

# EXHIBIT A

LHE/JAM  
F. #2018R01064

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE SEARCH OF  
INFORMATION ASSOCIATED WITH  
JEFFRYSCHNEIDER@GMAIL.COM THAT  
IS STORED AT PREMISES CONTROLLED  
BY GOOGLE, INC.

**TO BE FILED UNDER SEAL**

**APPLICATION FOR A  
SEARCH WARRANT FOR  
INFORMATION IN  
POSSESSION OF A PROVIDER  
(EMAIL ACCOUNT)**

Case No. 20-491 M

**AFFIDAVIT IN SUPPORT OF  
AN APPLICATION FOR A SEARCH WARRANT**

I, JENNIFER RIKER, being first duly sworn, hereby depose and state as follows:

**INTRODUCTION AND AGENT BACKGROUND**

1. I make this affidavit in support of an application for a search warrant for information associated with a certain account, jeffryschneider@gmail.com (the “Target Account”), that is stored at premises controlled by Google, Inc., an email provider headquartered at 1600 Amphitheatre Parkway, Mountain View, California (hereinafter “Google,” “Gmail” or “the provider”). The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Google to disclose to the government copies of the information (including the content of communications) further described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

2. I am a Special Agent with the Federal Bureau of Investigation (“FBI”). I have been employed by the FBI since 2012. I am currently assigned to investigate white collar crime, including securities fraud and related criminal activity. Through my training, education, and experience, I am familiar with the techniques and methods of operation used by individuals involved in criminal activities to conceal their behavior from detection by law enforcement authorities. I have participated in numerous securities fraud, public corruption and white collar investigations, during the course of which I have conducted physical surveillance, interviewed witnesses, executed court-authorized search warrants and used other techniques to secure relevant information.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other law enforcement officers and witnesses. This affidavit is intended to show merely that there is a lawful basis for the Court to grant the requested warrant and does not set forth all of my knowledge about this matter. Where the content of statements, conversations, and documents are described herein, they are done so in pertinent part and in sum and substance.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to search the Target Account, described in Attachment A, for evidence of violations of Title 15, United States Code, Sections 78j(b) and 78ff (securities fraud), Title 18, United States Code, Section 1343 (wire fraud), as well as conspiracy to commit such offenses under Title 18, United States Code, Sections 371 and 1349 (the “Target Offenses”), as described in Attachments B.

## **JURISDICTION**

5. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A), & (c)(1)(A). Specifically, the Court is “a district court of the United States . . . that has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

## **PROBABLE CAUSE**

### **Background and Investigation Overview**

6. The FBI’s investigation of the Target Offenses relates to GPB Capital Holdings, LLC (“GPB”), an asset management and private equity firm headquartered in Garden City and Manhattan, New York. GPB manages various funds that, at their peak in 2018, purported to have over \$1.5 billion assets under management. DAVID GENTILE (“GENTILE”) is GPB’s founder and serves as the Chief Executive Officer. In promotional materials distributed to investors, which I have reviewed, GPB represents that it identifies and purchases profitable assets, such as automotive dealerships and waste removal companies, which it operates and ultimately hopes to sell at a profit. As a registered investment adviser, GPB is the general partner and investment manager for at least seven limited partnership funds that invest money on behalf of limited partner-investors, purportedly according to the terms of private placement memoranda (“PPMs”). JEFFREY LASH (“LASH”) is the former Managing Partner of Automotive Retail at GPB. The Securities and Exchange Commission (“SEC”) is conducting a parallel civil investigation into GPB, its principals and others.

7. JEFFRY SCHNEIDER (“SCHNEIDER”) is the founder and head of Ascendant Capital, LLC (“Ascendant”) and the custodian of the Target Account. Through Ascendant, SCHNEIDER used a network of broker dealers and salespeople that were recruited to market

GPB funds to institutional and individual investors. Ascendant offered GPB securities through Axiom Capital Management, Inc. and Ascendant Alternative Strategies, LLC.

8. Generally, the facts set forth below establish probable cause that from at least 2014 to the present, GENTILE, SCHNEIDER, LASH and others have engaged in a scheme to commit the Target Offenses by making material misrepresentations and omissions to investors about, among other things, the source of funds used by GPB investment vehicles, including GPB Holdings, L.P. (“Holdings I”), GPB Holdings II, L.P. (“Holdings II”) and GPB Automotive Portfolio, L.P. (“GPB Automotive”) (collectively, the “GPB Funds”), to issue distributions and that fund’s performance. In connection with the investigation, I have reviewed information obtained from numerous confidential sources whose allegations in support of the Target Offenses have been corroborated by documents, bank records and other evidence. As described below, there is probable cause to believe that the Target Account has been used in furtherance of, and contains evidence of, the Target Offenses.

#### The Fraudulent Scheme

9. One of GPB’s primary funds was GPB Automotive, which, according to its offering overview, sought to acquire income-producing car dealerships throughout the United States, including in the Eastern District of New York. Investors in GPB Automotive invested in a portfolio of car dealerships that were purchased by GPB Automotive for the benefit of its investors. In the PPMs, due diligence materials and other marketing materials distributed to prospective investors, GPB Automotive emphasized that a main feature of the investment was a targeted annual distribution to limited partner investors of 8% of invested capital.

10. For example, in a PPM for GPB Automotive, dated on or about February 20, 2014, GPB stated, “When GPB determines to do so after accounting for reserves and expenses or

reinvestments, we will make distributions based on cash flow we have received from Dealerships.” Similarly, in a PPM for GPB Automotive, dated on or about March 6, 2015, GPB wrote, “[w]hen GPB determines to do so after accounting for reserves and expenses or reinvestments, we will make distributions based on cash flow we have received from Dealerships. GPB expects the Company to make distributions of cash, if any, to the LPs beginning three months after their subscription at an annual return rate targeted to be at least 8% (the ‘Target Return’) (though distributions could be more, less or none at all, depending on cash flow).”

11. Staff at Ascendant were responsible for promoting investments in the fund to Registered Brokers and Investment Advisers, who, in turn, would pitch investments in the fund to their clients. Ascendant staff conducted these promotions through emails, by phone, and at in person meetings. Ascendant staff would also coordinate in-person presentations to prospective investors and representatives, at which, from time to time, SCHNEIDER and GENTILE would present on aspects of the GPB Funds.

12. I have interviewed several former Ascendant employees, including several who sent emails to Registered Brokers and Investment Advisers promoting the GPB Funds and attended in-person events at which investments in GPB were promoted. These employees have told me that SCHNEIDER personally reviewed and approved the factual information about the GPB Funds that was included in emails and promotional materials distributed by Ascendant. The employees further advised that when SCHNEIDER and GENTILE presented in person to promote the GPB Funds, they would emphasize the payment of distributions and the fact that the distribution payments were made from the cash flow of the portfolio companies.

13. Promotional materials distributed by Ascendant personnel in or about 2015 represented that GPB Automotive paid a “2014 Distribution – 11.5% fully covered – funds from operations.” The document further states, “[t]argeted annual distribution – 8% paid – 100% funds from operations.” In promotional materials distributed in 2017, Ascendant personnel represented, in connection with GPB Automotive, and it had paid a “Historical Distribution – 2015 Distribution: 10%, 2014 Distribution: 11.5%.” Also in the materials, on a page titled “Structure,” GPB Automotive reported, “Distributions – Based off cash flow from portfolio companies targeted at 8%.”

14. Contrary to these and similar representations in the PPMs, financial records for the fund and statements by fund employees reflect that distributions to limited partners could not have come from cash flow from operations as advertised. For example, in its audited financial statements for 2015, GPB Automotive reported that it paid approximately \$2,405,529 more in distributions than it received from operations, and in its audited financial statements for 2016, GPB Automotive reported that it had paid approximately \$21.4 million in distributions than it received from operations (indeed in 2016 the audited financials reflect a \$7 million operating loss).

15. Furthermore, on March 23, 2016, a GPB employee sent an email to several GPB and Ascendant employees, including SCHNEIDER, in which he explained that he had calculated GPB Automotive to have a 70.4% coverage ratio, which is a term that refers to the extent to which the funds’ distributions were “covered,” or paid by cash flow from operations, for year 2015, and that this ratio included \$1,050,000 in revenue in the form of a management fee rebate (i.e. not actual cash flow from the operating companies). In addition, on December 8, 2016, an Ascendant employee sent an email to SCHNEIDER and his assistant containing a draft message

he planned to send to Ascendant salespeople. In the message, the employee quantified the coverage ratio for Holdings, inception to date, to be 82%, and for Automotive Portfolio, inception to date, to be 53%.

16. GPB later tempered the language in its investor documents and marketing materials, although it still materially misrepresented GPB Automotive's past performance and future prospects. For example, in or about December 2016, a PPM for GPB Automotive represented that, "while we have no present plans to do so, we could include LPs' invested capital in amounts we distribute to LPs, which may reduce the amount of capital available to acquire and operate Dealerships and make other permitted acquisitions, as well as, negatively impact the value of the LPs' investments, especially if a substantial portion of our distributions are paid from our LPs' invested capital." Yet GPB Automotive's 2016 audited financial statement showed that it had continued making distributions to investors despite a massive shortfall from operations that year. Specifically, the fund's audited financial statement for 2016 reports approximately \$14,339,241 in distributions even though it suffered a total net loss of approximately \$7,294,002, including a net loss from operations of approximately \$7,103,808. Thus, it appears impossible that any distributions could have come from operations, and the fund's statement in its December 2016 PPM that it had "no present plans" to pay distributions from invested capital was materially misleading.

17. Tellingly, on or about July 2018, in a PPM for GPB Automotive, GPB represented that, "[p]eriodic distributions are currently and may in the future be paid out of available working capital, which include investor contributions." Later, in December of 2018, GPB suspended all distributions to investors and issued a letter stating that "all of [GPB's]

distributions made to date have been a return of capital contributions made to [GPB] by investors.”

Use of the Target Account

18. The investigation has revealed that SCHNEIDER has used the Target Account to conduct business with and related to GPB and Ascendant. I have reviewed a long chain of text messages exchanged between SCHNEIDER, GENTILE and LASH between 2013 and 2017 in which they discuss matters relating to the GPB Funds. On or about November 1, 2014, SCHNEIDER sent a message to GENTILE and LASH, stating “Wherever possible avoid emails to me as they get reviewed by FINRA. Otherwise use my gmail. [Jeffryschneider@gmail.com](mailto:Jeffryschneider@gmail.com),” referring to the Target Account.

19. Additionally, on August 22, 2014, the Target Account was used on an email chain between SCHNEIDER, GENTILE, LASH and two other GPB employees discussing coverage ratios,. On August 19, 2014, a GPB employee sent an email to GENTILE, LASH and SCHNEIDER at the Target Account, as well as another GPB employee, attaching a monthly distribution report covering Holdings I and GPB Automotive. GENTILE then responded on August 22 questioning why one of the dealerships was underperforming, to which SCHNEIDER, using the Target Account, replied, asking for a call to discuss. LASH then responded with a calculation of what revenue would be necessary to cover the distribution payments.

20. Likewise, on June 25, 2014, the Target Account was used on an email chain between SCHNEIDER, LASH, GENTILE and two other GPB employees to discuss a payment of a stipend paid to SCHNEIDER from one of the car dealerships owned by a GPB Fund. Notably, these board stipends were not disclosed to investors.

21. More recent emails suggest that SCHNEIDER was using the Target Account to conduct business relating to GPB until at least 2018. For example on June 1, 2018, GENTILE emailed SCHNEIDER at the Target Account forwarding financials received from one of their portfolio companies. This email was obtained by the government in connection with its execution of a search warrant on the offices of GPB, which was executed in March 2019.

### **INFORMATION REGARDING EMAIL AND GOOGLE**

22. In my training and experience, I have learned that Google provides a variety of on-line services, including email, instant messenger, SMS, and social networking products to the public.

23. Google allows subscribers to obtain email accounts at the domain name gmail.com, like the email account listed in Attachment A, by registering with Google. During the registration process, Google asks subscribers to provide basic personal information. Such information can include the subscriber's full name, physical address, telephone numbers and other identifiers, alternative email addresses, and, for paying subscribers, means and source of payment (including any credit or bank account number). In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users.

24. A Google subscriber can also store information with the provider in addition to email, such as address books, contact or buddy lists, calendar data, pictures (in addition to ones attached to emails), and other files, Google Drive files, Google Documents, Google Talk chats, SMS, YouTube and other social networking products on servers maintained and/or owned by Google. The provider may also store records of Google subscribers' activities using Google services including Google search. In my training and experience, evidence of who was using an

email account and evidence related to criminal activity of the kind described above may be found in these files and records.

25. In my training and experience, email providers typically retain certain transactional information about the creation and use of each account on their systems. This information can include the date on which the account was created, the length of service, records of log-in (i.e., session) times and durations, the types of service utilized, the status of the account (including whether the account is inactive or closed), the methods used to connect to the account (such as logging into the account via the provider's website), and other log files that reflect usage of the account. In addition, email providers often have records of the IP address used to register the account and the IP addresses associated with particular logins to the account. Because every device that connects to the Internet must use an IP address, IP address information can help to identify which computers or other devices were used to access the email account.

26. In my training and experience, in some cases, email account users will communicate directly with an email service provider about issues relating to the account, such as technical problems, billing inquiries, or complaints from other users. Email providers typically retain records about such communications, including records of contacts between the user and the provider's support services, as well records of any actions taken by the provider or user as a result of the communications. In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users.

27. Therefore, Google's computers are likely to contain stored electronic communications (including retrieved and unretrieved email for Google subscribers) and information concerning subscribers and their use of Google services, such as account access

information, email transaction information, and account application information. In my training and experience, such information may constitute evidence of the crimes under investigation including information that can be used to identify the account's user or users.

28. I believe that the Target Account will include evidence of the Target Offenses, described in Attachment B, between January 1, 2014 and the present. This is because, as described previously, GPB Automotive has been unable to produce independently-audited financial statements for 2017 and 2018, and has publically stated that it must re-audit its 2015 and 2016 statements. According to public statements by GPB, these audits were supposed to have been completed by spring of 2018, then later by the end of September 2019, yet are still pending. Additionally, GPB is currently involved in litigation with an individual who formerly operated a group of dealerships owned by GPB Automotive, where the complaint alleges that GPB engaged in "serious financial misconduct" including "the fabrication of revenue through the use of fictitious contracts, self-dealing transactions on the part of GPB principals, and undisclosed related party transactions."

### **CONCLUSION**

29. Based on the forgoing, I request that the Court issue the proposed search warrant. Because the warrant will be served on Google, who will then compile the requested records at a time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

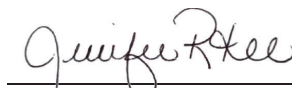
### **REQUEST FOR SEALING AND NON-DISCLOSURE**

30. I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to all of

the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may give targets an opportunity to flee/continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, intimidate potential witnesses, notify confederates or otherwise seriously jeopardize the investigation. Some of the evidence in this investigation involves communications that can be transferred to alternate platforms (including encrypted platforms and platforms beyond the jurisdictional reach of U.S. legal process). If alerted to the existence of the warrant, there is reason to believe that the subjects under investigation will destroy that evidence and change their patterns of behavior.

31. Pursuant to 18 U.S.C. § 2705(b) and for the reasons stated above, it is further requested that the Court issue an Order commanding Google not to notify any person (including subscribers or customers of the account(s) listed in the attached warrant) of the existence of the attached warrant for the period of one year from the date of the Order, except that Google may disclose the warrant to its attorney(s) for the purpose of receiving legal advice.

Respectfully submitted,



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JENNIFER RIKER  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn to before me by telephone on June 26, 2020



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THE HONORABLE CHERYL L. POLLAK  
UNITED STATES MAGISTRATE JUDGE  
EASTERN DISTRICT OF NEW YORK

**ATTACHMENT A**

**Property to Be Searched**

This warrant applies to information associated with a certain account, jeffryschneider@gmail.com (the “Target Account” or “the account”), that is stored at premises controlled by Google Inc., an email provider headquartered at 1600 Ampitheatre Parkway, Mountain View, California (hereinafter “Google” or “Gmail” or “the provider”).

## ATTACHMENT B

### Particular Things to be Seized

#### I. Information to be Disclosed by Microsoft, Inc. (the “Provider”)

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

a. The contents of all emails associated with the account from January 1, 2014 to the present, including stored or preserved copies of emails sent to and from the account, draft emails, the source and destination addresses associated with each email, the date and time at which each email was sent and the size and length of each email;

b. All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative email addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);

c. The types of service utilized;

d. All records or other information stored by an individual using the account, including address books, contact and buddy lists, calendar data, pictures and files; and

e. All records pertaining to communications between the Provider and any person regarding the account, including contacts with support services and records of actions taken.

The Provider is hereby ordered to disclose the above information to the government within 14 days of service of this warrant.

## II. Information to be Seized by the Government

All information described above in Section I that constitutes fruits, contraband, evidence and instrumentalities of violations of Title 15, United States Code, Sections 78j(b) and 78ff (securities fraud), Title 18, United States Code, Sections 1512(c)(2) (obstruction of justice), and 1349 (wire fraud), as well as conspiracy to commit such offenses in violation of Title 18, United States Code, Sections 371 and 1349 (the “Target Offenses”), involving Jeffry Schneider, Jeffrey Lash, David Gentile, and others, occurring after January 1, 2014, including, for the account or identifier listed on Attachment A, information pertaining to the following matters:

- (a) Records relating to planning, execution, covering up, and means and methods of the Target Offenses;
- (b) Records of any communications about the Target Offenses;
- (c) Records of any communications or internet search activity pertaining to GPB or Ascendant, its principals or employees;
- (d) Evidence indicating how and when the email account was accessed or used, to determine the geographic and chronological context of account access, use, and events relating to the Target Offenses and to the email account owner;
- (e) Evidence indicating the email account owner’s state of mind as it relates to the Target Offenses; and

UNITED STATES DISTRICT COURT

for the Eastern District of New York

In the Matter of the Search of )
(Briefly describe the property to be searched )
or identify the person by name and address) ) Case No. 20-491-M
JEFFFRYSCHNEIDER@GMAIL.COM THAT IS STORED )
AT PREMISES CONTROLLED BY GOOGLE, INC. )

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

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

See Attachment A.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (identify the person or describe the property to be seized):

See Attachment B.

YOU ARE COMMANDED to execute this warrant on or before July 10, 2020 (not to exceed 14 days)
in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

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

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

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)

for days (not to exceed 30) until, the facts justifying, the later specific date of

Date and time issued: 6/26/2020 11:15 am

Cheryl Pollak
Judge's signature

City and state: Brooklyn, New York

Hon. Cheryl L. Pollak U.S.M.J.
Printed name and title

AO 93 (Rev. 11/13) Search and Seizure Warrant (Page 2)

<b>Return</b>		
Case No.: 20-491-M	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of :		
Inventory of the property taken and name of any person(s) seized:		
<b>Certification</b>		
<p>I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.</p>		
Date: _____	_____ <i>Executing officer's signature</i>	
	_____ <i>Printed name and title</i>	