

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FILED
AUG 08 2008
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

UNITED STATES OF AMERICA
v.

JOHN DOE, aka DERIK DAVIS, TERRY DAVIS,
TERRY MCCULLOUGH

CRIMINAL COMPLAINT

CASE NUMBER: **208 - MJ - 267** KM

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

- On or about March 2, 2006, April 17, 2006, and August 3, 2006, in Placer and El Dorado Counties, in the Eastern District of California, defendant JOHN DOE, aka DERIK DAVIS, TERRY DAVIS, TERRY MCCULLOUGH, did commit mail fraud in violation of 18 U.S.C. § § 2 and 1341;

- On or about June 30, 2007, in Placer and El Dorado Counties, in the Eastern District of California, defendant JOHN DOE, aka DERIK DAVIS, TERRY DAVIS, TERRY MCCULLOUGH, did engage in a monetary transaction involving more than \$10,000 in criminally derived property in violation of 18 U.S.C. § § 2 and 1957; and

- On or about February 1, 2006, and February 2, 2006, in Placer and El Dorado Counties, in the Eastern District of California, defendant JOHN DOE, aka DERIK DAVIS, TERRY DAVIS, TERRY MCCULLOUGH, did cause or attempt to cause a domestic financial institution to fail to file a CTR in violation of 18 U.S.C. § 2 and 31 U.S.C. § 5324(a)(1).

I further state that I am a(n) Special Agent with the Internal Revenue Service - Criminal Investigation and that this complaint is based on the following facts:

▶ **SEE ATTACHMENT.**

Continued on the attached sheet and made a part hereof.

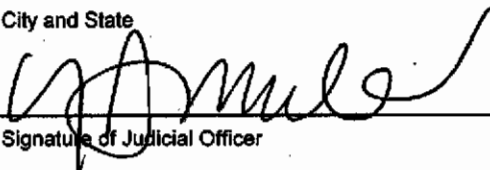

Signature of Complainant **CHRISTOPHER S. FITZPATRICK**
Special Agent, Internal Revenue Service - Criminal Investigation

Sworn to before me, and subscribed in my presence

8/6/08
Date

at Sacramento, California
City and State

KIMBERLY J. MUELLER
United States Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

**AFFIDAVIT IN SUPPORT OF ARREST WARRANT and CRIMINAL
COMPLAINT**

I. INTRODUCTION

A. Agent's Background and Experience.

1. I, Christopher S. Fitzpatrick, having been duly sworn, do hereby depose and state the following:

2. I am a Special Agent with Treasury Department, Internal Revenue Service - Criminal Investigation ("IRS-CI"), presently assigned to the Sacramento office. I have been employed as a Special Agent since September 2001. In the course of my employment with the IRS-CI, I have conducted or been involved in more than 100 investigations of alleged criminal violations, which have included: aiding or assisting in the preparation of false tax returns (26 U.S.C. § 7206(2)); conspiring to defraud the United States with respect to claims (18 U.S.C. § 286); money laundering (18 U.S.C. §§ 1956, 1957); identity fraud (18 U.S.C. § 1028); conducting an unlicensed money transmitting business (18 U.S.C. § 1960); structuring cash transactions (31 U.S.C. § 5324); mail fraud (18 U.S.C. § 1341); wire fraud (18 U.S.C. § 1343); bank fraud (18 U.S.C. § 1344); false statements in connection with a loan (18 U.S.C. § 1014); theft, embezzlement, or misapplication by bank officer or employee (18 U.S.C. § 656); assisting in the unlawful interception and reception of communications service offered over a cable system (47 U.S.C. § 553(a)(1)); importing controlled substances (21 U.S.C. § 952); distributing controlled substances (21 U.S.C. § 841(a)(1)); making a false statement (18 U.S.C. § 1001); making a false statement to a financial institution (18 U.S.C. § 1014) in connection with a federally conspiracy (18 U.S.C. § 371); and forfeiture (18 U.S.C. §§ 981, 982). Most of these investigations focused on individuals deriving property from illegal activity.

3. I have attended more than 1,000 hours of training in various aspects of criminal investigation, and I have attended classes and seminars dealing specifically with money laundering, various financial crime techniques, and related financial investigative techniques.

4. This affidavit is based upon my personal participation in this investigation, including my review of

law enforcement reports prepared by Federal Bureau of Investigation, Special Agent John Sommercamp, California Department of Real Estate, Deputy Commissioners, Tricia Sommers and Shannon Mitra, and El Dorado County District Attorney's Office Investigator Robert Cosley. I have also obtained real estate closing documents maintained by Fidelity Title National Insurance Company and loan files maintained by Accredited Home Lenders, Inc., Owinit Mortgage Solutions, Argent Mortgage Company, LLC, WMC Mortgage Corporation, New Century Mortgage, Novastar Mortgage, Option One Mortgage, and First Franklin Financial. Lastly, I have obtained bank records maintained by Union Bank of California, a federally-insured financial institution. I have not included every fact known to me, rather, only those facts necessary to establish probable cause sufficient to support a criminal complaint and arrest warrant.

5. As explained in greater detail below, particularly in paragraph 53 below, the complaint identifies the defendant as JOHN DOE aka Derik DAVIS, aka Terry MCCULLOUGH, aka Terry. (Except as specifically provided below, I use the term "Derik DAVIS" to refer to the defendant throughout this affidavit). The use of a JOHN DOE defendant is necessary because it is unknown what the true identity is of the person known through this investigation to be Derik DAVIS, aka Terry MCCULLOUGH, aka Terry DAVIS.

B. Charges

6. I make this affidavit in support of a criminal complaint. The information below establishes probable cause to believe that:

(1) On or about March 2, 2006, April 17, 2006, and August 3, 2006, in the Eastern District of California, and in furtherance of the scheme to defraud involving the purchase of the real properties located at 2170 Sunny Oak Drive, Auburn, California, 10195 Indian Hill Road, New Castle, California, and 4041 Stinson Road, Somerset, California, defendant DERIK DAVIS committed mail fraud in violation of 18 U.S.C. §§ 2 and 1341.

(2) On or about June 30, 2007, in the Eastern District of California, defendant DERIK DAVIS engaged in a monetary transaction involving more than \$10,000 in criminally derived property in violation of 18 U.S.C. §§ 2 and 1957, when he deposited a check in the amount of \$22,000 into Union Bank of California account number 315103XXXX, held in the name of Kristina Harvey.

(3) On or about February 1, 2006 and February 2, 2006, in the Eastern District of California, defendant DERIK DAVIS caused or attempted to cause a domestic financial institution to fail to file a CTR in violation of 18 U.S.C. § 2 and 31 U.S.C. §§ 5324(a)(1) and (a)(3).

C. Overview of the Investigation

7. The Federal Bureau of Investigation (FBI), the Internal Revenue Service-Criminal Investigations (IRS-CI), the El Dorado County District Attorney's Office, and the California Department of Real Estate (DRE) have been conducting a mortgage fraud and money laundering investigation. The investigation to date discloses probable cause to believe that beginning in or about March 2005, BEHROOZ BADIE, LISA STRAUME, DINO ROSETTI and others engaged in a mortgage fraud scheme involving the purchase of residential real properties, in Sacramento, Placer, and El Dorado counties. In all but two (2) out of the twenty (20) transactions, BEHROOZ BADIE acted as the real estate agent for the purchasers. In all but two (2) out of the twenty (20) transactions, LISA STRAUME and DINO ROSETTI facilitated the funding of loans for the purchasers in their capacity as a loan officer and mortgage broker, respectively, for 1st Option Mortgage.

8. A key feature of the scheme is that at the close of escrow large sums of money are distributed to a company called Calorneva Land Company. According to Calorneva Land Company's bank account records, those funds were then diverted back to the purchasers of real properties. Such transactions are indicative of what is called a "cash back" to buyer scheme in which the sales prices of real property is artificially inflated; the purchase is funded by so

called 80/20 loans in which the entire purchase price is financed through mortgage lenders; and an amount roughly equal to the amount by which the sales price was artificially inflated is fraudulently diverted back to a ringleader or the buyers directly without the knowledge of the lender.

9. The scheme also involved the use of false information on loan applications submitted to lenders, including federally-insured lenders. Kristina Harvey, Harriette Davis, Alan Bolton, Angela Davis, Hilda Day, and William Emmons are individuals who purchased the properties in real property transactions involving false loan representations, and bank account maintained in their names received funds from Calorneva Land Company after the closing of escrow.

10. Over a two-day period, starting on August 4, 2008, and ending on August 5, 2008, agents interviewed Kristina Harvey, William Emmons, and Alan Bolton. As stated above, these individuals purchased real properties in their names relating to the scheme. Each of the individuals gave similar statements concerning how they were persuaded by DAVIS to purchase the properties. Both Harvey and Emmons indicated DAVIS (an individual Emmons knew as TERRY MCCULLOUGH) approached them about purchasing real properties in their names. Both Harvey and Emmons stated they gave their personal information to DAVIS to prepare the loan applications. Both Harvey and Emmons stated they would meet DAVIS at the escrow signings. Both Harvey and Emmons stated that DAVIS asked them to open a Union Bank of California account, but once the accounts were open, they did not exercise control over the accounts. Bolton gave similar accounts with respect to his involvement with DAVIS. However, Bolton indicated that he was approached to purchase a property by his friend named TERRY MCCULLOUGH (during an interview with Harvey discussed below, Harvey confirmed that DAVIS goes by the aliases of TERRY MCCULLOUGH and TERRY DAVIS). Bolton stated that he gave his personal information to MCCULLOUGH to prepare the loan applications. Bolton stated that MCCULLOUGH asked him to open a Union Bank of California account, but once the account was opened, he did not exercise control over the account. The interviews with Harvey, Emmons, and Bolton are discussed in greater detail below.

II. FRAUDULENT REAL ESTATE TRANSACTIONS

A. Kristina Harvey Transactions

11. The investigation has disclosed that between April 2006 and May 2006, Kristina Harvey purchased five (5) real properties in Carmichael, Auburn, New Castle, Placerville, and Shingle Springs, all located in the Eastern District of California. Based upon a review of the Purchase Agreements, all five (5) properties were purportedly being offered for sale at a below market value price and were in need of repairs. The purchase prices were 100% financed with 80/20 loans totaling approximately \$3.7 million in aggregate value. Four (4) out of the five (5) properties have subsequently been foreclosed upon by either a private lender or a federally-insured financial institution at a substantial loss. According to the Purchase Agreements, BEHROOZ BADIE presented an offer for the sellers in which the purchase price was substantially increased from the list price. The difference between the purchase price and the original list price (which in some instances was inflated by as much as 20%) was then credited to Calorneva Land Company for repairs and improvements at the close of escrow. This is a very large percentage. According to Senior Deputy Commissioner Tricia Sommers with the California Department of Real Estate, most lenders only allow the seller to credit 3% to 6% of the purchase price to the buyer.

12. I have reason to believe that in the case of the five (5) Harvey transactions there was an addenda to each of the original purchase agreements, which requested that the seller credit Calorneva Land Company funds at the close of escrow for repairs. I base this belief on several considerations. First, I reviewed the escrow files pertaining to purchase of three (3) real properties by Angela Davis, Hilda Day, and William Emmons. Each of those files contained an addendum to the purchase agreement, which requested that the seller credit Calorneva Land Company funds at the close of escrow so that the funds could be used for repairs to the respective properties. Second, a review of the HUD-1 Settlement Statements regarding Harvey's five (5) real property transactions revealed Calorneva Land Company received funds at the close of escrow. Third, a review of records for the Calorneva Bank account held at Bank of America revealed, at the close of escrow relating to Harvey's five (5) real property

transactions, the bank account received a wire from Alliance Title, the title company that handled all of Harvey's real property transactions. Finally, based on my training and experience in investigating mortgage fraud cases, funds would not have been disbursed in this manner absent something in the escrow file, such as a purchase addendum, authorizing the disbursement. However, I and other agents have thus far been unable to secure the escrow files pertaining to Kristina Harvey's five (5) real property transactions because Alliance Title, which handled the escrow on all of Harvey's real property transactions, went out of business in December 2007, and as a result your affiant has had difficulty obtaining Alliance Title's escrow files for these transactions.

13. A review of Calorneva Land Company bank records maintained by Bank of America discloses that the funds the company received were not used for repairs. Instead, some of the funds were used to make mortgage payments on the five (5) properties. In addition, funds received from various escrow closings were transferred to bank accounts maintained in the names of Kristina Harvey and others. Furthermore, it appears that the purchase addenda disclosing the credits to Calorneva Land Company (which I reasonably believe are in the escrow files as discussed above) do not appear in the lenders' files, suggesting that they were not provided to the lenders. Therefore, purchase agreement information provided to the lender does not appear to have disclosed that the seller(s) in the transactions were crediting Calorneva Land Company a substantial amount of money at the close of escrow.

14. The investigation also disclosed that in order to secure funding for Harvey's five (5) real property transactions, false representations were made on the loan applications relating to the occupancy status of the properties, employment and income. A review of all of the loan applications revealed Harvey indicated that she intended to occupy all five (5) properties as her primary residence. This statement is false. All of the loan applications revealed Harvey worked for Morning Star Ranch and earned a gross monthly income between \$11,000-\$18,000. These statements were false. During an interview with Harvey on or about August 4, 2008, she indicated she never lived in any of the five (5) properties as her primary residence, never worked for Morning Star Ranch, and only earned approximately \$500-\$700 per week. Harvey also

admitted she believes DAVIS prepared the loan applications because she gave her personal information to him to prepare the loan applications. This interview is discussed in greater detail below.

15. The investigation has also disclosed that in furtherance of the fraudulent scheme involving the funding of loans to purchase the five (5) real properties, DAVIS and others caused individuals to mail various items through the United States mail and/or by private or commercial interstate carrier in violation of 18 U.S.C. § 1341. For example, information obtained from the Option One Mortgage loan file relating to the purchase of the real property located at 10195 Indian Hill Road, New Castle, California, revealed that on or about April 17, 2006, DAVIS and others caused an employee with Placer County Records Office to mail a Deed of Trust via the United States Mail from Auburn, California to Option One Mortgage, P.O. Box 57076, Irvine, California.

16. Lastly, a review of the HUD-1 Settlement Statements for Harvey's five (5) real property transactions revealed that at the close of escrow approximately \$407,671.35 in aggregate was wired from Alliance Title into the Calorneva Land Company bank account held at Bank of America. In reviewing the Calorneva Land Company bank account held at Bank of America I was unable to identify any disbursements from the account that were consistent with a business purportedly engaged in making repairs/improvements. There is probable cause to believe that Calorneva Land Company had no legitimate purpose except to receive fraud proceeds associated to this mortgage fraud scheme and to distribute those proceeds to bank accounts held in the names of various straw buyers including Harvey, Bolton and Emmons.

B. The William Emmons Transactions

17. The investigation has disclosed that between January 2006 and December, 2006, William Emmons purchased five (5) residential real properties in Somerset and Auburn, both located in Eastern District of California. Allegedly, all five (5) properties were offered for sale at a below market value price and in need of repairs. In each of the transactions he was represented by BEHROOZ BADIE. The purchases were 100% financed with so called "80/20 loans" totally approximately \$2.6 million in aggregate.

All five (5) real properties have subsequently been foreclosed upon by private lenders at a substantial loss.

18. The investigation has disclosed that the transactions involving Emmons bore many of the same indicia of fraud as appeared in the transactions of Kristina Harvey. For example, based on my review of multiple listing service (MLS) and loan documents it appears that in all of the transactions Emmons paid a purchase price significantly higher than the original list price. Based on my review of the HUD-1 closing documents and bank records, it further appears that funds from the escrow closings were credited to Calorneva Land Company. As discussed above, though I have not been able to obtain the escrow files for these five transactions, I have reason to believe that those files contain addenda to the purchase agreements reflecting credits at the close of escrow to Calorneva Land Company.

19. The investigation also disclosed that in order to secure funding for William Emmons's five (5) real property transactions, false representations were made on the loan applications relating to Emmons' purported intent to occupy the property and his gross monthly income. There is probable cause to believe that DAVIS prepared the false loan application because, as discussed below, Emmons indicated that he gave his personal information to DAVIS. The loan applications, each of which purport to be signed by Emmons, indicate that he intended to occupy all five (5) properties as his primary residence. Each of the loan applications further indicate that Emmons was retired from Moxie International and earned a gross monthly income between \$18,000-\$30,775. These statements are false. During an interview with Emmons on or about August 5, 2008, he indicated he never lived in any of the five (5) properties as his primary residence, and only earned approximately \$4,208 per month in retirement income from a federal annuity. Emmons informed the agents that he formerly worked for Moxie International, but he retired from that company and has not received any sort of retirement income.

20. The investigation has also disclosed that in furtherance of the fraudulent scheme involving the funding of loans to purchase the five (5) real properties, DAVIS and others caused individuals to mail various items through the United States mail and/or by private or commercial

interstate carrier in violation of 18 U.S.C. § 1341. For example, information obtained from the Argent Mortgage Company loan file relating to the purchase of the real property located at 2170 Sunny Oak Drive, Auburn California, revealed that on or about March 2, 2006, DAVIS and others caused an employee with Placer County Recorders Office to mail a Deed of Trust via the United States Mail from Auburn, California to Argent Mortgage Company, C/O National Title Clearing, Inc., 2100 Alt. 19 North, Palm Harbor, Florida.

21. Lastly, a review of the Settlement Statements for the five (5) real property transactions revealed that at the close of escrow approximately \$402,843.67 in aggregate was wired from Alliance Title into the Calorneva Land Company bank account held at Bank of America. As stated above, Calorneva Land Company had no legitimate purpose except to receive and distribute fraud proceeds associated to this mortgage fraud scheme.

C. Alan Bolton Transaction

22. The investigation disclosed that in or about August 2006, Alan Bolton purchased a residential real property in Somerset, California with a \$580,000 loan from Accredited Home Lenders, Inc. BEHROOZ BADIE acted as the real estate agent on the transactions. In July 2007, Accredited Home Lenders, Inc., foreclosed on the property.

23. The transaction involving Alan Bolton bears many of the same indicia of fraud as appear in the above-described transactions relating to Harvey and Emmons. Alan Bolton paid a purchase price (\$580,000) significantly higher than the original list price (\$499,000). Funds from the escrow closing were credited to Calorneva Land Company in the amount of approximately \$87,377.87. The addendum to the purchase agreement (which I have reason to believe is in an escrow file I have not yet been able to obtain) that reflects this credit does not appear in the lender's file.

24. The investigation also disclosed that in order to secure funding for the Somerset real property transaction, false representations were made on the loan applications relating to the occupancy status and gross base monthly income. A review of the loan application revealed Bolton intended to occupy the property as his primary residence. This statement is false. The loan application indicated

Bolton earned a gross monthly income of \$13,500. This statement is also false. During an interview with Bolton on August 5, 2008, he indicated he did not live in the Somerset property as his primary residence and only earned \$4,000-\$5,000 per month. This interview is discussed on greater detail below.

25. The investigation has also disclosed that in furtherance of the fraudulent scheme involving the funding of loan to purchase the Somerset real property, DAVIS and others caused individuals to mail various items through the United States mail and/or by private or commercial interstate carrier in violation of 18 U.S.C. § 1341. For example, information obtained from the Accredited Home Lender loan file relating to the purchase of the real property located at 4041 Stinson Road, Somerset, California, revealed that on or about August 3, 2006, DAVIS and others caused an employee with El Dorado County Records Office to mail a Deed of Trust via the United States Mail from Placerville, California to Accredited Home Lenders, 16550 West Bernardo Drive, Building #1, San Deigo, California 92127.

III. INTERVIEWS WITH PURCHASERS

A. Interview of Kristina Harvey

26. On August 4, 2008, El Dorado County District Attorney Investigator Robert Cosley, California Department of Real Estate Deputy Commissioner Shannon Mitra, and I interviewed Kristina Harvey. Prior to the start of the interview, DAVIS, who unbeknownst to the interviewing agents was present in the house, appeared and began discouraging Harvey from talking to the interviewing agents. I asked Harvey to step out of her residence so I could talk to her in private. I explained to Harvey that we were conducting a mortgage fraud investigation that included an investigation into five (5) real properties that she purchased in her name between April 2006 and May 2006. Harvey later explained that she and DAVIS used to date, but their relationship had ended on bad terms, and they had not spoken to each other since January 2008. Harvey explained that she nonetheless continues to live with DAVIS because she cannot afford to live anywhere else.

27. When we stepped outside the residence, Harvey indicated that she was in this whole mess because of DAVIS. Harvey informed me that she did not feel safe answering my questions while DAVIS was at home and she agreed to come to my office and answer questions. That same day, Harvey came to the IRS-CI office in Sacramento and stated the following:

28. Harvey said she met Derik DAVIS in 2004, while working at the Golden Tee Restaurant as a waitress. DAVIS told Harvey that he owned a company called Calorneva Land Company that was in the business of buying properties, fixing them up, and reselling them. DAVIS told Harvey that if she got involved in his business she would not have to work. Harvey thought this was a good idea because it allowed her to stay home with her two year old son. DAVIS also told Harvey that he was in the process of purchasing a home and once he secured the property, she could move in. Eventually, DAVIS obtained the home and Harvey moved in. Shortly after Harvey moved in, DAVIS also moved into the home unexpectedly.

29. Harvey gave her personal information to DAVIS to include her social security number and date of birth in order to prepare the loan applications. DAVIS would direct Harvey to sign various real estate documents. DAVIS directed Harvey to sign so many documents that, according to Harvey, the process became mundane. DAVIS would contact Harvey and tell her that she needed to go to the Alliance Title office located on Sunrise Boulevard to sign documents. DAVIS would always be present at the signings. Harvey was surprised to learn from the agents that between April 2006 and May 2006, she purchased five (5) real properties. Harvey was always led to believe that she only purchased two (2) real properties because DAVIS would always tell her that the property transactions fell through.

30. Prior to the real property purchases, DAVIS gave Harvey \$45,000 in cash to deposit into her Washington Mutual Bank account. DAVIS told Harvey the purpose of depositing the \$45,000 into her Washington Mutual Bank account was to make the real property purchases go through. DAVIS directed Harvey not to make one deposit of the money, but to break the deposit amounts up. Harvey questioned DAVIS regarding the "strange" deposit amounts. DAVIS told Harvey that an IRS form is prepared by the bank if the cash

deposit amount exceeded \$10,000. A review of Harvey's Washington Mutual Bank account revealed that on February 1, 2006, Harvey made two separate cash deposit of \$9,000 and \$3,700, respectively. A review of the bank account revealed the following day on February 2, 2006, Harvey made two additional cash deposits of \$8,700 and \$1,750, respectively. Based on Harvey's statement, the pattern of deposit activity, and my training and experience, I have probable cause to believe that the deposits that occurred on February 1st and 2nd of 2006 were structured in violation of 31 U.S.C. § 5324 (a)(1).

31. Moreover, these cash deposits occurred prior to the April and May 2006 transactions, further corroborating Harvey's information that the deposits related to the real property transactions. Based on my training and experience in investigating mortgage fraud, individuals engaged in mortgage fraud sometimes rent assets from family members or co-schemers to make it appear as though they ~~savings~~ *have* 2. Thus, it is not uncommon to see borrowers involved in mortgage fraud schemes depositing large amounts of money into their bank accounts prior to the lender conducting a Verification of Deposit ("VOD"). In order for the lender to verify the bank account balance listed on the loan application, the lender requests the bank to fill out the VOD form. The VOD form gives the application's current bank account balance. Harvey listed on the loan applications that she maintained a \$22,244 bank account balance in her Washington Mutual Bank account, which was accurate at that moment, except that it failed to disclose that the funds were "rented" to make it appear that she had these funds when she did not. According to Washington Mutual Bank records, shortly after Harvey's five (5) real property transactions closed escrow, a series of withdrawals were made from Harvey's account. On June 21, 2006, Harvey only had a bank account balance of \$1,186.58.

32. Harvey also indicated that DAVIS directed Harvey to open a bank account in her name at Union Bank of California. Harvey was assigned bank account number 315103XXXX. DAVIS told Harvey the purpose of the bank account was to maintain the properties. Harvey indicated that she did so. She further indicated that once Harvey received check books with blank checks associated with this newly opened Union Bank of California account, DAVIS directed Harvey to pre-endorse approximately 15-20 checks

and give them to DAVIS. After these checks ran out, DAVIS directed Harvey to pre-endorse another approximately 15-20 checks and give them to DAVIS. Harvey informed the agents that she did not conduct any of the withdrawals or deposits associated to the Union Bank of California account number 315103XXXX, but in fact, DAVIS conducted all the bank activity. A review of the cancelled checks from account number 315103XXXX revealed that a majority of the checks were endorsed to the private lenders that held the loans to Harvey's five (5) real property transactions. Also, there are several checks that are endorsed to Calorneva Land Company. A review of the Union Bank of California account number 315103XXXX revealed between May 2006 and June 2007, approximately \$50,189.82 was deposited into the account consisting of checks issued from Calorneva Land Company. For example, on or about June 30, 2007, a check from Calorneva Land Company in the amount of \$22,000 was deposited into Union Bank of California account number 315103XXXX, in violation of 18 U.S.C. § 1957.

33. In reviewing the account activity in Harvey's Union Bank of California account I discovered that there were a large number of ATM debit transactions conducted on the account. Between June 2006 and December 2007, the ATM withdrawals from the account totaled in excess of \$39,000. These transactions appear to have been conducted by DAVIS because, among other reasons, Harvey indicated that she did not conduct transactions on this account.

34. On August 4, 2008, Harvey agreed to conduct recorded telephone calls with DAVIS. Prior to initiating those calls Harvey played back for the agents a telephone message that she indicated DAVIS had left on her cellular telephone earlier in the day. In the telephone message, the person Harvey identified as DAVIS stated as follows:

"Hey, It's me again. (Inaudible). But anyway - we need to speak before this thing gets too crazy, so try and give me a call, Kris. (Inaudible). I look forward to hearing from you. Thank you."

35. Within minutes of playing DAVIS' message, Harvey exchanged voice mail messages with DAVIS and then placed a consensually recorded telephone call to DAVIS. Below is a transcript of this telephone call between Harvey ("KH") and DAVIS ("DD"):

DD: Hello.

KH: Hello.

DD: Hello. How are you?

KH: Scared.

DD: I know. Tell me truthfully because it doesn't matter (inaudible). Tell me truthfully because it does matter but it doesn't matter. I mean... what did he say to you outside today? What was (inaudible) taking you outside to say something to you?

KH: He wanted to know who you were.

DD: Mmm-hmm. Okay.

KH: And I told him that I wasn't going to talk to them and that they should go and that you would just get more nutty if they didn't go. And then they left. Then I came back in. They wanted to know who you were.

DD: Mmm-hmm. Yeah.

KH: But they came back. And I've got a meeting with them tomorrow.

DD: Mmm-hmm. All three of them came back?

KH: Mmm-hmm.

DD: How long after?

KH: About an hour.

DD: How are you going to tackle that?

KH: I don't know. You tell me how am I going to tackle it?

DD: Well...

KH: I'm scared.

DD: Absolutely. I understand. I know that. Well...

KH: They kept asking questions about the houses. And the bank account. And (inaudible). So is this about him? I mean, come on, you've got to know something about this.

DD: Yeah, no. I mean, yeah, I mean...

KH: Yeah, what?

DD: I mean they've just pulled a lot of his files, you know, and they want to look at some of the deals obviously. You know, so I mean it's just, but I mean I don't know truthfully (inaudible). I don't know that there's any illegality. It might be what they're trying to make of it. You know? But I really don't know honestly (inaudible) without getting a lawyer involved now, that there's any really illegality. It's just maybe what they're seeing into it. You know?

KH: Just the questions they were asking. They were asking about who Bill is. Who you're wife is. What's moxie? What do you want me to tell these people? I mean they're going to have me in a room by myself. You need to tell me what you want me to say. Because this has nothing to do with me and these accounts weren't mine. These weren't my houses. This is all on you and here I am - I'm going to have to go and talk to them. I'm scared shitless. And it's all on you. You did this to me.

DD: I understand.

KH: You understand what?

DD: I understand that you're scared shitless and the way you feel about the whole (inaudible). You know? I understand all that.

KH: So what do I say?

DD: Is someone asking you... when were they... they asked you all them questions when they came back?

KH: When they came back. But I had to take (inaudible) to an interview so I couldn't talk.

DD: So they took notes on all them questions or what? I mean, how did you answer all that?

KH: I told them I didn't have time to talk, so they want me to see them tomorrow. I'm scared.

DD: Well, as I say, I really don't truly know if there's any illegality, but obviously they're seeing something in it. So not to, you know... I'll have to try and talk with you later. Somebody (inaudible) the window at me. We'll have to try and talk later anyway, for sure. You know?

KH: I've got to work later.

DD: Pardon?

KH: I have to go to work later.

DD: Well, we need to talk after that. You know? I mean, we need to talk. That's for sure. Okay? What time's your appointment tomorrow?

KH: 8.

DD: 8 in the morning?

KH: Mmm-hmm.

DD: Okay. Alright. Can I call you later please?

KH: Where are you at now?

DD: Where am I at right now?

KH: Mmm-hmm.

DD: I'm over by Sunrise and Madison. Where are you at right now?

KH: At home in my room.

DD: Okay.

KH: But I'm not hanging here. I'm leaving.

DD: Okay.

KH: I'm sure someone's going to come and put a notice on the door any day telling me I have to move again, thank you.

DD: I'll give you a call later on.

KH: Alright.

DD: Okay.

KH: Bye-bye.

36. There was a second consensually recorded telephone conversation between Harvey and DAVIS later that afternoon. However, the telephone call was brief and thus is not summarized here.

37. In the morning of August 5, 2008, the day after the two consensually recorded telephone calls described above, I conducted a second interview with Harvey. This interview was conducted telephonically. Harvey indicated that DAVIS moved out of the residence last night (August 4, 2008). Harvey indicated that DAVIS removed all of his possessions from the residence, including a white Jaguar automobile that was located in the garage. DAVIS told Harvey that he had to take the Jaguar because the vehicle contained documents, but he did not do anything wrong in connection with the transactions. Before DAVIS departed in the automobile, Harvey was able to obtain the Jaguar's vehicle identification number of SAJGX5743VC005104. On August 5, 2008, your affiant was able to confirm that according to the California Department of Motor Vehicles, the Jaguar that bears this vehicle identification number is registered to William Emmons.

38. On August 5, 2008, I conducted a third interview with Harvey. I wanted to know if DAVIS went by any alias. Harvey indicated that DAVIS used the alias of TERRY MCCULLOUGH and TERRY DAVIS. Harvey related how she once asked DAVIS why he chose the alias name of TERRY MCCULLOUGH. DAVIS told Harvey that he once knew a person by the name and just chose to use it.

B. Interview with William Emmons

39. On August 5, 2008, El Dorado County District Attorney Investigator Robert Cosley, California Department of Real Estate Deputy Commissioner Shannon Mitra, and I interviewed William Emmons. Emmons is 85 years old and in your affiant's lay opinion demonstrated behavior consistent with Alzheimer's or dementia. In pertinent part, Emmons stated the following:

40. Emmons met DAVIS approximately 6-10 years ago. Emmons worked with DAVIS's ex-wife, Harriette DAVIS, who is also a subject of this investigation. Derik DAVIS approached Emmons about becoming an investor with respect to a ranch called Morning Star located on Wise Road in Auburn, California. DAVIS told Emmons that he wanted to purchase the ranch, fix up the ranch, and resell the ranch for a profit, but he needed investors. In order to get capital to purchase the ranch and make the repairs, DAVIS explained to Emmons that he (Emmons) would have to purchase real properties in his name. DAVIS told Emmons that by

purchasing the real properties in his name, it would give him and the other investors the capital needed to make repairs.

41. Emmons agreed to become an investor and he gave his personal information to DAVIS, including his social security number and date of birth in order to prepare the loan application. DAVIS directed Emmons to sign various real estate documents. DAVIS would always accompany him to the closings at Alliance Title. Emmons informed the agents that DAVIS was a born salesman and he could sell anything to anybody.

42. Emmons indicated that DAVIS directed him to open a bank account at Union Bank of California in his name. Emmons was assigned Union Bank of California account number 315102XXXX. Davis asked Emmons to sign incomplete checks and he gave those checks to DAVIS. A review of the canceled checks for bank account number 315102XXXX revealed a portion were endorsed to the lenders that held the loans relating to Emmons five (5) real property transactions. There were also several canceled checks endorsed to Calorneva Land Company and Morning Star Ranch. Emmons cannot remember what the purpose was to establish the Union Bank of California account. A review of Union Bank of California account number 315102XXXX, held in the name of William Emmons, revealed that between July 2005 and May 2007, approximately \$322,890 was deposited into the account consisting of checks issued from Calorneva Land Company. Emmons was surprised to learn that between January 2005 and February 2008, approximately \$189,120 in cash was deposited into Union Bank of California account number 315102XXXX. Emmons informed the agents that he did not deposit that cash into the bank account. The cash into the bank account did not appear to be structured.

43. In reviewing the account activity in Emmons' Union Bank of California account I discovered that there were a large number of ATM debit transactions conducted on the account. Between March 2005 and October 2007, the ATM withdrawals from the account totaled in excess of \$79,000. These transactions appear to have been conducted by DAVIS because, among other reasons, Emmons indicated that he did not conduct transactions on this account.

44. Emmons indicated that on Monday, August 4, 2008 (the same day as the initial Harvey interview and the two consensually recorded telephone calls between Harvey and DAVIS), DAVIS came by the bookstore where he worked as a volunteer in Carmichael, California. DAVIS told Emmons that three law enforcement officials went by his house early that morning and he (Emmons) needs to be careful.

C. Interview of Alan Bolton

45. On August 5, 2008, FBI Special Agent John Sommercamp and California Department of Real Estate Senior Deputy Commissioner interviewed Alan Bolton. In pertinent part, Bolton stated the following:

46. Approximately five years ago, Bolton met Terry MCCULLOUGH. MCCULLOUGH was seeking the services of Bolton since MCCULLOUGH needed his boat repaired. Bolton refurbishes boats for a living. In addition, Bolton is an employee of the Alexander Technique, a physical therapy business. While Bolton was working on MCCULLOUGH's boat, MCCULLOUGH asked Bolton if he would be interested in purchasing investment properties. MCCULLOUGH told Bolton that Bolton would buy the house, and then MCCULLOUGH would fix-it up, and flip-it within three months from the date of purchase. MCCULLOUGH assured Bolton that when they sold the property, they would split the proceeds. Bolton was concerned since he knew he did not make enough money to pay the mortgage payment. However, MCCULLOUGH told Bolton, "I'll take care of it." Therefore, Bolton agreed to purchase one investment property. In Bolton's mind, this transaction might help him recoup the money that MCCULLOUGH owed him.

47. The investment property was located at 4041 Stinson Road in Somerset, California. Bolton never saw the Stinson Road property and only dealt with MCCULLOUGH regarding the purchase transaction. Bolton was shown a copy of the Residential Purchase Agreement. Bolton stated that the signature on the Residential Purchase Agreement was not his.

48. In regards to the loan application, Bolton never intended to occupy the Stinson Road property as indicated on the loan application. Bolton did not make \$13,800 a month as indicated on the loan application. Bolton was shown a copy of page 4 of the Residential loan

application, which purportedly contained his signature. Bolton stated that the signature was not his.

49. The only documentation Bolton signed was when he went to the land agency (title company) with MCCULLOUGH. Bolton's wife and the notary were also present. Bolton stated that the notary was female but he did not remember her name. Bolton did not review any of the documentation before signing it. MCCULLOUGH and the notary just instructed him to sign his name on the final loan documents.

50. According to Bolton, MCCULLOUGH asked Bolton to open a bank account at Union Bank of California. Union Bank of California records confirm that in November 2006 Bolton opened an account there. MCCULLOUGH explained that he wanted Bolton to open the account so MCCULLOUGH could make payments to Bolton for fixing the boat. Bolton said that he and MCCULLOUGH went to Union Bank of California and opened the bank account. Bolton said that he and MCCULLOUGH are both signatories on the account. However, after that day, Bolton has never received any accounting or documentation regarding the account. Bolton assumed that the account has been closed. Bolton has never used or accessed the account for any purpose.

51. Approximately six months after the real estate transaction closed, Bolton started to receive calls from the lender complaining that the mortgage payments were not being made. Subsequently, Bolton received a foreclosure notice in the mail. Bolton is very upset with MCCULLOUGH since he trusted him. However, MCCULLOUGH has put Bolton in financial hardship.

52. During the interview, Bolton indicated that the previous night (the night of August 4, 2008) Bolton received a telephone call from MCCULLOUGH. MCCULLOUGH advised Bolton that somebody may be visiting him to discuss the Stinson Road transaction. MCCULLOUGH further advised Bolton that people were investigating the transaction.

IV. FURTHER INVESTIGATION

53. A few days ago, I queried the California Employment Development Department (EDD) for employment information about Derik DAVIS. EDD records do not have any employment information for him. I also recently contacted Immigration and Customs Enforcement (ICE) to ascertain

DAVIS' status in the United States. According to Special Agent Brad Bybee of ICE, DAVIS immigrated from the United Kingdom in 1979. He is a lawful permanent resident. However, I have reason to believe that the person known through this investigation as Derik DAVIS is not in fact Derik DAVIS. I base this belief on the fact that the person identified as Derik DAVIS in ICE files appears to reside in Salinas, California. I further base this belief on the fact that in ICE files there is a California Driver's license number listed for Derik DAVIS. Using that number I accessed the California Department of Motor Vehicles information I obtained a soundex photograph of Derik DAVIS. The photograph of DAVIS does not appear to be the person I saw on August 4, 2008 when I and other agents went to interview Harvey.

54. On August 6, 2008, I queried the Nevada Secretary of State's website for information about Calorneva Land Company. The website indicated that Calorneva was formed on or about September 2000. The company is in default. The officers of the company include William Emmons and Howard Day. Emmons is also listed as a Director.

V. CONCLUSION

55. Based on the information above I have probable cause to believe that on or about March 2, 2006, April 17, 2006, and August 3, 2006, in the Eastern District of California, and in furtherance of the scheme to commit mail fraud involving the purchase of the real properties located at 2170 Sunny Oak Drive, Auburn, California, 10195 Indian Hill Road, New Castle, California, and 4041 Stinson Road, Somerset, California, defendant DERIK DAVIS committed mail fraud in violation of 18 U.S.C. §§ 2 and 1341. I also have probable cause to believe that on or about June 30, 2007, in the Eastern District of California, defendant DERIK DAVIS engaged in a monetary transaction involving more than \$10,000 in criminally derived property in violation of 18 U.S.C. §§ 2 and 1957, when he deposited a check in the amount of \$22,000 into Union Bank of California account number 315103XXXX, held in the name of Kristina Harvey. Lastly, I have probable cause to believe that on or about February 1, 2006 and February 2, 2006, in the Eastern District of California, defendant DERIK DAVIS caused or attempted to cause a domestic financial institution to fail to file a CTR in violation of 18 U.S.C. § 2 and 31 U.S.C. § 5324(a)(1).

VII. SEALING REQUEST

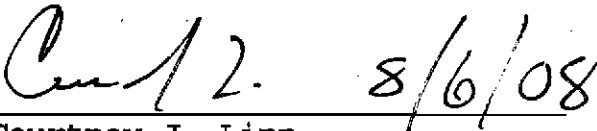
56. The criminal investigation regarding DERIK DAVIS and others is continuing. A number of additional interviews, subpoenas, and possibly grand jury testimony and arrests, are contemplated in the very near future. Disclosure of the contents of this affidavit at this time would seriously impede the continuing investigation and prosecution by disclosing the details of the Government's investigation, which potentially would cause subject of the investigation to flee, destroy evidence, or intimidate and attempt to corruptly influence potential witnesses in the case. Such activity would seriously impede the investigation and prosecution. Accordingly, the Court is respectfully requested to issue an order sealing this

arrest warrant and criminal complaint until further order of this Court or upon the arrest of DERIK DAVIS.



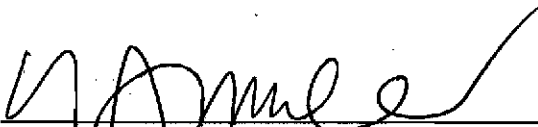
CHRISTOPHER S. FITZPATRICK
Special Agent
Internal Revenue Service -
Criminal Investigation

Reviewed and approved as to form



Courtney J. Linn
Assistant U.S. Attorney

Subscribed and sworn to before
me this 6th day of August,
2008.



HON. Kimberly J. Mueller
United States Magistrate Judge