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SUPERIOR COURT

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF NEVADA

11
12 **THE PEOPLE OF THE STATE OF**
13 **CALIFORNIA,**

Plaintiff,

14 v.

15 **THOMAS JOHN HASTERT**
16 **DOB: 06/01/1955,**

Defendant.

No. *F09-058*

**DECLARATION OF JASON NICHOLS
IN SUPPORT OF ARREST WARRANT**

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19 I, Jason Nichols, am a Special Agent assigned to the California Department of Justice
20 (CA DOJ), Special Crimes Unit (SCU) Sacramento Office. In my capacity as a Special Agent for
21 the SCU, I have been working on an investigation of Thomas HASTERT relating to the
22 following: filing of fraudulent documents with the County Recorder's office, a violation of Penal
23 Code (PC) section 115 (offering false instruments for record); selling securities and making
24 misrepresenting or omissions of facts in relation to the sale of those securities, violating
25 Corporations Code Sections 25110 (Securities) and 25401 (Untrue statement or omission in
26 connection with purchase or sale of a security); and embezzlement of trust funds, a violation of
27 PC sections 506 (Misappropriation by fiduciary or contractor) and PC Section 506(a) (Debt
28 collector deemed agent in trust). The following information is either personally known to me or

COPY

1 from the statements of witnesses or opinions of expert witnesses or written reports provided by
2 other California law enforcement and or State government agencies.

3 The CA DOJ/SCU has been involved with the ongoing investigation related to
4 HASTERT/Loan Sense since February 2007 and officially took the position of lead investigative
5 agency during March 2008. The CA DOJ/SCU hired Investigative Consultant (IC) Gary Hintz to
6 assist with this investigation. IC Hintz was Special Agent with the California Franchise Tax
7 Board for 12 years, Senior Investigative Staff member of National Investigation Agency, Inc.
8 (NIA), a private financial investigation firm, for approximately 7 years and owner of G.L. Hintz
9 & Associates, a private real estate investigative and consultation firm for the past 18 years. For
10 the past 25 years, IC Hintz has specialized in investigating real estate fraud, both criminally and
11 civilly, as well as conducted prevention and development seminars to real estate companies
12 related to real estate and financial fraud.

13 During the course of this investigation, I personally spoke to and read investigative reports
14 authored by Detectives from the Grass Valley Police Department, Investigators from the
15 California Department of Real Estate and Investigators from the Nevada County District
16 Attorney's Office. Each of these agencies has provided me with copies of their respective agency
17 reports related to HASTERT/Loan Sense. I was present at the service of the search warrant that
18 was executed at the Loan Sense office during September 2007 and assisted in seizing the
19 evidence of which is currently housed in the CA DOJ/SCU evidence vault.

20 SUMMARY

21 Thomas John HASTERT was a licensed Real Estate Broker through the California
22 Department of Real Estate and an active attorney in the State of California. HASTERT owned
23 and operated Loan Sense in Nevada County, California from August 2004 until September 2007.
24 HASTERT is responsible for brokering/funding no less than 270 "hard money" loans in Butte,
25 Nevada, Placer, Sacramento, Sutter and Yuba Counties. As of September 2007¹, 123 loans
26 remained active. The active loans totaled more than \$21 million dollars in principal. A "hard

27 ¹ A search warrant was served at Loan Sense on September 21, 2007 and the loan files
28 were seized.

1 money loan” is a specific type of asset-based loan financing in which a borrower receives funds
2 secured by the value of a parcel of real estate. Hard money loans are typically issued at higher
3 interest rates than conventional commercial or residential property loans and are almost never
4 issued by a commercial bank or other deposit institution. Many hard money mortgages are made
5 by private investors, generally in their local areas. Usually the credit score of the borrower is not
6 important, as the loan is secured by the value of the collateral property. Typically, the maximum
7 loan-to-value (LTV) ratio is 65-70%. That is, if the property is worth \$100,000, the lender would
8 advance \$65,000-70,000 against it. This low LTV provides added security for the lender in case
9 the borrower does not pay and they have to foreclose on the property.

10 The vast majority of HASTERT’s loans involved multiple investors contributing to one
11 loan. For instance: 4 individuals might invest \$100,000 each on a \$400,000 loan. This type of
12 lending is often referred to as “multi-investor,” or “fractionalized,” or “a series-of-notes.”

13 HASTERT brokered the loans. He typically charged 3% of the principal as his broker fee
14 (often referred to as “points”). HASTERT also worked as the servicing agent of the interest
15 payments: i.e., he collected the interest due from the borrower and apportioned the payments to
16 the multiple lenders on the loan. HASTERT did not charge a separate fee for acting as servicing
17 agent.

18 **A. HASTERT DID NOT COMPLY WITH B&P 10237 et seq. or Corp. 25102.5**

19 **1. HASTERT’s series-of-notes do not qualify as “exempt” “securities”**

20 California Corporations Code Section 25102.5 requires that any transaction that is the sale
21 of a series-of-notes secured directly by an interest in the same real property must comply with all
22 of the provisions of Section 10237 et. seq. of the Business and Professions Code or be registered
23 as security pursuant to Corporations Code 25110. Such registration never occurred.

24 Initially, HASTERT did comply by filing the appropriate notice to the California Real
25 Estate Commissioner giving the Commissioner notice he was operating as the broker and/or
26 servicer of a series-of-notes pursuant to Business and Professions Code 10238(a).

27
28

1 **2. The interest payments serviced by HASTERT required additional notice to**
2 **the real estate commissioner after November 2005.**

3 However, once the level of payments reached a certain threshold, HASTERT was required
4 to file an updated notice followed by annual trust account reports. HASTERT did not comply.

5 Specifically;

6 upon becoming a servicing agent of notes or interest sold where the
7 payments due during any period of three consecutive months in the
8 aggregate exceed one hundred twenty-five thousand dollars
9 (\$125,000), the agent shall file, or update, the notice required by
10 subdivision (a) with the commissioner within 30 days. Business
11 and Professions Code 10238(k)(3).

12 I reviewed the active loan files seized from Loan Sense and calculated the interest due between
13 July 1 and September 30, 2005, and determined the payments due exceeded \$125,000. Therefore,
14 HASTERT was required to file such an updated notice in November 2005. This was not done.
15 Additionally, HASTERT/Loan Sense was required to thereafter forward a report of the trust
16 accounts from a Certified Public Accountant². This was not done. Therefore, any series-of-notes
17 sold after the November 2005, were in violation of B&P 10238 and Corp. 25110.

18 **3. The construction loans sold by HASTERT did not comply with statutory**
19 **requirements**

20 Of the 123 active loans sold and being serviced by HASTERT, 24 of them were
21 construction loans with an aggregate principal balance in excess of \$8 million dollars. Each of
22 the investors was led to believe their investment was protected by adequate loan-to-value (LTV).
23 The "value" in these loans was evidenced by an appraisal of the expected value of the project
24 upon completion. However, using an as-will-be appraisal requires adherence to the "safeguards"
25 of Business and Professions Code 10238(h)(4)(A-G). HASTERT did not follow all them.
26 Therefore, each of these construction loans/investments sold was in violation of B&P 10238 and
27 Corp. 25110.

28 An independent neutral third-party escrow holder must be used for all deposits and
disbursements³. This was not done for any of the aforementioned 24 loans.

² Bus. and Prof. Code 10238(k)(3)

³ Bus. and Prof. Code Section 10238(h)(4)(A)

1 The loan must be fully funded, with the entire loan amount deposited in escrow prior to
2 recording of the deed or deeds of trust⁴. This was not done for 22 of the 24 aforementioned loans.

3 A comprehensive, detailed, draw schedule is used to ensure proper and timely
4 disbursements to allow for completion of the project⁵. This was not done for any of the
5 aforementioned 24 loans.

6 The disbursement draws from the escrow account must be based on verification from an
7 independent qualified person who certifies that the work completed to date meets the related
8 codes and standards and that the draws were made in accordance with the construction contract
9 and draw schedule⁶. This was not done for 20 of the 24 aforementioned loans.

10 As a result of HASTERT not following the "safeguards" of 10238(h) the 24 loans have
11 been unproductive, uncompleted, and most have either been foreclosed or are now involved in
12 foreclosure and/or quiet title litigation. Investors have lost the value of most if not all of the 8
13 million dollars invested.

14 **B. HASTERT made misrepresentations in the sale of the construction loans**

15 A misrepresentation in the sale of a security can be made affirmatively, or where
16 statements made omit to state a material fact necessary in order to make the statements made, in
17 the light of the circumstances under which they were made, not misleading. HASTERT did so on
18 numerous occasions.

19 **1. Affirmative Misrepresentations**

20 On loan number 305, HASTERT represented to investors he used that he used a "5 draw
21 system, where funds are released upon inspection, approval, and signature of broker" and that
22 such a draw system would insure the value of the property was increasing along with the
23 expenditures;" he also stated that the borrower's credit was "fine." None of which were true. In
24 fact, despite his previous statement that - he as broker - would do the inspections, he could not
25

26 _____
27 ⁴ Bus. and Prof. Code Section 10238(h)(4)(B)

⁵ Bus. and Prof. Code Section 10238(h)(4)(C)

⁶ Bus. and Prof. Code Section 10238(h)(4)(D)

1 find the property 12 months later when the investors asked him to drive them to the project,
2 despite HASTERT having authorized 96 “draw” payments.

3 On loan number 201, HASTERT represented to one investor that her investment would be
4 secured by a second deed-of-trust, when in fact there was already a second and she was put into
5 third position.

6 On loan number 336, a \$100,000 second deed-of-trust, HASTERT stated the borrower
7 was a “AAA borrower.” In fact, the borrower was already in default on the first deed-of-trust.
8 The same borrower had missed payments on three previous loans with HASTERT (115, 116, and
9 245). Additionally, HASTERT said, the borrower “only needed \$100,000 to finish the project,”
10 but after receiving the full \$100,000, it still needs another \$200,000 to complete.

11 **2. Misrepresentations by Omission**

12 For each of the construction loans HASTERT stated the as-will-be appraisal LTV of
13 approx 70-80% protected their investment. However, he omitted telling the investors he was not
14 going to follow the safeguards provided them by law in 10238(H)(3)(A-D). Such omissions
15 mislead the investors into believing the stated LTV sufficiently protected their investment.

16 **C. HASTERT RECORDED FALSE AND MISLEADING DOCUMENTS**

17 HASTERT brokered no less than thirty three (33) multi-lender investments/loans of which
18 each transaction included a straw investor. When these loans closed they were not fully funded as
19 required by Business and Professions Code 10238(h)(4)(b). However, the deed of trust was
20 recorded as if it had fully funded. The straw person, who made no contribution of funds, is listed
21 in the recorded documents and other documents which created the appearance they had purchased
22 a fractionalized interest in the Note and Deed of Trust along with other investors. In reality, the
23 straw investor’s fractionalized interest was the difference between 100% of the loan value and the
24 amount of actual initial funding provided by the initial real investors. If, for example, the actual
25 amount of invested funds was \$100,000.00 on the day a \$400,000.00 loan closed, the deed of trust
26 showed the real investor(s) collectively had a 25%, 100,000/400,000ths, interest in the loan and
27 the straw person had a 75% or 300,000/400,000ths interest. In each multi-lender investment/loan,
28 the securing document for investors/lenders, a Deed of Trust, was recorded in the county where

1 the subject property was located. In each transaction, the recorded securing document
2 misrepresented on its face that the straw investor had contributed actual funds, and was therefore
3 a legitimate beneficiary of the note. The straw person had not contributed any funds; but only the
4 straw person, HASTERT and other Loan Sense employees knew that for certain.

5 The initial investors were not told there would be a straw person, nor were they told the
6 "majority" investor, according to the deed of trust, had actually put no funds into the transaction.
7 Typically, the investor was not aware the source of the additional funds necessary to fully fund
8 the loan had yet to be found.

9 Further, the existence of the straw person who, on paper, held the majority interest in the
10 loan, was used by HASTERT on some occasions to prevent or forestall the real investors from
11 taking action to protect their investment by beginning foreclosure proceedings on loans in default.
12 HASTERT himself told some investors that the majority investor, the straw person, did not wish
13 to proceed with the foreclosure and therefore, the "other" investors would be prevented from
14 doing so as well.

15 The fact that the straw person on these multi-lender loans was in actuality HASTERT's
16 secretary, NANCY SELECMAN, and later DEBRA NEWBY, with no funds at risk was not
17 disclosed to either investors or borrowers.

18 As additional funds were obtained from new investors, a sham sale was documented and
19 often (but not always) recorded showing that the straw person sold a portion of his or her alleged
20 percentage of ownership in the loan to the new investor for cash when, in reality, the new investor
21 funds were an infusion of new capital, not the sale of an existing investment or portion thereof.
22 The documentation was misleading and each Assignment of Deed of Trust recorded to
23 memorialize and secure new investors' interests was, like the original Deed(s) of Trust, false and
24 fraudulent. Often, assignments were not recorded until long after the date new investor funds
25 were received, leaving those investors without any recorded security for their investments until,
26 and unless, that recording took place.

27 This failure to timely record the assignments endangered the collateral that each of the
28 investors was led to believe they had. If title to the subject property had been transferred for any

1 reason before the assignments were recorded, the new investors' interests in the loans would not
2 be revealed in a title search. HASTERT/Loan Sense would have been aware of the investors'
3 interests, of course, but HASTERT's representations to the new investors/lenders that their
4 investments were secured by a deed of trust on a specific property was untrue unless and until the
5 assignments of deed of trust were recorded with the county recorder in the county where the
6 property securing the loan was located.

7 **D. HASTERT embezzled "unearned" fees**

8 HASTERT collected his fees when the loans closed. The fee percentages were based
9 upon the total loan amount despite the fact that the loans were only partially funded at closing.
10 The proper method of collecting fees would have been to collect his percentage only on the
11 investments actually made instead of investments that would be made in the future. In fact, of
12 33 loans studied in detail, 8 never fully funded.

13 Analysis of those 8 loans that were never fully funded revealed that HASTERT took fees
14 to which he was not entitled under any circumstances. For the under-funded loans, our analysis
15 did not reveal any repayment or attempted repayment by HASTERT of unearned fees to the
16 borrowers or investors. The fact that HASTERT took fees he was not entitled to was never
17 disclosed to potential investors. Business and Professions Code 10238(h)(4)(A) requires the use
18 of an independent third party escrow holder to be used for all deposits and disbursements.
19 HASTERT's failure to follow that section allowed him to self-deal in an improper manner.

20 Furthermore, the improper taking of fees diminished the monies available to the borrowers
21 to complete their construction projects. For instance, loan #326 was a \$600,000 construction loan
22 brokered on 10/5/06 by HASTERT and First Associated Real Estate. On that date, the first
23 investor put in \$80,000, or 13% of the loan total. Four months passed before another investor
24 was found on the loan -- putting in another \$85,000. Another investor put in \$100,000 three
25 months after that. Despite only funding 13% initially - fees were paid as if the loan had fully
26 funded: \$18,000 to HASTERT (3% of 600,000); \$12,000 to a second broker (2% of \$600,000);
27 \$6,000 into a prepaid interest account; plus other title insurance fees and the like. In the end, of
28 the initial \$85,000 invested, only \$40,617 was put into the construction account. I.E., less than

1 half of the initial investment was put to its intended purpose because the fees were charged and
2 paid up front. If the fees had been allocated correctly, \$25,750 more would have been paid into
3 the construction account⁷ for the benefit of the project instead of the benefit of HASTERT.

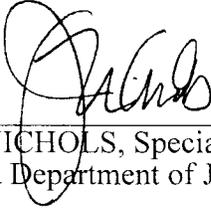
4 Additionally, as mentioned above, Business and Professions section 10238(k)(3) required
5 HASTERT to submit independent CPA reviews of his trust accounts at three-month intervals to
6 the Department of Real Estate beginning in November 2005. This was not done. HASTERT's
7 failure to follow that section allowed him to self-deal in an improper manner.

8 CONCLUSION

9 In this case, the investigation revealed that Thomas John HASTERT has arranged the
10 filing of fraudulent documents with the County Recorder's office, a violation of Penal Code (PC)
11 section 115 (offering false instruments for record); selling securities and making misrepresenting
12 and omissions of facts in relation to the sale of those securities, violating Corporations Code
13 Sections 25110 (Securities) and 25401 (Untrue statement or omission in connection with
14 purchase or sale of a security); and embezzlement of trust funds, a violation of PC sections 506
15 (Misappropriation by fiduciary or contractor) and PC Section 506(a) (Debt collector deemed
16 agent in trust). Therefore, I request a warrant ordering the arrest of Thomas John HASTERT for
17 the relevant felony violations charged in the accompanying Felony Complaint.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed this 19TH day of February, 2009

20
21 
22 _____
23 JASON NICHOLS, Special Agent
24 California Department of Justice

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27 ⁷ Actual Fees minus correct fees (($\$600,000 * .05$)-($\$85,000 * .05$)) does not even take
28 into account the excessive 5% in fees paid on the loan.