

E-filing

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN JOSE

Filed

MAY 30 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES OF AMERICA,

v.

CR 13 00345

EJD

LISA MCMAHON,

PSG

DEFENDANT(S).

INDICTMENT

VIOLATIONS: Title 18 U.S.C § 1343-Wire Fraud; 18 U.S.C. §§ 666(a)(1)(A) and (b)-Federal Program Theft; 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461-Criminal Forfeiture of Wire Fraud and Federal Program Theft Proceeds

A true bill.

Al Sh... Foreman

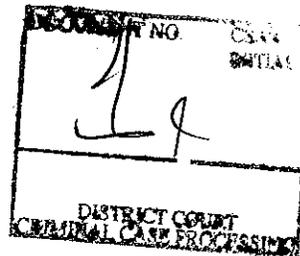
Foreman

Filed in open court this 29th day of 2013

[Signature]

Clerk

Bail, \$



No Bail
Arrest
Warrant

1 MELINDA HAAG (CABN 132612)
2 United States Attorney

Filed

MAY 30 2013

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 **CR 13 00345**
12 No.

EJD
PSG

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 LISA McMAHON,
16 Defendant.

VIOLATIONS: 18 U.S.C. § 1343–Wire
Fraud; 18 U.S.C. §§ 666(a)(1)(A) and
(b)–Federal Program Theft; 18 U.S.C. §
981(a)(1)(C) and 28 U.S.C. § 2461
–Criminal Forfeiture of Wire Fraud and
Federal Program Theft Proceeds

SAN JOSE VENUE

17 INDICTMENT

18 The Grand Jury charges:

19 Introductory Allegations

20 At times relevant to this Indictment:

21 1. The Monterey Bay Aquarium Research Institute (“MBARI”) was a non-profit center for
22 advanced research and education in ocean science and technology located in Moss Landing,
23 California. MBARI employed research staff, oceanographic research vessels, underwater
24 vehicles, and science facilities to support laboratory experiments, technology design, and the
25 collection and exchange of data about the marine environment.

26 2. Employees of MBARI received wages by check or direct deposit from an MBARI payroll
27 account maintained at Wells Fargo Bank. MBARI funded its employees’ “401(k)” tax-deferred
28 savings plan by transferring funds from a Wells Fargo account to Fidelity Investments, the

INDICTMENT

1 custodian of the plan. Employees could borrow against their 401(k) savings under certain
2 circumstances, which loans were repaid, in part, by later deductions from their wages.

3 3. Defendant LISA McMAHON was a payroll specialist at MBARI. McMAHON was
4 responsible, in part, for creating and maintaining payroll records and initiating transfers of money
5 to and from Wells Fargo and Fidelity concerning the payment of wages and 401(k) contributions,
6 loans, and loan repayments.

7 4. McMAHON occupied a position of trust at MBARI. From in or about November of 2007
8 to in or about April of 2012, MBARI allowed McMahan to work remotely, by computer, from
9 her residence in Arkansas.

10 5. MBARI received between \$5,400,000 and \$8,400,000, approximately, in funding per year
11 from the United States Government.

12 The Scheme to Defraud

13 6. From at least in or about October of 2005 until on or about January 12, 2012, in the
14 Northern District of California and elsewhere, the defendant,

15 LISA McMAHON,

16 knowingly devised, intended to devise, and participated in a scheme and artifice to defraud
17 MBARI, and to obtain money and property from MBARI by means of materially false and
18 fraudulent pretenses, representations, promises, and material omissions, which scheme is
19 described further below.

20 7. It was part of the scheme that McMAHON converted approximately \$800,000 of MBARI
21 funds to her own use without the authorization or knowledge of MBARI.

22 8. It was further part of the scheme that McMAHON altered payroll records and caused
23 fraudulent payments from the MBARI payroll account at Wells Fargo, to her and to bank
24 accounts she controlled, above and beyond her authorized salary.

25 9. It was further part of the scheme that McMAHON withdrew funds in the form of
26 purported loans from her 401(k) savings, and fraudulently replaced those funds, in part, by
27 altering 401(k) records to cause the transfer of money from the general MBARI account at Wells
28 Fargo to Fidelity accounts at Deutsche Bank, in the guise of fictitious personal "repayments" of

1 the loans.

2 10. It was further part of the scheme that McMAHON did conceal and hide, and cause to be
3 concealed and hidden, the acts done and the purpose of the acts done in furtherance of the
4 scheme, in part (a) by creating the false appearance that the funds she fraudulently converted
5 were legitimate wages, or legitimate payments to and from her 401(k) savings, and (b) by
6 otherwise altering the records of MBARI to which she had been given access.

7 COUNTS ONE THROUGH THREE: (18 U.S.C. § 1343 – Wire Fraud)

8 11. Paragraphs 1 through 10 of this Indictment are hereby re-alleged and incorporated by
9 reference as if set forth in full herein and in each of Counts One through Three.

10 12. On or about the following dates, in the Northern District of California and elsewhere, the
11 defendant,

12 LISA McMAHON,

13 for the purpose of executing said scheme and artifice to defraud, did knowingly transmit, and
14 cause to be transmitted, by means of wire and radio communication in interstate commerce,
15 certain writings, signs, and signals, as further set forth below:

Count	Date	Description of Transmission
One	March 10, 2009	Transfer of approximately \$27,318.90 from MBARI account ending in "0810" at Wells Fargo Bank in San Francisco, California, to Fidelity account at Deutsche Bank in New York, New York
Two	May 25, 2011	Transfer of approximately \$27,000.00 from MBARI account ending in "0810" at Wells Fargo Bank in San Francisco, California, to Fidelity account at Deutsche Bank in New York, New York
Three	November 8, 2011	Defendant's communication by computer in Mountain Home, Arkansas, with MBARI server in Moss Landing, California

24 All in violation of Title 18, United States Code, Section 1343.

25 COUNT FOUR: (18 U.S.C. §§ 666(a)(1)(A) and (b) – Federal Program Theft)

26 13. Paragraphs 1 through 5 of this Indictment are hereby re-alleged and incorporated by
27 reference as if set forth in full herein.

28 14. On or about March 10, 2009, in the Northern District of California and elsewhere, the

1 defendant,

2 LISA McMAHON,

3 being an agent of the Monterey Bay Aquarium Research Institute, an organization receiving in
4 the one-year period ending on that date benefits in excess of \$10,000 under a grant from the
5 National Science Foundation, a federal program, did embezzle, steal, obtain by fraud, and
6 without authority knowingly convert \$27,318.90 owned by, and under the care, control, and
7 custody of, MBARI, in the form of an unauthorized and fraudulent transfer from an MBARI
8 Wells Fargo account to defendant's Fidelity retirement account, maintained at Deutsche Bank, in
9 violation of Title 18, United States Code, Sections 666(a)(1)(A) and (b).

10 COUNT FIVE: (18 U.S.C. § 666(a)(1)(A) and (b) – Federal Program Theft)

11 15. Paragraphs 1 through 5 of this Indictment are hereby re-alleged and incorporated by
12 reference as if set forth in full herein.

13 16. On or about August 5, 2010, in the Northern District of California and elsewhere,
14 defendant

15 LISA McMAHON,

16 being an agent of the Monterey Bay Aquarium Research Institute, an organization receiving in
17 the one-year period ending on that date benefits in excess of \$10,000 under a grant from the
18 National Science Foundation, a federal program, did embezzle, steal, obtain by fraud, and
19 without authority knowingly convert \$7,076.56 owned by, and under the care, control, and
20 custody of MBARI, in the form of unauthorized and fraudulent transfers from the MBARI's
21 Wells Fargo payroll account to bank accounts controlled by the defendant, in violation of Title
22 18, United States Code, Sections 666(a)(1)(A) and (b).

23 COUNT SIX: (18 U.S.C. § 666(a)(1)(A) and (b) – Federal Program Theft)

24 17. Paragraphs 1 through 5 of this Indictment are hereby re-alleged and incorporated by
25 reference as if set forth in full herein.

26 18. On or about November 9, 2011, in the Northern District of California and elsewhere, the
27 defendant,

28 LISA McMAHON,

1 being an agent of the Monterey Bay Aquarium Research Institute, an organization receiving in
2 the one-year period ending on that date benefits in excess of \$10,000 under a grant from the
3 National Science Foundation, a federal program, did embezzle, steal, obtain by fraud, and
4 without authority knowingly convert \$6,270.39 owned by, and under the care, control, and
5 custody of MBARI, in the form of an unauthorized and fraudulent transfer from the MBARI
6 Wells Fargo payroll account to a bank account controlled by the defendant, in violation of Title
7 18, United States Code, Sections 666(a)(1)(A) and (b).

8 FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 –

9 Forfeiture of Fraud and Federal Program Theft Proceeds)

10 19. The allegations of Counts One through Six of this Indictment are re-alleged and
11 incorporated herein pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. §
12 2461(c).

13 20. Upon conviction of any of the offenses alleged in Counts One through Six, the
14 defendant,

15 LISA McMAHON,

16 shall forfeit to the United States any property, real or personal, which constitutes or is derived
17 from proceeds traceable to said offense, including but not limited to a sum of money equal to the
18 total proceeds from the commission of said offense.

19 21. If, as a result of any act or omission of the defendant, any of said property

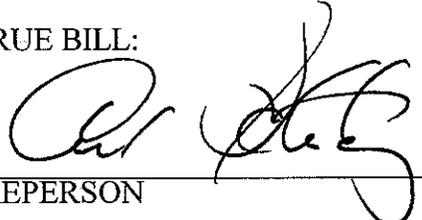
- 20 a. cannot be located upon the exercise of due diligence;
- 21 b. has been transferred or sold to or deposited with, a third person;
- 22 c. has been placed beyond the jurisdiction of the Court;
- 23 d. has been substantially diminished in value; or
- 24 e. has been commingled with other property which cannot be divided without
25 difficulty;

26 any and all interest defendant has in any other property up to the value of the property described
27 in paragraph 20 above, shall be forfeited to the United States pursuant to
28 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461.

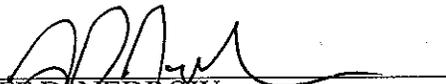
1 All in violation of Title 18, United States Code, Sections 666, 981(a)(1)(C) and 1343;
2 Title 28, United States Code, Section 2461; and Rule 32.2 of the Federal Rules of Criminal
3 Procedure.

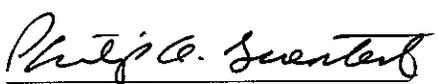
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DATED: 5/29/2013

A TRUE BILL:

FOREPERSON

MELINDA HAAG
United States Attorney


JEFF D. NEDROW
Chief, San Jose Branch Office

(Approved as to form: 
AUSA Philip A. Guentert

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

COUNT ONES-THREE: Title 18 U.S.C. 1343 - Wire Fraud Petty
COUNTS FOUR-SIX: Title 18, U.S.C. §§ 666(a)(1)(A) and (b)- Federal Program Theft Minor
 Misdemeanor
 Felony
PENALTY: SEE ATTACHMENT

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION
Filed

DEFENDANT - U.S.

MAY 30 2013

EJD

▶ Lisa McMahon

RICHARD W. WIERING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

PSG

CR 13 00345
DEFENDANT

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI, Niem Nguyen

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:

U.S. ATTORNEY DEFENSE

SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form MELINDA HAAG

U.S. Attorney Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned) PHILIP GUENTERT

IS NOT IN CUSTODY

- Has not been arrested, pending outcome this proceeding.
- 1) If not detained give date any prior summons was served on above charges
 - 2) Is a Fugitive
 - 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
 - 5) On another conviction } Federal State
 - 6) Awaiting trial on other charges
- If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

Bail Amount: 0

If Summons, complete following:

Arraignment Initial Appearance

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address:

Date/Time: Before Judge:

Comments:

PENALTY SHEET ATTACHMENT

Counts One through Three

18 U.S.C. § 1343 (Wire Fraud)

Maximum penalties: 20 years imprisonment (18 U.S.C. § 1343)
\$250,000 fine (18 U.S.C. § 3571(b)(3)), or twice the
pecuniary gain or loss from the offense, whichever is
greatest (18 U.S.C. § 3571(d))
3 years supervised release (18 U.S.C. § 3583(b)(2))
\$100 special assessment (18 U.S.C. § 3013(a)(2)(A))

Counts Four through Six

18 U.S.C. § 666 (Federal Program Theft)

Maximum penalties: 10 years imprisonment (18 U.S.C. § 666(a))
\$250,000 fine (18 U.S.C. § 3571(b)(3)), or twice the
pecuniary gain or loss from the offense, whichever is
greatest (18 U.S.C. § 3571(d))
3 years supervised release (18 U.S.C. § 3583(b)(2))
\$100 special assessment (18 U.S.C. § 3013(a)(2)(A))

United States District Court
Northern District of California

Filed

MAY 30 2013

CRIMINAL COVER SHEET

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

Instructions: Effective January 3, 2012, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case. Please place this form on top of the Defendant Information Form.

EJD

Case Name:

USA v. Lisa McMahon

Case Number:

CR13 00345

PSC

Total Number of Defendants:

1 2-7 _____ 8 or more _____

Is This Case Under Seal?

Yes _____ No _____

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes _____ No

Venue (Per Crim. L.R. 18-1):

SF _____ OAK _____ SJ

Is this a death-penalty-eligible RICO Act gang case?

Yes _____ No

Assigned AUSA (Lead Attorney):

Philip Guentert

Comments:

[Empty box for comments]

Date Submitted:

May 29, 2013

PRINT