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F. #2013R00714

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

JOSEPH MCCLAM,

Defendant.

SEALED COMPLAINT
AND AFFIDAVIT IN
SUPPORT OF
ARREST WARRANT

(18 U.S.C. § 1001)

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EASTERN DISTRICT OF NEW YORK, SS:

THOMAS ADAMS being duly sworn, deposes and states that he is a Special Agent with the United States Department of Homeland Security – Office of Inspector General (“DHS-OIG”), duly appointed according to law and acting as such.

Upon information and belief, on or about and between November 16, 2012 and November 27, 2012, within the Eastern District of New York and elsewhere, the defendant JOSEPH MCCLAM did knowingly and willfully make materially false, fictitious and fraudulent statements and representations, in a matter within the jurisdiction of the executive branch of the Government of the United States.

(Title 18, United States Code, Section 1001(a)(2))

The source of your deponent’s information and the grounds for his belief are as follows:¹

¹ Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

1. I am a Special Agent with DHS-OIG and have served in that capacity for more than 9 years. During that time, I have investigated numerous cases involving malfeasance by DHS employees, fraud perpetrated against DHS and the Federal Emergency Management Agency ("FEMA"), and other crimes. During the course of these investigations I have conducted or participated in surveillance, witness interviews, undercover transactions, the execution of search warrants, debriefings of informants and reviews of taped conversations and financial records. The information set forth in this affidavit is based upon my participation in witness interviews, review of documentary evidence and records, and discussions with other law enforcement agents.

BACKGROUND

2. On October 29, 2012, Hurricane Sandy (hereinafter "Sandy") struck New York and New Jersey, causing widespread damage to homes and businesses in low-lying and coastal areas throughout the region. Many neighborhoods within the Eastern District of New York, including Sheepshead Bay, Brooklyn, were devastated, many homes were badly damaged or destroyed, and many residents were displaced as a result of the storm.

3. In the aftermath of the storm, residents of hard-hit areas in the Eastern District of New York and elsewhere turned to FEMA for assistance. Pursuant to 41 U.S.C. § 5174 and Title 44 of the Code of Federal Regulations, FEMA is authorized to provide financial assistance to individuals and households for certain qualifying expenses that are the result of an event designated a "major disaster" by the President of the United States. See 42 U.S.C. § 5174(a)(1). On October 30, 2012, in light of the damage cause by Sandy, President Obama issued a "major disaster declaration" for Kings County, New York, and other counties,

and authorized FEMA to provide federal assistance to eligible individuals in those counties, pursuant to 42 U.S.C. § 5121 et seq. See 77 Fed. Reg. 224 69647 (Nov. 20, 2012).

4. By statute, resources provided by FEMA are available only to “individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable. . . .” 44 U.S.C. § 5174(b)(1); see also 44 C.F.R. § 206.101(b) (“Eligibility for assistance is based on need created by disaster-related unlivability of a primary residence or other disaster-related displacement, combined with a lack of adequate insurance coverage.”). Under the applicable regulations, “[p]rimary residence means the dwelling where the applicant normally lives during the major portion of the calendar year, a dwelling which is required because of proximity to employment, or to agricultural activities as referenced in paragraph (c)(1)(ii) of this section.” 44 C.F.R. § 206.101(c)(10).

5. FEMA has awarded \$1.4 billion in disaster benefits to those affected by Sandy.² In order to ensure that those funds were distributed to eligible individuals for damage caused by Sandy, DHS-OIG was tasked with investigating and prosecuting fraudulent requests to FEMA for Sandy disaster relief. As a Special Agent with DHS-OIG, I have participated in investigations of approximately six Sandy disaster relief disbursements that FEMA believes to be fraudulent, and approximately six FEMA fraud investigations relating to disbursements made after Hurricane Katrina in 2005.

MCCLAM’S DISASTER RELIEF APPLICATION

6. On or about November 16, 2012, the defendant JOSEPH MCCLAM applied for FEMA disaster assistance for a house in the Sheepshead Bay neighborhood of

² See <http://www.fema.gov/hurricane-sandy>.

Brooklyn, located at 2798 Ford Street, Brooklyn, New York, 11235 (the "Ford Street Property"). MCCLAM filed the Application online through FEMA's Internet website.

7. Question #8 on the Application requests the "Address of Damaged Property." In response to this question, MCCLAM provided the address of the Ford Street Property. Question #12 on the Application asked "[i]s the address listed in #8 your primary residence?", to which MCCLAM responded "Yes (Primary)." Question #21 on the Application requests a list of the "[o]ccupants living in primary residence at time of disaster," in response to which MCCLAM listed only himself.

8. On the Application, MCCLAM indicated in response to question #9 that his "current mailing address" was "217E E 85th Street #120, New York, NY 10028-3062." The address "217E E 85th St." is not a valid address in New York City, and the building located at 217 E. 85th Street does not contain an apartment "#120."

9. 217 E. 85th Street, however, is the address of a Mail Boxes and Beyond store, and "#120" refers to a specific rented mailbox within this Mail Boxes and Beyond store. I have reviewed records provided by the Mail Boxes and Beyond store at 217 E. 85th Street, which reveal that mailbox #120 is leased by MCCLAM. MCCLAM leased the mailbox on April 3, 2012, and in his mailbox lease application listed the Ford Street Property as his home address and an address in Fuquay Varina, North Carolina as his business address. MCCLAM presented a North Carolina driver's license (with an expiration date of January 14, 2017) and a New York driver's license (with an expiration date of January 14, 2014) as identification.

10. On or about November 21, 2012, a FEMA-contracted inspector inspected the Ford Street Property with MCCLAM present. During the inspection, the inspector provided MCCLAM with a Department of Homeland Security "Declaration and Release" form

related to MCCLAM's November 16, 2012 application for FEMA benefits. The "Declaration and Release" form was provided to MCCLAM by the FEMA-contracted inspector on a tablet computer during the inspection of the Ford Street Property.

11. The "Declaration and Release" form states that, "[b]y my signature I certify that: . . . All information I have provided regarding my application for FEMA disaster assistance is true and correct to the best of my knowledge." The form also states that, "[b]y my signature, I certify that: . . . I understand that, if I intentionally make false statements or conceal any information in an attempt to obtain disaster aid, it is a violation of federal and state laws, which carry severe criminal and civil penalties, including a fine up to \$250,000, imprisonment, or both (18 U.S.C. §§ 287, 1001, and 3571)." MCCLAM signed the document on the FEMA-contracted inspector's tablet computer.

12. During the inspection, MCCLAM told the FEMA-contracted inspector that he lived in the basement of the Ford Street Property, and was in the process of renovating the first and second floors of the property. The inspector indicated in his report to FEMA that the first two floors of the Ford Street Property had "no sheetrock, no appliances, no furnishings."

13. Following the inspection, on or about November 27, 2012, FEMA awarded MCCLAM the maximum amount of FEMA disaster assistance available – \$28,952 for home repair and \$2,948 for rental assistance. As confirmed by Bank of America records, these funds were disbursed by electronic funds transfer on or about November 27, 2012 to a Bank of America account ending in 3724 (the "BOA Account"), as instructed by MCCLAM.

14. Bank of America records indicate that the BOA Account belongs to JOSEPH MCCLAM. The mailing address associated with the BOA Account is 7409 Stonecliff Dr. Apartment 201, Raleigh, NC 27615.³

THE FORD STREET PROPERTY

15. Records from the New York City Department of Finance, Office of the City Registrar, indicate that MCCLAM purchased the Ford Street Property on November 10, 2006, with a mortgage assigned to Option One Mortgage Corporation. The Ford Street Property is adjoined on the left side to 2800 Ford Street. A photograph of 2798 and 2800 Ford Street is attached as Exhibit 1.

16. In the course of my investigation, I interviewed an individual who lives on Ford Street near 2798 Ford Street (the "Witness"). The Witness told me he has lived on Ford Street in Brooklyn for his entire life, and he has lived in his current residence, near the Ford Street Property, for the past 18 years.

17. The Witness explained that he has met MCCLAM on several occasions since MCCLAM purchased the Ford Street Property in 2006, but that MCCLAM has never resided in the Ford Street Property.

18. The Witness indicated that, between 2006 and 2010, MCCLAM rented the property to a series of tenants. During this period, the Witness learned from MCCLAM that MCCLAM was residing in North Carolina. The Witness also noted that MCCLAM was driving a vehicle with a North Carolina license plate.

³ Bank of America records also show that on November 27, 2012, the same day FEMA transferred the disaster assistance funds to the BOA Account, MCCLAM transferred \$20,000 from the BOA Account to a Merrill Lynch brokerage account.

19. According to the Witness, sometime in 2010, the Ford Street Property sustained significant damage in a fire.⁴ On the date of the fire, the Witness called MCCLAM to inform him that the Ford Street Property was burning. MCCLAM said he was in North Carolina at the time and could not come to the Ford Street Property.

20. According to the Witness, the Ford Street Property has been uninhabited since the 2010 fire. The Witness stated that, after the fire, MCCLAM began, but did not complete, repairs to the Ford Street Property. The Ford Street Property remained in a state of internal and external disrepair from the date of the fire until Sandy. The Witness stated, for example, that the damage to the siding above the front door, seen in the photograph attached as Exhibit 1, predated Sandy.

21. According to the Witness, after MCCLAM made initial repairs to the Ford Street Property following the fire, MCCLAM stayed in the basement of the Ford Street Property one or two weekends per month. According to the Witness, some months the Witness would not see MCCLAM at the Ford Street Property at all.

22. The Witness stated that in November 2012, shortly after Sandy, the Witness received a phone call from MCCLAM, during which MCCLAM asked about damage to the Ford Street Property and other properties on Ford Street. The Witness informed MCCLAM that the area was flooded by Sandy, and homes on Ford Street had sustained significant damage.

23. Later in November 2012, the Witness saw MCCLAM at the Ford Street Property with an individual the Witness believed to be a FEMA inspector. The Witness

⁴ I have verified with the New York City Fire Department that it responded to a fire at the Ford Street Property on May 31, 2010 and, as a result of the fire, the Ford Street Property sustained significant damage.

overheard MCCLAM tell the individual that he lived in the basement of the Ford Street Property, and that the damage to the property was sustained during Sandy.

24. I have reviewed water billing statements and records provided by the New York City Department of Environmental Protection (“DEP”) for the Ford Street Property. Those records indicate that MCCLAM has not paid the water bill for the Ford Street Property since 2009 and currently owes more than \$7,000 for outstanding water bills.⁵

25. I have reviewed records provided by Consolidated Edison Company of New York (“ConEd”) for the Ford Street Property, and they indicate that MCCLAM opened an account with ConEd for the basement of the Ford Street Property on November 13, 2006, and terminated the account on August 27, 2010. ConEd records indicate that there has been no ConEd account in the basement of the Ford Street Property since August 27, 2010.

26. ConEd records also indicate that one “Vanita Wheeler” opened a ConEd account for the first and second floors of the Ford Street Property on October 4, 2009 and closed the account on June 1, 2010. ConEd records indicate that there has been no ConEd account for the first and second floors of the Ford Street Property since June 1, 2010.

MCCLAM’S RESIDENCE IN NORTH CAROLINA

27. A search of North Carolina Division of Motor Vehicles records reveals that MCCLAM has had a North Carolina driver’s license since April 27, 2009, and that his current North Carolina driver’s license was issued on April 12, 2011 and is scheduled to expire on January 14, 2017. MCCLAM listed 500 Birchtree Valley Court, Fuquay Varina, North

⁵ A representative from the DEP explained that the Ford Street Property is not billed for water using a water meter that registers actual water usage. Rather, the Ford Street Property is billed a flat rate for “Frontage Billing,” which is calculated based on the height and width of the house, the number of stories, the number of toilets, and other factors.

Carolina, 27526, as his "resident address" on his April 12, 2011 North Carolina driver's license application.

28. I have reviewed records provided by Ram Real Estate in Raleigh, North Carolina, which reveal that MCCLAM and his wife leased an apartment at 7409 Stonecliff Drive, #201, Raleigh, North Carolina, 27615 ("7409-201 Stonecliff"), beginning on August 31, 2012. On the lease application for 7409-201 Stonecliff, MCCLAM provided the same date of birth in January 1961 and social security number ending in 0855 that he provided on the application for FEMA disaster assistance described in paragraph 5, above. On the rental application, dated August 31, 2012, MCCLAM indicated that his "Current Home Address" was 500 Birchtree Valley Court, Fuquay Varina, North Carolina, and that his "Previous Home Address" was the Ford Street Property.

29. On March 29, 2013, MCCLAM and his wife signed a lease on another apartment located at 7208 Stonecliff Drive, #3 ("7208-3 Stonecliff"), in the same development as 7409-201 Stonecliff. 7208-3 Stonecliff is managed by the same company as 7409-201 Stonecliff, and I have confirmed with employees of the management company that MCCLAM and his wife resided in 7409-201 Stonecliff from August 2012 until March 2013, at which time they moved into 7208-3 Stonecliff, where they are currently living.

30. I have reviewed records provided by Duke Energy, the electric utility in the Raleigh area, which provides electricity to both 7409-201 Stonecliff and 7208-3 Stonecliff. The records reveal that MCCLAM had an account with Duke Energy at 7409-201 Stonecliff from September 2012 through April 2013. Since April 2013, MCCLAM has had an account with Duke Energy at 7208-3 Stonecliff.

31. I have also reviewed records provided by Raleigh Water, which provides water service to 7409-201 Stonecliff and 7208-3 Stonecliff. The records reveal that MCCLAM opened an account with Raleigh Water at 7409-201 Stonecliff on September 18, 2012, and maintained that account until April 29, 2013, at which time he transferred his account to 7208-3 Stonecliff. As of September 13, 2013, MCCLAM's Raleigh Water account at 7208-3 Stonecliff was active.

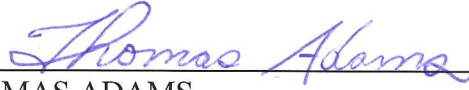
32. MCCLAM provided "(718) 350-0479" as both the "Damaged phone #" and the "Current phone #" on his application for FEMA disaster relief. Law enforcement databases indicate that this phone number is a Cingular Wireless cellular telephone number, registered to MCCLAM at 7409-201 Stonecliff.⁶

WHEREFORE, your deponent respectfully requests that the defendant, JOSEPH MCCLAM, be dealt with according to law.

Furthermore, your deponent respectfully requests that this affidavit, arrest warrant and any other papers submitted in support of this application be sealed until further

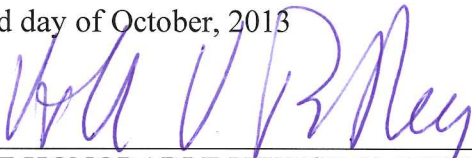
⁶ I have subpoenaed MCCLAM's subscriber and billing records from Cingular Wireless, but I have not yet received those records from the company.

order of the Court so as to prevent notifying the defendant of the pending warrant, which could result in his destruction of evidence and/or alteration of travel plans to avoid arrest.



THOMAS ADAMS
Special Agent
United States Department of Homeland Security,
Office of Inspector General

Sworn to before me this
23rd day of October, 2013



THE HONORABLE VIKTOR V. POHORELSKY
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

EXHIBIT 1

