

2. The Clerk's Office shall issue a summons for the appearance of Mr. Levison on
July 16, 2013, at 10:00 a.m. The Clerk's Office shall provide the Federal Bureau of Investigation
with a certified copy of the summons for service on Mr. Levison and Lavabit LLC.

3. The Federal Bureau of Investigation shall serve the summons on Mr. Levison
together with a copy of the Motion of the United States for an Order to Show Cause and a
certified copy of this Order to Show Cause.

4. The sealing and non-disclosure provisions of the June 10, 2013 Section 2703(d)
order and the June 28, 2013 pen register order shall remain in full force and effect. Mr. Levison

and Lavabit LLC shall not disclose the existence of these applications, motions, and court orders, including this Order to Show Cause, to the subscriber or to any other persons unless otherwise authorized to do so by court order, except that Lavabit LLC may disclose the orders to an attorney for the purpose of obtaining legal advice regarding these orders.

5. This Order, the Motion of the United States for an Order to Show Cause, and any subsequent pleadings and proceedings regarding this matter shall be placed under seal until further order of this Court.

Entered in Alexandria, Virginia, this 9th day of July, 2013

/s/
Claude M. Hilton
United States District Judge

A TRUE COPY, TESTE:
CLERK, U.S. DISTRICT COURT

BY 

DEPUTY CLERK

EXHIBIT 7

AO 83 (Rev. 06/09) Summons in a Criminal Case

UNITED STATES DISTRICT COURT

for the

Eastern District of Virginia

United States of America
v.

Ladar Levison

Defendant

Case No. 1:13ec297

UNDER SEAL

SUMMONS IN A CRIMINAL CASE

YOU ARE SUMMONED to appear before the United States district court at the time, date, and place set forth below to answer to one or more offenses or violations based on the following document filed with the court:

- ☐ Indictment ☐ Superseding Indictment ☐ Information ☐ Superseding Information ☐ Complaint
☐ Probation Violation Petition ☐ Supervised Release Violation Petition ☐ Violation Notice ☒ Order of Court

Place: 401 Courthouse Square
Alexandria, VA 22314

Courtroom No.: 800- Judge Hilton

Date and Time: 7/16/13 @ 10:00 am

This offense is briefly described as follows:

See Attached Order

Date: 07/09/2013

Issuing officer's signature

- Deputy Clerk

Printed name and title

I declare under penalty of perjury that I have:

☐ Executed and returned this summons

☐ Returned this summons unexecuted

A TRUE COPY, TESTE:
CLERK, U.S. DISTRICT COURT

Date:

DEPUTY CLERK

Printed name and title

EXHIBIT 8

AO 110 (Rev. 01/09) Subpoena to Testify Before a Grand Jury

13-1 / 1302537 / 13-2451

United States District Court
for the

Eastern District of Virginia

SUBPOENA TO TESTIFY BEFORE THE GRAND JURY

TO: Ladar Norman Levison

[REDACTED]
Dallas, TX 75204

YOU ARE COMMANDED to appear and testify before the United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: UNITED STATES DISTRICT COURT
401 Courthouse Square
Alexandria, Virginia 22314

Date and Time: July 16, 2013 9:30 AM

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable):

In addition to your personal appearance, you are directed to bring to the grand jury the public and private encryption keys used by lavabit.com in any SSL (Secure Socket Layer) or TLS (Transport Security Layer) sessions, including HTTPS sessions with clients using the lavabit.com web site and encrypted SMTP communications (or Internet communications using other protocols) with mail servers;

Any other information necessary to accomplish the installation and use of the pen/trap device ordered by Judge Buchanan on June 28, 2013, unobtrusively and with minimum interference to the services that are accorded persons with respect to whom the installation and use is to take place;

If such information is electronically stored or unable to be physically transported to the grand jury, you may provide a copy of the information to the Federal Bureau of Investigation. Provision of this information to the FBI does not excuse your personal appearance.

Date: July 11, 2013

CLERK OF COURT

[REDACTED]
Signature of the Clerk or Deputy Clerk

The name, address, email, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

[REDACTED]
Office of the United States Attorney
Justin W. Williams United States Attorney's Building
1100 Jamieson Avenue
Alexandria, Virginia 22314 (703) 299-2700

AO 110 (Rev. 01/09) Subpoena to Testify Before a Grand Jury (Page 2)

PROOF OF SERVICE

This subpoena for (name of individual or organization) Ladar Norman Lewis
was received by me on (date) July 11, 2013.

☒ I personally served the subpoena on the individual at (place) [REDACTED]
Dallas, Texas on (date) July 11, 2013; or

☐ I left the subpoena at the individual's residence or usual place of abode with (name) _____,
a person of suitable age and discretion who resides there, on
(date) _____, and mailed a copy to the individual's last known address; or

☐ I served the subpoena on (name of individual) _____, who is
designated by law to accept service of process on behalf of (name of organization)
_____ on (date) _____; or

☐ I returned the subpoena unexecuted because _____; or

☐ Other (specify): _____

I declare under the penalty of perjury that this information is true.

Date: July 11, 2013



F.B.I. Dallas
Server's address

Additional information regarding attempted services, etc:

EXHIBIT 9

AO 93 (Rev. 12/09) Search and Seizure Warrant

UNDER SEAL

UNITED STATES DISTRICT COURT

for the
Eastern District of Virginia

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address)
INFORMATION ASSOCIATED WITH)
[REDACTED])
THAT IS STORED AT PREMISES)
CONTROLLED BY LAVABIT, LLC)

Case No. 1:13SW522

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Northern District of Texas
(identify the person or describe the property to be searched and give its location):
See Attachment A

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be seized):
See Attachment B

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before _____
(not to exceed 14 days)

☐ in the daytime 6:00 a.m. to 10 p.m. ☒ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge
The Honorable Claude M. Hilton
(name)

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) ☐ for _____ days (not to exceed 30).
☐ until, the facts justifying, the later specific date of _____

Date and time issued: July 16, 2013

City and state: Alexandria, Virginia

/s/
Claude M. Hilton
United States District Judge

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with [REDACTED] that is stored at premises controlled by Lavabit, LLC, a company that accepts service of legal process at [REDACTED] Dallas, Texas, 75204.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Lavabit, LLC (the "Provider")

To the extent that the information described in Attachment A is within the possession, custody, or control of the Provider, including any emails, records, files, logs, or information that has been deleted but is still available to the Provider, the Provider is required to disclose the following information to the government for each account or identifier listed in Attachment A:

- a. All information necessary to decrypt communications sent to or from the Lavabit e-mail account [REDACTED] including encryption keys and SSL keys;
- b. All information necessary to decrypt data stored in or otherwise associated with the Lavabit account [REDACTED]

II. Information to be seized by the government

All information described above in Section I that constitutes fruits, contraband, evidence and instrumentalities of violations of 18 U.S.C. §§ [REDACTED] those violations involving [REDACTED] including, for each account or identifier listed on Attachment A, information pertaining to the following matters:

- a. All information necessary to decrypt communications sent to or from the Lavabit e-mail account [REDACTED] including encryption keys and SSL keys;
- b. All information necessary to decrypt data stored in or otherwise associated with the Lavabit account [REDACTED]

CERTIFICATE OF AUTHENTICITY OF DOMESTIC
BUSINESS RECORDS PURSUANT TO FEDERAL RULE
OF EVIDENCE 902(11)

I, _____, attest, under penalties of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this declaration is true and correct. I am employed by Lavabit, LLC, and my official title is _____. I am a custodian of records for Lavabit, LLC. I state that each of the records attached hereto is the original record or a true duplicate of the original record in the custody of Lavabit, LLC, and that I am the custodian of the attached records consisting of _____ (pages/CDs/kilobytes). I further state that:

- a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth, by, or from information transmitted by, a person with knowledge of those matters;
- b. such records were kept in the ordinary course of a regularly conducted business activity of Lavabit, LLC; and
- c. such records were made by Lavabit, LLC as a regular practice.

I further state that this certification is intended to satisfy Rule 902(11) of the Federal Rules of Evidence.

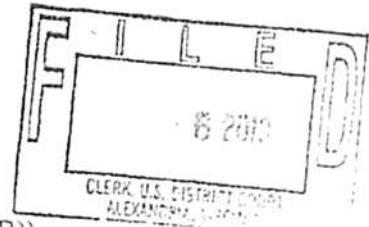
Date

Signature

EXHIBIT 10

UNDER SEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
[REDACTED]
THAT IS STORED AT PREMISES
CONTROLLED BY LAVABIT, LLC

) UNDER SEAL
) (Local Rule 49(B))
) No. 1:13sw522
)
)
)

ORDER TO SEAL

The UNITED STATES, pursuant to Local Rule 49(B) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, having moved to seal the application for a search warrant, the search warrant, the affidavit in support of the search warrant, the Motion to Seal, and proposed Order in this matter; and

The COURT, having considered the government's submissions, including the facts presented by the government to justify sealing; having found that revealing the material sought to be sealed would jeopardize an ongoing criminal investigation; having considered the available alternatives that are less drastic than sealing, and finding none would suffice to protect the government's legitimate interest in concluding the investigation; and having found that this legitimate government interest outweighs at this time any interest in the disclosure of the material; it is hereby

ORDERED, ADJUDGED, and DECREED that, the application for search warrant, the search warrant, the affidavit in support of the search warrant, Motion to Seal, and this Order be sealed until further Order by the Court. It is further ordered that law enforcement officers may serve a copy of the warrant on the occupant of the premises as required by Rule 41 of the Fed. R. of Crim. Proc.

Date: July 16, 2013
Alexandria, Virginia

/s/
Claude M. Hilton
United States District Judge

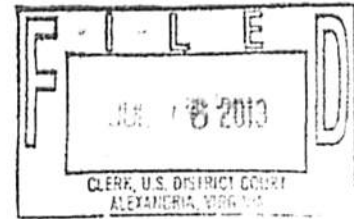
EXHIBIT 11

UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

IN RE: APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN ORDER
PURSUANT TO 18 U.S.C. § 2705(b)

Case No. 1:13SW522
Filed Under Seal



ORDER

The United States has submitted an application pursuant to 18 U.S.C. § 2705(b), requesting that the Court issue an Order commanding Lavabit, an electronic communications service provider and/or a remote computing service, not to notify any person (including the subscribers or customers of the account(s) listed in the search warrant) of the existence of the attached search warrant until further order of the Court.

The Court determines that there is reason to believe that notification of the existence of the attached warrant will seriously jeopardize the investigation, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, or notify confederates. See 18 U.S.C. § 2705(b)(2), (3), (5).

IT IS THEREFORE ORDERED under 18 U.S.C. § 2705(b) that Lavabit shall not disclose the existence of the attached search warrant, or this Order of the Court, to the listed subscriber or to any other person, unless and until otherwise authorized to do so by the Court, except that Lavabit may disclose the attached search warrant to an attorney for Lavabit for the purpose of receiving legal advice.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court.

July 16, 2013
Date

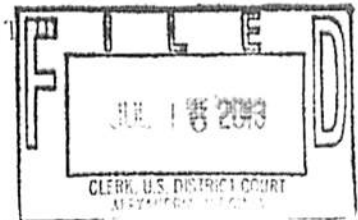
/s/
Claude M. Hilton
United States District Judge

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division



IN THE MATTER OF THE) FILED UNDER SEAL.
APPLICATION OF THE UNITED)
STATES OF AMERICA FOR AN ORDER) No. 1:13EC297
AUTHORIZING THE USE OF A PEN)
REGISTER/TRAP AND TRACE DEVICE)
ON AN ELECTRONIC MAIL ACCOUNT)

**SUPPLEMENT TO THE MOTION OF THE UNITED STATES
FOR AN ORDER TO SHOW CAUSE**

The United States, through the undersigned counsel, submits the following additional information in support of its show cause motion filed July 9, 2013:

1. Following the issuance of the Court's Order to Show Cause, the government had a meeting/conference call with Mr. Levison and his then counsel. Mr. Levison was in Dallas, Texas, at the FBI field office, at the time, and his counsel from San Francisco, California, and prosecutors and FBI agents from the Washington, D.C. field office participated by telephone. The conference call was convened to discuss Mr. Levison's questions and concerns about the installation and operation of a pen register on the targeted email account. Mr. Levison's concerns focused primarily on how the pen register device would be installed on the Lavabit LLC system, what data would be captured by the device, what data would be viewed and preserved by the government. The parties also discussed whether Mr. Levison would be able to provide "keys" for encrypted information.

2. During the conference call, the FBI explained to Mr. Levison that the pen register could be installed with minimal impact to the Lavabit LLC system, and the agents told Mr.

Levison that they would meet with him when they were ready to install the device and go over with him any of the technical details regarding the installation and use of the pen register. As for the data collected by the device, the agents assured Mr. Levison that the only data that the agents would review is that which is stated in the order and nothing more (*i.e.*, user log-in information and the date, time, and duration of the transmissions for the target account).

3. Lavabit LLC provides encryption service to paid users [REDACTED]. Based on the conference call with Mr. Levison, the FBI is reasonably confident that with the encryption keys, which Mr. Levison can access, it would be able view in an un-encrypted format any encrypted information required to be produced through the use of the pen register.

4. Mr. Levison and his attorney did not commit to the installation and use of the pen register at the conclusion of the July 10 conference call. On July 11, 2013, counsel who participated in the conference call informed the government that she no longer represented Mr. Levison or Lavabit LLC. In addition, Mr. Levison indicated that he would not come to court unless the government paid for his travel.

5. On July 11, 2013, FBI agents served Mr. Levison with a grand jury subpoena directing him to appear before the grand jury in this district on July 16, 2013. As a grand jury witness, the government was responsible for making Mr. Levison's travel arrangements.

6. On July 11, 2013, the undersigned counsel sent Mr. Levison an email indicating that he has been served with a show cause order from this Court requiring his appearance on July 16, 2013, and a subpoena requiring his appearance on the same date before a federal grand jury. The email further advised Mr. Levison that he should contact the United States Attorney's Office as soon as possible to make his travel arrangements.

7. On July 13, 2013, Mr. Levison, who was no longer represented by counsel, sent government prosecutors an email indicating that he would be able to collect the data required by the pen register and provide that data to the government after 60 days (the period of the pen register order). For this service, Mr. Levison indicated that the government would have to pay him \$2000 for "developmental time and equipment" plus an additional \$1500 if the government wanted the data "more frequently" than after 60 days.

8. On July 13, 2013, the government responded to Mr. Levison's proposal. The prosecutors informed Mr. Levison that the pen register is a device used to monitor ongoing email traffic on a real-time basis and providing the FBI with data after 60 days was not sufficient. Furthermore, prosecutors informed him that the statute authorizes the government to compensate a service provider for "reasonable expenses," and the amount he quoted did not appear to be reasonable. Mr. Levison responded by email stating that the pen register order, in his opinion, does not require real-time access (although this fact was discussed at length during the July 10 conference call). Moreover, he indicated that the cost of reissuing the "SSL certificate" (for encryption service) would be \$2000. It was unclear in his email if this \$2000 was an additional expense to be added to the \$3500 previously claimed. Mr. Levison indicated that he would try to contact the person responsible for making his travel arrangements at the United States Attorney's office on Sunday afternoon.

9. On July 15, 2013, Mr. Levison spoke with the person responsible for making his travel arrangements. He was told that he was booked on a flight from Dallas, Texas, to Reagan National Airport departing that same evening. He also had a hotel reservation. Mr. Levison indicated that [REDACTED]

10. The proceeding before the Court today is to determine whether Lavabit LLC and Mr. Levison should be held in civil contempt. Civil contempt, as compared to criminal contempt under rule 42 of the Federal Rules of Criminal Procedure, is intended to coerce compliance with a court order. There are four elements to civil contempt: (1) the existence of valid order of which Lavabit LLC and Mr. Levison had actual or constructive knowledge; (2) the order was in the government's "favor"; (3) Lavabit LLC and Mr. Levison violated the terms of the order and had knowledge, or constructive knowledge, of such violation; and (4) the government suffered harm as a result. *In re Grand Jury Subpoena* (T-112), 597 F.3d 189, 202 (4th Cir. 2012).

11. Here, each of these elements has been met. Lavabit LLC, through direct communication between the government and Mr. Levison, its owner and operator, has had actual knowledge of the pen register order and the subsequent June 28 order of the magistrate judge compelling compliance with that order. This Court's show cause order, which was personally served on Mr. Levison, provided further notice of the violation of those orders by Lavabit LLC. The government clearly has suffered harm in that it has lost 20 days of information as a result of non-compliance.

12. Lavabit LLC may comply with the pen register order by simply allowing the FBI to install the pen register device and provide the FBI with the encryption keys. If Lavabit LLC informs the Court it will comply with the order, the government will not seek sanctions. If, however, Mr. Levison informs the Court that Lavabit LLC will not comply, the government requests that the Court impose a fine of \$1000 per day, commencing July 17, 2013, until Lavabit LLC fully complies with the pen register order.

13. To the extent that Lavabit LLC takes the position that the pen register does not

authorize the production of the encryption keys, the government has asked the Court to authorize the seizure of that information pursuant to a warrant under Title 18, United States Code, Section 2703, thus rendering this argument moot.

14. The Court has sealed this proceeding. This pleading has also been filed under seal. The United States will hand deliver a copy of this pleading to Mr. Levison at today's hearing.

Respectfully submitted,

Neil H. MacBride

By

United States Attorney's Office
Justin W. Williams U.S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
Phone: 703-299-3700

EXHIBIT 13

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN THE MATTER OF THE)
APPLICATION OF THE UNITED) 1:13 EC 297
STATES OF AMERICA FOR AN)
ORDER AUTHORIZING THE) UNDER SEAL
INSTALLATION AND USE OF A)
PEN REGISTER/TRAP AND TRACE) Alexandria, Virginia
DEVICE ON AN ELECTRONIC) July 16, 2013
MAIL ACCOUNT) 10:41 a.m.

COPY

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States: James Trump, Esq.
Andrew Peterson, Esq.
Brandon Van Grack, Esq.
Michael Ben'Ary, Esq.

For the Respondent: Ladar Levison, Respondent

Court Reporter: Tracy L. Westfall, RPR, CMRS, CCR

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

P R O C E E D I N G S

THE CLERK: In Re: Case No. 1:13 EC 297.

MR. TRUMP: Good morning, Judge. Jim Trump on behalf of the United States. With me is Andy Peterson, Brandon Van Grack from the United States Department of Justice, Mr. Ben'Ary behind me, and Matt Braverman, special agent for the FBI.

THE COURT: All right.

MR. LEVISON: Ladar Levison, the subject of the summons.

THE COURT: All right. Mr. Trump.

MR. TRUMP: Your Honor, we submitted our supplemental paper this morning describing the communication we've had with Lavabit, LLC, through Mr. Levison. And I think, very simply, we would like this Court to inquire of Mr. Levison whether he intends to comply with the pen register order which would require him to allow the FBI access to his server to install a device which will extract data, filter that data, and provide that data to the FBI, and to provide the FBI with the encryption keys to the extent there is encrypted information, included among within the body of information called for by the pen register order.

As the Court is aware, and as we will provide with Mr. Levison, we obtained a search warrant this morning from Your Honor for the same encryption keys. Thus, to the extent there's

1 any question as to whether Mr. Levison would be required to
2 provide these keys, it's now subject both to the pen register
3 order and the search warrant, the seizure warrant.

4 That's where we stand, Your Honor. If Mr. Levison
5 agrees to comply with the order, we would not seek any
6 sanctions. We would ask that he be directed to forthwith make
7 his servers available so the FBI can install that device and to
8 extract the encryption keys.

9 If, however, he informs the Court he is not willing to
10 comply with the order, we would ask the Court to impose
11 sanctions. We suggested in our pleading a thousand dollars a
12 day to be paid to the United States government until he
13 complies. If he doesn't comply with that sanction, then we
14 would be back in court seeking additional sanctions or charging
15 additional offenses.

16 THE COURT: All right. Mr. Levison.

17 MR. LEVISON: Good morning, Your Honor. I'm not sure
18 what order I should make these in, but I would like to request a
19 couple of things by motion.

20 I'd like to move that all of the nonsensitive portions
21 of the documents that were provided, i.e., everything except the
22 account in question, be unsealed. I believe it's important for
23 the industry and the people to understand what the government is
24 requesting by demanding that I turn over these encryption keys
25 for the entire service.

1 THE COURT: All right. What do you say to that,
2 Mr. Trump? Deal with the motions before I --

3 MR. TRUMP: What Mr. Levison is trying to do, Your
4 Honor, is invite industry to come in and litigate as a surrogate
5 for him the issue of whether the encryption keys are part and
6 parcel of the pen register order. And that's one of the reasons
7 we sought the search warrant, to make it clear, whether through
8 the search warrant or pen register order, he is required to
9 provide these keys.

10 We know he's been in contact with attorneys who also
11 represent industry groups and others who have litigated issues
12 like this in the WikiLeaks context and others. But we would
13 object to unsealing this matter because it's just Mr. --

14 THE COURT: And they've done that in connection with
15 the issuance of a pen register?

16 MR. TRUMP: They have litigated privacy-related issues
17 in the context of process under 2703. I'm not sure -- not a pen
18 register, but with respect to 2703.

19 But we discussed this issue with Mr. Levison and his
20 counsel by conference call. We indicated that the only data
21 that the government seeks is that which is required by the pen
22 register order. That it's just the basic header to e-mail
23 traffic, sender, recipient, time, duration, that sort of thing.

24 If Mr. Levison wants to object to providing the keys,
25 he can certainly object to doing that and then we can proceed

1 from there, but I don't think he's entitled to try to make this
2 a public proceeding to invite others in to litigate those issues
3 on his behalf.

4 THE COURT: All right. Well, I believe that to be
5 correct. I mean, this is a criminal investigation. A pen
6 register has been ordered and is here at issue, and any motion
7 to unseal that will be denied.

8 You said you had another motion, I believe?

9 MR. LEVISON: Yeah. My issue is only with the SSL
10 keys. So if that is litigated separately and that portion of
11 the proceeding is unsealed, I'm comfortable with that.

12 THE COURT: I don't understand what you're saying,
13 separate proceedings.

14 MR. LEVISON: Sorry. I have always agreed to the
15 installation of the pen register device. I have only ever
16 objected to turning over the SSL keys because that would
17 compromise all of the secure communications in and out of my
18 network, including my own administrative traffic.

19 THE COURT: Well, didn't my order already include that?

20 MR. LEVISON: I do not believe so, sir.

21 THE COURT: Did my initial order -- I don't recall at
22 the moment. Did my initial order recall the encrypted devices
23 with the installation of a pen register?

24 MR. TRUMP: The pen register, as issued, just required
25 all assistance, technical assistance, facilities, and

1 information, to facilitate the pen register.

2 This morning the search warrant required --

3 THE COURT: Yeah, but the search warrant's a different
4 matter now. That's not before me this morning. The only thing
5 that's before me this morning is the pen register.

6 MR. TRUMP: Correct.

7 THE COURT: So as I understand it, my initial order
8 ordered nothing but that the pen register be put in place.

9 MR. TRUMP: And all technical assistance, information,
10 and facilities necessary to implement the pen register. And
11 it's our position that without the encryption keys, the data
12 from the pen register will be meaningless. So to facilitate the
13 actual monitoring required by the pen register, the FBI also
14 requires the encryption keys.

15 THE COURT: Well, that could be, but I don't know that
16 I need -- I don't know that I need to reach that because I've
17 issued a search warrant for that.

18 MR. TRUMP: Correct, Your Honor. That the -- to avoid
19 litigating this issue, we asked the Court to enter the seizure
20 warrant.

21 THE COURT: Well, what I'm saying is if he agrees that
22 the pen register be established, and that the only thing he
23 doesn't want to do in connection with the pen register is to
24 give up the encryption device or code --

25 MR. LEVISON: I've always maintained that.

1 THE COURT: -- so we've got no issue here. You're
2 ready to do that?

3 MR. LEVISON: I've been ready to do that since Agent
4 Howard spoke to me the first time.

5 THE COURT: All right. So that ends our --

6 MR. TRUMP: Well, then we have to inquire of
7 Mr. Levison whether he will produce the encryption keys pursuant
8 to the search warrant that Your Honor just signed.

9 THE COURT: But I can't deal with that this morning,
10 can I?

11 MR. TRUMP: Well, it's the same issue. You could ask
12 him, Your Honor. We can serve him with the warrant and ask him
13 if he's going to comply rather than --

14 MR. LEVISON: Your Honor, I've also been issued a
15 subpoena demanding those same keys, which I brought with me in
16 the event that we would have to address that subpoena.

17 THE COURT: I don't know, Mr. Trump. I don't think I
18 want to get involved in asking him. You can talk with him and
19 see whether he's going to produce them or not and let him tell
20 you. But I don't think I ought to go asking what he's going to
21 do and what he's not going to do because I can't take any action
22 about it anyway.

23 If he does not comply with the subpoena, there are
24 remedies for that one way or another.

25 MR. TRUMP: Well, the original pen register order was

1 followed by a compulsion order from Judge Buchanan. The
2 compulsion order required the encryption keys to be produced.

3 So, yes, part of the show cause order is to require
4 compliance both with the pen register order and the compulsion
5 order issued by Judge Buchanan.

6 And that order, which was attached to the show cause
7 order, states, "To the extent any information, facilities, or
8 technical assistance are under the control of Lavabit are needed
9 to provide the FBI with the encrypted data, Lavabit shall
10 provide such information, facilities, or technical assistance
11 forthwith."

12 MR. LEVISON: I would object to that statement. I
13 don't know if I'm wording this correctly, but what was in that
14 order to compel was a statement that was incorrect.

15 Agent Howard seemed to believe that I had the ability
16 to encrypt the e-mail content stored on our servers, which is
17 not the case. I only have the keys that govern communications
18 into and out of the network, and those keys are used to secure
19 the traffic for all users, not just the user in question.

20 So the statement in that order compelling me to decrypt
21 stuff and Agent Howard stating that I have the ability to do
22 that is technically false or incorrect. There was never an
23 explicit demand that I turn over these keys.

24 THE COURT: I don't know what bearing that would have,
25 would it? I mean, I don't have a problem -- Judge Buchanan

UNDER SEAL

9

1 issued an order in addition to mine, and I'm not sure I ought to
2 be enforcing Judge Buchanan's order.

3 My order, if he says that he will produce or allow the
4 installation of the pen register, and in addition I have issued
5 a search warrant for the codes that you want, which I did this
6 morning, that's been entered, it seems that this issue is over
7 as far as I'm concerned except I need to see that he allows the
8 pen register and complies with the subpoena.

9 MR. TRUMP: Correct.

10 THE COURT: If he doesn't comply -- if he doesn't
11 comply with the subpoena, then that has -- I have to address
12 that.

13 MR. TRUMP: Right.

14 THE COURT: But right now there's nothing for me to
15 address here unless he is not telling me correctly about the pen
16 register.

17 MR. TRUMP: Well, we can -- Your Honor, if we can talk
18 to Mr. Levison for five minutes, we can ask him whether he will
19 honor the warrant that you just issued.

20 MR. LEVISON: Before we do that, can I --

21 THE COURT: Well, what can I do about it if he doesn't,
22 if he tells you he's not going to? You've got the right to go
23 out and search and get it.

24 MR. TRUMP: Well, we can't get the information without
25 his assistance. He's the only who knows and has possession of

1 it. We can't take it from him involuntarily.

2 MR. LEVISON: If I may, sir, my other --

3 THE COURT: Wait just a second.

4 You're trying to get me ahead. You're trying to get me
5 to deal with a contempt before there's any contempt, and I have
6 a problem with that.

7 MR. TRUMP: I'm trying to avoid contempt altogether,
8 Your Honor.

9 THE COURT: I know you are. And I'd love for you-all
10 to get together and do that. I don't want to deal with it
11 either. But I don't think we can sit around and agree that
12 there's going to be a default and I will address it before it
13 occurs.

14 MR. TRUMP: I'm just trying to figure out whether
15 there's going to be a default. We'll take care of that, Judge.

16 THE COURT: You can. I think the way we've got to do
17 this -- and I'll listen to you. I'm cutting you off, I know,
18 but I'll listen to you in a minute.

19 The way we have to do this, the hearing that's before
20 me this morning on this issue of the pen register, that's been
21 resolved, or so he's told me. I don't know whether you want to
22 continue this one week and see if he complies with that, which I
23 guess would be prudent to do, or a few days for him to comply
24 with the pen register. Then we will wait and see what happens
25 with the subpoena.

UNDER SEAL

11

1 Because as far as my pen register order is concerned,
2 he says he's going to comply with it. So that issue's over and
3 done with. The next issue will be whether or not he complies
4 with the subpoena. And I don't know and I don't want to
5 presume, and I don't want him to represent to me what he intends
6 to do when he can very well go home and decide he's going to do
7 something different.

8 When that warrant is served, we'll know what he's going
9 to do. I think we've got -- I don't see another way to do it.

10 MR. TRUMP: That's fine, Your Honor. We will serve the
11 warrant on him as soon as we conclude this hearing, and we'll
12 find out whether he will provide the keys or not.

13 THE COURT: Okay. Now, did you want to say anything
14 else?

15 MR. LEVISON: Well, I mean, I've always maintained that
16 all the government needs to do is contact me and set up an
17 appointment to install that pen register. So I don't know why
18 there has never been any confusion about my willingness to
19 install it. I've only ever objected to the providing of those
20 keys which secure any sensitive information going back and
21 forth.

22 But my motion, and I'm not sure if it's relevant or not
23 because it deals more with the issue of the subpoena demanding
24 the keys and for what will be the forthcoming search warrant,
25 would be a continuance so that I can retain counsel to address

1 that particular issue.

2 THE COURT: Well, I mean, there's nothing before me
3 with that. I've issued the subpoena. Whatever happens with
4 that, that's -- you're trying to get me to do what Mr. Trump
5 wanted to do and to arrange this beforehand.

6 MR. LEVISON: Well, I don't know if I have to appear
7 before that grand jury right now and give the keys over or face
8 arrest. I'm not a lawyer so I don't understand the procedure.

9 THE COURT: I don't know either. You need to have --
10 it would be wise to have a lawyer.

11 MR. LEVISON: Okay.

12 THE COURT: I don't know what's going to happen. I
13 don't know. They haven't served the warrant yet. I have no
14 idea. Don't know what's going to happen with it. You'll just
15 have to figure that out, and it be wise to have a lawyer to do
16 it, I would think.

17 MR. LEVISON: I guess while I'm here in regards to the
18 pen register, would it be possible to request some sort of
19 external audit to ensure that your orders are followed to the
20 letter in terms of the information collected and preserved?

21 THE COURT: No. The law provides for those things, and
22 any other additional or extra monitoring you might want or think
23 is appropriate will be denied, if that's what you're requesting.

24 MR. LEVISON: Okay. I mean, it requests that the
25 government return to the Court records --

111
UNDER SEAL

13

1 THE COURT: You need to talk to a lawyer about what the
2 law requires for the issuance of a pen register.

3 MR. LEVISON: They can handle that separately. That's
4 fine.

5 THE COURT: The law sets out what is done in that
6 regard. Your lawyer can fill you in if you want to know.

7 MR. LEVISON: I've always been willing to accept the
8 device. I just have some concern about ensuring that it's used
9 properly.

10 THE COURT: Should we continue this to some specific
11 date to see that he complies with the pen register?

12 MR. TRUMP: We can, Your Honor. It's a moot issue
13 without the encryption keys.

14 THE COURT: Well, that is a practical matter --

15 MR. TRUMP: That's a practical --

16 THE COURT: -- but I don't think it is a moot issue. I
17 mean, you-all have got the right to go in and put on that pen
18 register. He says that he will do it. That's all that I've
19 ordered.

20 Now, the other business about ordering that, Judge
21 Buchanan made an order that he's going to have to supply what
22 you say is the encryption codes to make the information useful.
23 I don't know. I didn't enter that order. I have trouble making
24 that connection.

25 If you're going to -- I don't know whether you want to

1 do something in front of Judge Buchanan or not.

2 MR. LEVISON: You see, Judge, though that I've always
3 been willing. They just didn't feel the need to set up an
4 appointment.

5 THE COURT: What do you want me to do with this case?
6 You want me to continue it? You want me to say it's moot right
7 now and just end it?

8 MR. TRUMP: No. I think we can continue it. I don't
9 know Mr. Levison's schedule. It can be done within hours of his
10 return to Dallas.

11 THE COURT: Of course he can. You want to continue it
12 till a week from Friday?

13 MR. TRUMP: Or a week from today.

14 MR. LEVISON: I'm not available within hours of my
15 return, but I can meet with you on Thursday.

16 THE COURT: Let's continue it a week from Friday.

17 MR. TRUMP: A week from Friday.

18 THE COURT: What date's that? The --

19 THE CLERK: 26th.

20 THE COURT: The 26th?

21 MR. LEVISON: Acceptable to me.

22 THE COURT: We'll continue it to the 26th, and that's
23 for determining whether or not that pen register has been
24 installed as you request.

25 We can make it 10 o'clock.

1 MR. LEVISON: I'll remember 10:00 instead of 10:30 this
2 time.

3 THE COURT: All right. Thank you.

4 All right. Thank you-all. We'll adjourn till tomorrow
5 morning at 9:30.

6 * * *

7 (Proceedings concluded at 11:02 a.m.)
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CERTIFICATION

I certify, this 17th day of September 2013, that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter to the best of my ability.

/s/

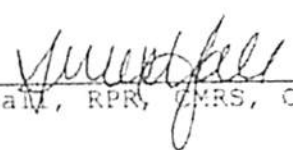

Tracy Westfall, RPR, MRS, CCR

EXHIBIT 14