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F.2013R00010

M 13-549

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TO BE FILED UNDER SEAL

UNITED STATES OF AMERICA

COMPLAINT AND AFFIDAVIT
IN SUPPORT OF APPLICATION
FOR AN ARREST WARRANT

- against -

CHRISTOPHER GARDNER,

(18 U.S.C. §§ 1030(a)(5)(A)
and 1030(a)(5)(C))

Defendant.

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EASTERN DISTRICT OF NEW YORK, SS:

VINCENT D'AGOSTINO, being duly sworn, deposes and states that he is a Special Agent with the Federal Bureau of Investigation, duly appointed according to law and acting as such.

Upon information and belief, on or about December 10, 2012, within the Eastern District of New York and elsewhere, the defendant CHRISTOPHER GARDNER, did knowingly and intentionally (a) cause the transmission of a program, information, code, or command, and as result of such conduct, intentionally caused damage without authorization, to a protected computer; and (b) access a protected computer without authorization, and as a result of such conduct, caused damage and loss.

(Title 18, United States Code, Sections 1030(a)(5)(A) and 1030(a)(5)(C)).

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

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI"). I have been employed by the FBI for nine (9) years. For the past six months, I have been assigned to a cybercrime squad. In that capacity, I am responsible for conducting and assisting in investigations into the activities of individuals and criminal groups involved in cybercrime and the various federal criminal violations associated with cybercrime, including access device fraud, identity theft, bank fraud, wire fraud and computer hacking. I have participated in investigations involving search warrants and arrest warrants. As a result of my training and experience, I am familiar with the techniques and methods of operation used by individuals involved in criminal activity to conceal their activities from detection by law enforcement authorities.

2. I have personally participated in the investigation of the offenses discussed below. I am familiar with the facts and circumstances of this investigation from: (a) my personal

¹ Because this affidavit is submitted for the limited purpose of establishing probable cause to arrest, I have not set forth each and every fact learned during the course of the investigation. Moreover, where the statements of others are reported herein, they are reported in sum and substance and in part, except where otherwise indicated.

participation in this investigation, (b) reports made to me by other law enforcement authorities, (c) interviews of witnesses and victims, (d) my review of documents, including Internet provider subscriber records, and (e) my training and experience.

3. On or about December 17, 2012, John Doe #1, an Information Technology Director at Dan's Papers, a company which publishes a weekly newspaper distributed primarily on the East End of Long Island, contacted the FBI. Dan's Papers also operates a website named Danshamptons.com. John Doe #1 reported, in sum and substance, that, on December 10, 2012, an unknown individual accessed the website's File Transfer Protocol ("FTP") server² without permission and altered the robots.txt file,³ effectively removing the company's website from search results on search engines like Google and Yahoo!. John Doe #1 further stated, in sum and substance, that Dan's Papers suffered revenue losses from advertising due to the computer intrusion, as the

² An FTP server is a computer system that hosts digital files, which can be accessed anywhere from an Internet-connected machine. An FTP is commonly used to access the files which make up a website. Making changes to website-related files hosted on an FTP server will affect how a website looks or if a website can be found via a search engine (such as Google).

³ A robots.txt file is an important file which is hosted in the root directory of a website. This file tells other Internet-connected machines whether or not the content stored on that machine should be indexed and publicly published as a result of a search engine query. Depending on the parameters set within this file, a web page can be made to become invisible to Internet searches.

company's website was not listed on search engines for several days.

4. Through investigation and review of server logs, the FBI verified that, on December 10, 2012 at approximately 2:26 p.m., someone using Internet Protocol ("IP") address⁴ 24.184.17.246 uploaded a new robots.txt file onto the Danshamptons.com FTP server. Further investigation revealed that IP address 24.184.17.246 belonged to Optimum Online. Subscriber information provided by Optimum Online for IP address 24.184.17.246 revealed that this IP address came back to "Christop Gardner" at the address "14 Montauk Hw RR Cota, Westhampton, NY 11977." The Optimum Online records further revealed that "Christop Gardner" was an Optimum Online subscriber from April 29, 2012 through the date of the subpoena (January 3, 2013). The billing address on the Optimum Online subscriber records was listed as "536 PO Box, Westhampton, NY 11977."

5. A United States Postal Inspector advised the FBI that P.O. Box 536 in Westhampton, New York is held by the defendant CHRISTOPHER GARDNER, who listed his address as 14

⁴ An IP address is a unique numeric address used by computers on the Internet. An IP address looks like a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet must be assigned an IP address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. Most Internet service providers (such as Optimum Online) control a range of IP addresses.

Montauk Highway, Rear Cottage, Westhampton, NY 11977.

Surveillance by FBI agents on or about and between April 8 and April 10, 2013, revealed that there is a separate building from the main residence at 14 Montauk Highway in Westhampton.

6. The defendant CHRISTOPHER GARDNER is a former employee of Dan's Papers, where he was employed between approximately April 4, 2011 and June 19, 2012 as a web administrator/web designer for the Danshamptons.com website. After his termination from the company, GARDNER contacted John Doe #1 and proposed to redesign the company's website. Dan's Papers declined his offer in or about mid Summer 2012.

7. John Doe #1 further advised the FBI that, as an employee, the defendant CHRISTOPHER GARDNER knew the login and password used to access the company's FTP server and that the login and password remained the same, even after GARDNER's termination, including on December 10, 2012 - the date of the computer intrusion.

8. In or about late March 2013, the defendant CHRISTOPHER GARDNER moved from the 14 Montauk Highway, Westhampton address to 115 Fallwood Parkway in Farmingdale, New York. On or about May 2, 2013, FBI agents conducted surveillance of 115 Fallwood Parkway in Farmingdale and saw a white Mitsubishi vehicle parked in the driveway. The Mitsubishi is registered to "CW Gardner" at P.O. Box 536 in Westhampton, New York (the same

address that appeared on Gardner's Optimum Online subscriber records as his billing address). More recently, on or about June 13, 2013, agents conducted surveillance of 115 Fallwood Parkway and observed a second vehicle, a grey Toyota, parked in the driveway. The Toyota is also registered to "CW Gardner," but at the 115 Fallwood Parkway address.


9. Moreover, the FBI investigation revealed that the defendant CHRISTOPHER GARDNER uses the email address chrisgardnerweb@gmail.com, which was created on February 9, 2009. The IP logs for the chrisgardnerweb@gmail.com email account, provided by Google, which owns Gmail, reveal that, beginning on or about March 30, 2013 (and through April 15, 2013, the date of the subpoena provided to Google), the chrisgardnerweb@gmail.com account was logging onto Gmail using IP address 108.41.194.97 multiple times per day. The 108.41.194.97 IP address is owned by Verizon. Verizon records list Jane Doe as the subscriber at 115 Fallwood Parkway in Farmingdale.⁵ The Google logs further reveal that, prior to March 30, 2013, the chrisgardnerweb@gmail.com account was logging onto Gmail using IP address 24.184.17.246 (the same Optimum Online IP address discussed above, at paragraph 4, which was used to upload a new robots.txt file onto the Danshamptons.com FTP server), multiple times per day.

⁵ Public records indicate that Jane Doe has used the 536 P.O. Box, Westhampton, NY 11977 address that Gardner provided to Optimum Online as his billing address.

10. The Verizon subscriber records for Jane Doe's account list two email accounts, including "leezon." The investigation has revealed that the defendant CHRISTOPHER GARDNER has used the username "leezon" on Twitter, an online social networking service. GARDNER's Twitter page has links to Dan's Hamptons articles.

WHEREFORE, your deponent respectfully requests that an arrest warrant be issued for the defendant CHRISTOPHER GARDNER so that he may be dealt with according to law.

Given the nature of this application and the potential that the defendant might flee and/or destroy evidence if he learns of this application and the requested arrest warrant, your deponent respectfully requests that this affidavit and the arrest warrant be filed under seal until further order of the Court.


VINCENT D'AGOSTINO
Special Agent
Federal Bureau of Investigation

Sworn to before me this
24th day of June, 2013


THE HONORABLE ARLENE. R. LINDSAY
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK