# 0

*I* 1 VICTOR SHERMAN, ESQ. (SBN 38483) SHERMAN & SHERMAN

*I*

1. A Professional Law Corporation 2115 Main Street
2. Santa Monica, CA 90405 (310) 399-3259 (0)

4 (310). 392-9029 (F)

email: ssvictor@aol.com

5 0

Attome\_y for Defendant

6 LIDELFONSO CHAIDEZ

7



**CONFORMED COPY**

**OF ORK?NA.L:fIL D**

**Lor** ,,\_,::t

##### DEC 2:\_; 2012

**mc r,Clerk**

BY'\_ \_,.;;:::;;W=.=---' Deputy



1. **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2. **FOR THE COUNTY OF LOS ANGELES**

10

PEOPLE OF THE STATE OF

1. CALIFORNIA,
2. Plaintiff,
3. V.

Case No.: BA402561

**NOTICE OF MOTION AND MOTION TO DISCLOSE SEALED PORTIONS OF**

**IN**

**AFFIDAVIT SUPPORT OF**

**IN**

1. LIDELFONSO CHAIDEZ,

**1&8f& l oINTs**

**AND AUTHORITIES**

1. Defendant. 16

**SUPPORT THEREOF; EXHIBIT**

17

18

19

DATE: TIME: COURT:

January 8, 2013

8:30 a.m.

Department 37

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE PEOPLE OF THE STATE OF CALIFORNIA AND THEIR ATTORNEYS OF RECORD:

|  |  |
| --- | --- |
|  | 20 |
| 21 |
| 22 |
| 23 |
| 24 |
| 25 |
| 26 |
|  | 27 |

PLEASE TAKE NOTICE that on January 8, 2013 at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department 37 of the above-entitled court, Defendant Lidelfonso Chaidez will, and hereby does, move the Court to disclose the sealed portions of the affidavit in support of the application for the search warrant issued on September 12, 2012 for 7226 Cortland Avenue, in Paramount, California.

The basis for this Motion is that the defendant is entitled under the laws of

28

MOTION TO DISCLOSE SEALED PORTIONS OF APPLICATION

0 0

* 1. this state and the Constitution of the United States of America to exercise his

*I*

* 1. rights under the Fourth, Fifth, Sixth and Fourteenth Amendments. Specifically,
	2. Mr. Chaidez is entitled to due process, to seek a remedy for the violation of this
	3. right against unreasonable searches and seizure, to confront witnesses against him,
	4. to the assistance of counsel and to a public trial.
	5. This motion is based on this notice of motion and motion, the Fourth, Fifth,
	6. Sixth and Fourteenth Amendments to the United States Constitution, the parallel
	7. provisions of the California Constitution, Penal Code §1538.5, the attached
	8. memorandum of points and authorities, and upon any other oral and/or
	9. documentary evidence which may be adduced at the hearing on this motion.
	10. DATED: December 28, 2012 Respectfully submitted,
	11. SHERMAN & SHERMAN

A Professional Law Corporation

13

1. By: RMAN =
2. Attorney for Defendant

LIDELFONSO CHAIDEZ

16

17

18

19

20

21

22

23

24

25

26

27

28

MOTION TO DISCLOSE SEALED PORTIONS OF APPLICATION

-11-

0 n

*I*

* 1. **MEMORANDUM OF POINTS AND AUTHORITIES**
	2. I.
	3. **PRELIMINARY STATEMENT**
	4. On September 12, 2012, Mario Garcia a police officer with the Costa Mesa
	5. Police Department applied to Karen Ackerson-Brazille, Judge of the Los Angeles
	6. Superior Court, for a warrant authorizing the search and seizure of evidence from
	7. 7226 Cortlan.d Avenue in Paramount, California. (Exhibit.) In addition, Officer
	8. Garcia prepared a Declaration and Request for an Order Sealing the Affidavit that,
	9. with the Court's authorization, sealed the entirety of the probable cause portion of
	10. the affidavit under the purported authority of People v. Hobbs, 7 Cal 4th 948
	11. (1994). According to the sworn statement of Officer Garcia, if any of the
	12. allegations of probable cause were made public, they "will reveal or tend to reveal
	13. the identity of any confidential informant(s), impair further related investigations
	14. arid endanger the life of the confidential informant(s)." Id. (Exhibit.)
	15. Considering that all of the information concerning probable cause in the warrant
	16. affidavit would allegedly lead back to one or more informants, it can only be
	17. inferred that the nexus between the residence that was searched and evidence of a
	18. crime was supplied entirely by an informant or informants.
	19. Although only currency, identification and weapons were seized from the
	20. Cortland residence, cocaine was seized from two other locations named in the
	21. warrant along with additional currency. Id. (Exhibit.)
	22. The unredacted portion of the search warrant provides no probable cause for
	23. its issuance or any factual basis that would justify the entry into and search of any
	24. of the searched locations, including the Cortland residence. Instead, those
	25. portions of the affidavit that have been produced consist primarily of a recitation
	26. of the affiant's expertise and descriptions of the location of the search and items
	27. sought to be seized.
	28. Thus, the only thing that the affidavit reveals is that there was an informant

# 0

*I* 1 of unknown reliability who provided information that may or may not have been

* + 1. corroborated in any adequate way. The totality of the circumstances on which
		2. probable cause might have been based are entirely missing from the affidavit.
		3. Likewise it is unknown whether the informant had any particularized information
		4. concerning Mr. Chaidez and the degree to which the Cortland residence may have
		5. been only incidental to the sealed statement of probable cause. The warrant itself
		6. states only a magistrate found, based on the representations of affiant Garcia, that
		7. there was allegedly probable cause to believe that property at the Cortland
		8. residence was used as the means of committing a felony, tended to show that a
		9. felony was committed, or was possessed with the intent to commit a public
		10. offense. Id.; Penal Code §1524 [paraphrased].
		11. / It was on the basis of this warrant that law enforcement officers allegedly
		12. seized approximately 16 kilograms of cocaine and approximately $1.3 million in
		13. currency with $919,000 of that cash having allegedly been seized from the

5 Cortland residence. The information on which this search was based and whether

1. such information was specific to the Cortland residence or Mr. Chaidez is
2. unknown. At this time, all information and investigation leading to the search has
3. been completely suppressed. Accordingly, no evidence has been produced that
4. links Mr. Chaidez to a crime other than his mere alleged propinquity to a large
5. sum of cash.
6. As redacted, this warrant is not valid on its face. Cal. Evid. Code §1042(b).
7. Nowhere among the fragments of the affidavit thus far provided can probable
8. cause be found. Accordingly, Mr. Chaidez can perceive no lawful basis for the
9. search warrant affidavit for the search and seizure in this case. He is equally
10. unable to perceive whether any cooperating source(s) is or has claimed to be a
11. percipient witness to his activities and whether such a source might claim to have
12. heard admissions that could be used against him. This information is also
13. shrouded in governmental secrecy.

0 0

* 1. Assuming that a cooperating witness purports to have been closely
	2. associated or involved in criminal activities with one of the defendants, he or she

3 may likely be able to provide exculpatory information as to one or more of these

1. defendants. Considering that there were no narcotics, narcotics paraphernalia or
2. packaging material seized from the Cortland residence, the People may have no
3. choice but to rely on their informant as a witness. If it is either the case that a
4. cooperating witness possesses exculpatory evidence or is a necessary witness,
5. there is no reason why the defendants should not now be provided with his or her
6. identity in order to protect their rights to adequately prepare for cross examination,
7. determine whether the witness has information that may be helpful to their
8. defenses, and assess if the testimony could implicate their right not to be
9. incriminated by the out of court statements of codefendants. Bruton v. United 13 States, 391 U.S. 123 (1968).
10. Based on the likelihood that one or more informants in this case are material
11. witnesses and are the sole source of probable cause for the search warrant, Mr.
12. Chaidez contends that the affidavit in this case must be disclosed to protect his
13. rights to due process, confrontation, the assistance of counsel and to a public trial.

18

19

20 **A.**

21

22

**II. ARGUMENT**

**The Affidavit Cannot Remain Sealed Without Contravening Mr. Chaidez' Due Process Rights**

A little over half a decade ago, the United States Supreme Court examined

1. the circumstances under which the government may refuse to disclose the identity
2. of a confidential informant in a criminal case. Roviaro v. United States, 353 U.S.
3. 53, 77 S.Ct. 623 (1957). In Roviaro, the Court began with the observation that the
4. so-called informer's privilege is in fact a government's privilege that serves the
5. public interest in effective law enforcement by preserving anonymity as a means
6. of encouraging citizens to communicate their knowledge of the commission of

0 0

1. cnmes. Id. at 59, 77 S.Ct. at 627. The contents of a communication will never be
2. held to be protected by the informant's privilege where its disclosure will not tend
3. to reveal the identity of an informer. Id. (citing Foltz v. Moore McCormack Lines, 4 189 F.2d 537, 539-540 92d Cir. 1951); VIII Wigmore, Evidence (3d ed. 1940),
4. §2374(1); A.L.I., Model Code of Evidence (1942), Rule 230).
5. Accordingly, as a first rule regarding the invocation of the informant
6. privilege, the privilege may not be used to suppress the contents of
7. communications that do not, by their unique nature, trace to a particular source.
8. Id.; see also People v. Hobbs, 7 Cal.4th 948, 963 (1994) ("[a]ny portions of the
9. sealed materials which, if disclosed, would not reveal or tend to reveal the
10. informant's identity must be made public and subject to discovery by the

'

1. defense").1
2. "A further limitation on the applicability of the privilege arises from the
3. fundamental requirements of fairness. Where the disclosure of an informer's
4. identity, or of the contents of his communication, is relevant and helpful to the
5. defense of an accused, or is essential to a fair determination of a cause, the
6. privilege must give way." Roviaro, 353 U.S. at 60-61, 77 S.Ct. at 628 (citing
7. Scher v. United States, 305 U.S. 251, 59 S.Ct. 174 (1938); Wilson v. United
8. States, 59 F.2d 390 (3d Cir. 1932). When fairness or due process compels the
9. disclosure of an informant's identity and the government refuses to comply, the
10. government must disclose the identity or risk the dismissal of the action. Id.
11. Thus, a second rule limiting the use of the informant's privilege is that the
12. government may not withhold an informant's identity or the contents of his or her
13. communications when that information is relevant and helpful to the defense. Id.
14. It was this second limitation of the government's ability to invoke the informant's 26

27 1 A corollary also discussed in Roviaro is that when the informant's identity is

already known, the privilege is no longer applicable. Roviaro, 353 U.S. at 60, 77 S.Ct. at 627.

28

## 0

1. privilege that was at issue in Roviaro. In that case, the government sought to
2. withhold the identity of an informer who had helped to set up the commission of
3. the crime and who was present at its occurrence. Id. Observing that "the public
4. interest iri protecting the flow of information against the individual's right to
5. prepare his defense" requires balancing on the part of the courts, the Roviaro
6. Court ruled that the balance favored the defendant when the informant's possible
7. testimony was relevant and might have been helpful to the defense. Id. at 63-64,
8. 77 S.Ct. at 629. Aside from the defendant, "[t]he informer was the only witness in
9. a position to amplify or contradict the testimony of government witnesses." Id.
10. (concluding that the withholding the informant's identity violated the defendant's
11. due process rights and required reversal). See also United States v. Cervantes, 542 12 F.2d 773, 775 (9th Cir. 1976) (en bane).
12. In this same vein, the Court in Roviaro assumed that when probable cause
13. for the issuance of a search warrant is based on the communications of an
14. informant and there is insufficient evidence apart from his confidential
15. communication to validate the warrant, the government is required to disclose the
16. identity of the informant. Id. at 61, 77 S.Ct. at 628. This conclusion, however,
17. was repudiated to some extentinMcCrayv. State ofill., 386 U.S. 300,312 n.11,
18. 87 S.Ct. 1056, 1063 n.11 (1967), which stated that "an absolute rule of disclosure
19. for probable cause determinations would conflict with the case-by-case approach
20. upon which the Roviaro decision was based." In advocating a case-by-case
21. approach, McCray can hardly be seen as support for the blanket invocation of the
22. informant privilege to seal search warrant affidavits that is currently being
23. practiced in this state. Based on the same balancing test that was applied in
24. Roviaro, fundamental fairness (as a requirement of due process) requires
25. disclosure of an informant's statements when probable cause is inexorably
26. dependent on that information. Roviaro, 353 U.S. at 60, 77 S.Ct. at 628.
27. McCray. in fact, is inapposite to the kind of sealing authorized by Hobbs

## 0 0

* 1. because it did not involve a situation in which officers refused to disclose the
	2. contents of an informant's communications in addition to his identity. To the
	3. contrary:
	4. Unlike the situation in Beck v. State of Ohio, 379 U.S. 89, 85 S.Ct.
	5. 223, 13 L.Ed.2d 142, each of the officers in this case described with
	6. specificity 'what the informer actually said, and why the officer
	7. thought the information was credible.' 379 U.S., at 97, 85 S.Ct., at
	8. 229. The testimony of each of the officers informed the court of the
	9. 'underlying circumstances from which the informant concluded that
	10. the narcotics were where he claimed they were, and some of the
	11. underlying circumstances from which the officer concluded that the
	12. informant\* \* \* was 'credible' or his information 'reliable."
	13. McCray, 386 U.S. at 304, 87 S.Ct. at 1059. The officer's explanations of the bases
	14. for their actions in McCray were made in open court and subject to cross
	15. examination by the defendant's attorney. Accordingly,McCray. while cited in
	16. Hobbs, hardly involved the complete suppression of the information constituting
	17. probable cause. While McCray stated that police officers need not invariably be
	18. required to disclose an informant's identity, its reached this conclusion only after it
	19. was shown by"evidence submitted in open court and subject to cross-examination,
	20. that the officers did rely in good faith upon credible information supplied by a
	21. reliable informant." Id. at 305, 87 S.Ct. at 1059.
	22. Similarly, in United States v. Anderson, 509 F.2d 724 (9th Cir. 1975), also
	23. relied on in Hobbs, the reliability of the informants was explored in open court, id.
	24. at 727, and the defense had considerable information concerning probable cause.
	25. Thus the defendant was aware that there were two informants, one of whom had
	26. told a customs agent about a heroin supplier who was purchasing heroin in
	27. Mexicali. After that informant had been corroborated to some extent, the same
	28. informant later provided additional specific information that five ounces of heroin,

# 0

1. which had been purchased in Mexicali would be delivered in Calexico or Brawley.
2. The arrest in the Anderson case was made when the defendant and three other men
3. entered the United States at Calexico as predicted. Id. Moreover, the defendant
4. also knew the substance of the statements made by a second informant who had
5. identified the defendant and told another federal agent about the defendant's plan
6. to travel to Mexico to purchase heroin. This informant also described the car,
7. including its license number, that the defendant and his associates would be
8. traveling in. Id. Aside from the informants' identities, the only other information
9. withheld from the defense were the bases for the informants' knowledge. Id. at 10 728.
10. Moreover, as the court in Anderson readily acknowledged, the opinion in
11. McCray did not intend to promulgate a rule that would invariably preclude
12. disclosure of an informant's identity to the accused or his attorney simply because
13. the informant's information related solely to probable cause. Anderson, 509 F.2d
14. at 729. Thus, a court faced with a due process challenge must weight the
15. competing interests to determine whether the privilege has to give way to the
16. defendant's interest in receiving a fair trial. Roviaro, 353 U.S. at 62, 77 S.Ct. at
17. 629; United States v. Roberts, 338 F.2d 646 (2nd Cir. 1968). While Hobbs
18. presents the state-law informant's privilege (codified in Evidence Code§§1041
19. and 1042) as an exception to the statutory requirement that the contents of a search
20. warrant, including any supporting affidavits setting forth the facts establishing
21. probable cause for the search, become a public record once the warrant is
22. executed, Hobbs, 7 Cal.4th at *Q62* (citing Pen. Code§1534(a)), the interests it
23. juxtaposes (between those of the sate and those of a defendant) should be the
24. starting point for the same case-by-case balancing test described in McCray and 26

27

28

## 0 0

* 1. Roviaro.2
	2. Where, as here, the state's interest is a very general one, involving a policy
	3. of encouraging the public to come forward with information, and defendant's
	4. interest is highly specific and compelling in that it is directed at determining the
	5. justification for the issuance of a search warrant that is inextricably intertwined
	6. with an informant's allegations, the balance under such circumstances should
	7. rarely, if ever, favor the state. "[A]n asserted state evidentiary privilege is not a
	8. viable excuse for violating federal constitutional rights." Whitaker v. Garcetti, 9 291 F.Supp.2d 1132, 1152 n.42 (C.D.Cal. 2003).
1. The defendant's interest in uncovering the truth is all the more weighty in
2. the face of an official effort to completely conceal critical information.
3. Accordingly, no federal court has extended the informant's privilege to shield all
4. the material facts making probable cause in a warrant. See, e.g., United States v.
5. Cummins, 912 F.2d 98, 99 (6th Cir.1990); United States v. Moore, 522 F.2d 1068, 15 1072 (9th Cir.1975); United States v. Rivera, 738 F.Supp. 1208, 1211-12
6. (N.D.lnc.1990); United States v. Barker, 623 F.Supp. 823, 836 (D.Colo.1985).
7. Likewise, the cases from other jurisdictions on which Hobbs relied
8. articulated specific concerns that under the circumstances of those cases gave rise
9. to the need for confidentiality. These included fear for the informant's safety,
10. Moore, 522 F.2d at 1072 (involving only the informant's name, not redaction);
11. United States v. Williams, 716 F.2d 864, 865 (11th Cir. 1983); People v. Castillo, 22 80 N.Y.2d 578, 580, 607 N.E.2d 1050, 1050, 592 N.Y.S.2d 945 (1992), and the
12. integrity of pending investigations, Roviaro, 353 U.S. at 60, 77 S.Ct. 623; Castillo,
13. 80 N.Y.2d at 580, 607 N.E.2d at 1050. Rather than supporting a general rationale
14. for nondisclosure;however, these authorities make it clear that the sealing of 26

27 2 Evidence Code § 1041 provides a balancing test that requires the court to

determine if disclosure is against public policy because the interest in preserving the confidentiality of the informant's identity outweighs the necessity for disclosure.

28

0 0

1. information concerning probable cause is restricted to "exceptional
2. circumstances." Castillo, 80 N.Y.2d at 583,607 N.E.2d at 1052.
3. With respect to whether sufficient grounds exist for maintaining the
4. confidentiality of the informant's identity, the Court must look at the People's
5. proffered reasons for maintaining the confidentiality of the information and
6. determine whether there is an ongoing reason for maintaining secrecy. Hobbs, 7
7. Cal.4th at 972. Notwithstanding the preprinted language concerning the
8. endangerment of the lives of informants on the now standardized request for and
9. order sealing the affidavit, this is case presented no "exceptional circumstances."
10. Assertions about unspecified dangers to informants are insufficient, United States
11. v. Hernandez, 608 F.2d 741, 745, 745 n.3 (9th Cir. 1979), and an evidentiary
12. hearing based on submitted facts must be held before a court can find that there is
13. a true potential "danger." Id. Generic recitations of the dangers posed by
14. defendants are fundamentally misleading when there is no specific basis for a
15. belief that the defendants are actually dangerous. United States v. Aileman, 986 16 F.Supp. 1228, 1285 (N.D.Cal.1997).
16. Likewise, if there is an investigatory interest in preserving the informant(s)'
17. anonymity for related investigations, this court should require an affirmative
18. showing that those additional investigations are not at an end. It certainly can't be
19. the case, as the affiant states, that these informants will never cease to be of aid to
20. ongoing investigations. Even when the government is able to show that there is an
21. ongoing investigation, denial of discovery is not automatic. The Court must still
22. balance the needs of the litigant-which in this case are the defendants' rights to
23. confrontation, to due process and be present and represented by counsel at critical
24. stages of a public trial - against the policies for maintaining secrecy.
25. Frankenhauser v. Rizzo, 59 F.R.D. 339 (E.D.Pa. 1973) (abrogated by statute on
26. other grounds, see Crawford v. Dominic, 469 F.Supp. 260,264 (E.D.Pa 1979)),
27. citing Brown v. Thompson, 430 F.2d 1214 (5th Cir. 1970).

## 0 0

* 1. Because of the weightiness of the competing concerns, the informer's
	2. privilege is qualified. Roviaro v. United States, 353 U.S. 53, 77, 77 S.Ct. 623
	3. (1957). "[T]he privilege exists for the benefit of the general public, not for the
	4. benefit of the particular informant involved." Westighouse Electric Corp. v. City 5 of Burlington, 351 F.2d 762, 768 (D.C. Cir. 1965).
1. Roviaro rejects the theory that the privilege guarantees the informer's
2. anonymity. The opinion imports a "fairness" concept and states that a
3. court must balance competing interests in reaching its decision on
4. privilege.
5. Id. Accordingly, the People must assert a specific interest in nondisclosure. They
6. cannot routinely rely on general assertions unsubstantiated by any factual basis.
7. In this case, the continued sealing of the affidavit will deprive Mr. Chaidez ·
8. of his due process rights to present a defense, to be heard and to subject the
9. prosecution's case to adversarial testing, all in violation of the Fourteenth
10. Amendment. Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920 (1967); Crane 16 v. Kentucky. 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986). Thus, a
11. defendant may not be deprived of the opportunity to be heard or to present a
12. complete defense. Crane, 476 U.S. at 690 (citing In re Oliver, 333 U.S. 257,273,
13. 68 S.Ct. 499, 92 L.Ed. 682 (1948)). This is not merely a matter of depriving the
14. defendant of information restricted to probable case. Without access to some of
15. the information on which the case against him was built, Mr. Chaidez is further
16. precluded from obtaining evidence that might be critical to his defense, such as
17. lack of knowledge, third party culpability or possible entrapment. United States v.
18. Miramon, 443 F.2d 361, 362 (9th Cir. 1971); Lopez-Hernandez v. United States, 25 394 F.2d 820, 821 (9th Cir. 1968).

26 **B.**

27

28

**The Sealing Of The Affidavit In This Case Is A Denial Of Defendant's Right to Counsel**

Adversarial inquiry, which is at the center of our system of justice is based

# 0

1. on the historic inadequacies of ex parte procedures for achieving accurate
2. resolutions. Adversarial proceedings substantially reduce the incidence of error by
3. allowing each side to consider the many and subtle interrelationships that may
4. exist among the facts reflected by the record while allowing the trial judge to
5. maintain impartial role that relies on the parties, through thorough research and
6. investigation, to provide the scrutiny that the Fourth Amendment requires. As
7. recognized in Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978), motions to
8. quash and traverse search warrants are an essential means of correcting for the
9. inherent limitations on a court's ability to recognize false and misleading
10. information in search warrant applications.
11. The pre-search proceeding is necessarily ex parte, since the subject of
12. the search cannot be tipped off to the application for a warrant lest he
13. destroy or remove evidence. The usual reliance of our legal system on
14. adversary proceedings itself should be an indication that an ex parte
15. inquiry is likely to be less vigorous. The magistrate has no
16. acquaintance with the information that may contradict the good faith
17. and reasonable basis of the affiant's allegations. The pre-search
18. proceeding will frequently be marked by haste, because of the
19. understandable desire to act before the evidence disappears; this
20. urgency will not always permit the magistrate to make an extended
21. independent examination of the affiant or other witnesses.
22. Id. at 169. Thus, it is critical that the alleged facts that were used to establish
23. probable cause be rigorously tested by the adversarial process, lest unlawfully
24. obtained evidence might for the basis for a criminal conviction.
25. As this case stands, however, the adversarial system can hardly function
26. when all of the evidence lea<;ling to the search and arrests has been suppressed so
27. that access to it has been completely denied to one of the parties. It is an
28. oversimplification to put too much emphasis on Hobbs' distinction between the

0 n

1. testing of guilt or innocence at trial and a motion to suppress, which is intended to
2. put aside inculpatory evidence. Hobbs, 7 Cal.4th at 968. While the exclusionary
3. rule is directed as a sanction to law enforcement, the rights that the Fourth
4. Amendment protects are universal to all citizens and confidence in the fairness of
5. a verdict often turns on whether the police are believed to have acted with respect
6. for the laws they enforce. On the currently known facts of Mr. Chaidez' case,
7. there is no way for Mr. Chaidez or his attorney to receive any realistic assurance
8. that the Fourth Amendment was observed and that the evidence that was obtained
9. can be considered reliable. Neither the informant nor the facts underlying the
10. finding of probable cause has been tested by the adversarial process.
11. . Because the results of Mr. Chaidez' efforts to traverse and quash the

*rl*

1. warrant might determine whether he has any option other than to change his plea,
2. he is clearly facing a critical stage in the proceedings against him that requires the
3. assistance of counsel. Here, the ability of Mr. Chaidez' attorney to participate in

0-

*s(l* 15

16

*cf* 17

18

19

20

21

22

23

24

25

26

27

28

the suppression hearing may not only determine whether counsel pursues a plea bargain or recommends going to trial, it will also influence the recommendation as to whether the defendant takes the stand. These decisions implicate grave constitutional concerns which justify an unimpeded right to counsel. A complete deprivation of counsel at this critical stage of the proceeding is, by definition, harmful to a criminal defendant as such representation is required by the United States Constitution.

The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense." The right to counsel extends to every critical stage of the criminal prosecution.

--------

Coleman v. Alabam§, 399 U.S. 1, 7, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970);

Hamilton v. Alabam§, 368 U.S. 52, 53-54, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961).

Counsel "is required at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected." Mempha v. Rhay, 389 U.S. 128,

0 0

1. 134, 88 S.Ct. 254, 19 L.Ed.2d 336 (1967). This includes the right to be personally
2. present and to be represented by counsel at critical stages during the prosecution. 3 United States v. Wade, 388 U.S. 218, 224-25, 87 S.Ct. 1926, 18 L.Ed.2d 1149

4 (1987).

1. The right to counsel is also guaranteed at suppression hearings. See United
2. States v. Hamilton, 391 F.3d 1066, 1070 (9th Cir.2004) ('"It is quite clear that a
3. pretrial motion to suppress evidence is a critical stage of the prosecution requiring
4. the presence of counsel for the accused,' because in many cases the crucial issue is
5. the admissibility of evidence found in the defendant's possession.") (quoting
6. Olney v. United States, 433 F.2d 161, 163 (9th Cir.1970)). Thus, while, as Hobbs
7. observes, Fourth Amendment claims are often a diversion from the ultimate
8. question of guilt or innocence, and Fourth Amendment claims that have been fully
9. and fairly litigated will ordinarily not be considered as grounds for collateral
10. relief, Stone v. Powell, 428 U.S. 465, 490-92 (1976), search and seizure issues can
11. still be raised in a habeas petition when the issue was inadequately litigated
12. because of a lack of assistance of counsel, Kimmelman v. Morrison, 477 U.S. 365, 17 377,106 S.Ct. 2574, 2583-84 (1986).
13. Without counsel the right to a fair trial itself would be of little
14. consequence, see, e.g., Cronic, supra, 466 U.S., at 653, 104 S.Ct., at 20 2043; United States v. Ash, 413 U.S. 300, 307-308, 93 S.Ct. 2568, 21 2572-2573, 37 L.Ed.2d 619 (1973); Argersinger v. Hamlin, 407 U.S.

22 25, 31-32, 92 S.Ct. 2006, 2009-2010, 32 L.Ed.2d 530 (1972); Gideon,

23 supra, 372 U.S., at 343-345, 83 S.Ct., at 796-797; Johnson v. Zerbst,

24 304 U.S. 458, 462-463, 58 S.Ct. 1019, 1022-1023, 82 L.Ed. 1461

25 (1938); Powell v. Alabama, 287 U.S. 45, 68-69, 53 S.Ct. 55, 63-64,

1. 77 L.Ed. 158 (1932), for it is through counsel that the accused secures
2. his other rights. Maine v. Moulton, 474 U.S. 159, 168-170, 106 S.Ct. 28 477, 483-484, 88 L.Ed.2d 481 (1985); Cronic, supra, 466 U.S., at

n 0

* 1. 653, 104 S.Ct., at 2043; see also, Schaefer, Federalism and State
	2. Criminal Procedure, 70 Harv.L.Rev. 1, 8 (1956) ("Of all the rights
	3. that an accused person has, the right to be represented by counsel is
	4. by far the most pervasive, for it affects his ability to assert any other
	5. rights he may have"). 6 Id., 106 S.Ct. at 2584.
1. Where, as here, the allegations purporting to show probable cause have been
2. sealed, and the defendant's ability to have the assistance of counsel to move to
3. exclude illegally seized evidence is relegated to a procedure of asking questions in
4. the dark, it necessarily follows that Mr. Chaidez will have been denied the
5. assistance of counsel at a critical stage in the proceedings against him.
6. "[S]uppression hearings often are as important as the trial itself.... In ... many
7. cases, the suppression hearing [is] the only trial, because the defendants thereafter 14 · plead guilty pursuant to a plea bargain." Waller v. Georgia, 467 U.S. 39, 46-47,
8. 104 S.Ct. 2210 (1984). The showing of prejudice that is ordinarily required under
9. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), is not relevant
10. when a state's procedures effectively deprive the client of the protections
11. guaranteed by the Sixth Amendment," Pen:y v. Leeke, 488 U.S. 272,278, 109
12. S.Ct. 594 (1989). Under such circumstances, wherein "counsel [is] either totally
13. absent, or prevented from assisting the accused during a critical stage of the
14. proceeding," prejudice is presumed under United States v. Cronic, 466 U.S. 648,
15. 655 n. 12, 104 S.Ct. 2039 (1984) and Strickland does not apply. Wright v. Van 23 Pattan, 552 U.S. 120, 128 S.Ct. 743, 747 (2008).
16. None of the authority relied on in Hobbs supports the view that the Sixth
17. Amendment right to counsel is not violated when there has be a complete
18. deprivation of assistance of counsel at a critical stage of the proceeding. Here,
19. although defendant is represented by counsel, he will be unable to rely on his
20. attorney to perform his duties by functioning as an advocate and bringing a viable

*(*"'*)*-

1. motion to suppress. Although counsel for Mr. Chaidez has submitted a list of
2. questions to be asked at an in camera hearing, the questions were drafted in a void
3. without any material information from the affidavit to assist counsel in their
4. formulation. 3 For much the same reasons, Mr. Chaidez has also been precluded

\_5 from assisting with his own defense. The informant's privilege underlying the

1. holding in Hobbs is a qualified one that should not outweigh a criminal
2. defendant's fundamental right to counsel under the Sixth Amendment at a critical
3. stage of the proceedings against him.
4. Hobbs' reliance on the trial judge to assume the role of defense counsel is
5. unethical as well as ineffective. The trial judge is precluded from the practice of
6. law by Canon 4(G) of the Cal.Code of Judicial Ethics and would be automatically
7. disqualified from hearing a case where "the judge served as a lawyer in the
8. proceeding" or "gave advice to any party in the present proceeding upon any
9. matter involved in the action or proceeding." Cal.Code Civ. Proc. §170.l(a)(2).
10. Trial judges are not privy to defense strategies, criminal discovery, investigation,
11. nor all the facts of a criminal case such that they can serve as an effective defense
12. attorney in any event. Leaving the in camera hearing to the trial judge and the
13. prosecution deprives petitioner of an advocate who can ensure that proper 19

20

1. 3 Where, as in this case, all of the underlying facts have been suppressed, counsel can do no more than submit ageneric list of questions that could apply to any
2. defendant in any case and, therefore, fail to provide **this defendant** with either
3. responsive or effective representation. Thus, under Hobbs, a defendant's Sixth Amendment right to an attorney may amount to nothing more than a right to have his
4. representation referred to the trial judge. Assuming that the result of the court's in
5. camera proceedings is that the motion to suppress is denied, the representative that the defendant has counted on to defend him against the charges will often be
6. relegated to a role of assisting him with his plea and standing with him at his
7. sentencing. The actual advocacy that the defendant might have expected will have been replaced with secret sessions held solely among employees of the same
8. government that seeks his imprisonment.

0 ()

1. challenges are considered and that the defense's position is effectively argued. It
2. also creates a conflict of interest between the need for judicial neutrality in both
3. fact and appearance and the defendant's need for a zealous advocate.
4. The denial of counsel at a suppression hearing is analogous to the denial of
5. counsel at an in camera hearing held to assess the validity of a Fifth Amendment
6. assertion. Cf. United States v. Bohn, 890 F.2d 1079 (9th Cir.1989). "The validity
7. ofBohn's assertion of the fifth amendment was the key issue in the entire case."
8. Id. at 1081. Thus, the in camera stage was "at least as critical as the trial itself,"
9. because if the assertion was valid, Bohn could not be convicted. Here, the entire
10. case could hinge on the issue of probable cause. The Bohn court concluded that
11. "because Bohn was denied his sixth amendment right to have counsel present at
12. the in camera hearing, we may not engage in harmless error analysis." Id. at 1082.
13. Likewise, should Mr. Chaidez' attorney not be allowed to participate in the in
14. camera hearings, the denial of counsel will be absolute and not subject to a
15. harmless error analysis.
16. **C. The Use Of In Camera Hearings Without The Presence Of Counsel Will**
17. **Deny Defendant A Public Trial**
18. . Closed hearings are anathema to the Public Trial Guarantee of the Sixth
19. Amendment. The closure of any part of the proceedings must be justified through
20. a balancing test. Thus, when considering a state court's decision to close a
21. suppression hearing to the public in Waller v. Georgia, 467 U.S. 39, 104 S.Ct.
22. 2210 (1984), the United States Supreme Court explained:
23. there can be little doubt that the explicit Sixth Amendment right of
24. the accused is no less protective of a public trial than the implicit
25. First Amendment right of the press and public. The central aim of a
26. criminal proceeding must be to try the accused fairly, and "[o]ur cases
27. have uniformly recognized the public-trial guarantee as one created
28. for the benefit of the defendant."

## 0 0

1. Id. at 46 (concluding that a pretrial suppression hearing was part of the public trial
2. contemplated by the Sixth Amendment's guarantee of a public trial and closure of
3. entire suppression hearing was plainly unjustified).
4. Observing that public trials and suppression hearings serve an important
5. purpose, the Court quoted Justice Harlan's concurring opinion in Estes v. Texas,
6. 381 U.S. 532, 588, 85 S.Ct. 1628, 1662, "Essentially, the public-trial guarantee
7. embodies a view of human nature, true as a general rule, that judges, lawyers,
8. witnesses, and jurors will perform their respective functions more responsibly in
9. an open court than in secret proceedings." Waller, 467 U.S. at 46 n.4. Unlike
10. Waller, which merely involved the exclusion of the public from a suppression,
11. hearing, the state in this case seeks to also exclude also the defendants and their
12. attorneys. The Supreme Court saw little difference between secret trials and secret
13. suppression hearings:
14. [A] suppression hearing often resembles a bench trial: witnesses are
15. sworn and testify, and of course counsel argue their positions. The
16. outcome frequently depends on a resolution of factual matters.
17. [citation omitted] The need for an open proceeding may be
18. particularly strong with respect to suppression hearings. A challenge
19. to the seizure of evidence frequently attacks the conduct of police and
20. prosecutor. As the Court of Appeals for the Third Circuit has noted,
21. "[s]trong pressures are naturally at work on the prosecution's
22. witnesses to justify the propriety of their conduct in obtaining" the
23. evidence. Rundle, supra, at 605. The public in general also has a
24. strong interest in exposing substantial allegations of police
25. misconduct to the salutary effects of public scrutiny.
26. Id. at 47.
27. The use of sealed evidence and clandestine proceedings is precisely what
28. the Public Trial Clause is intended to prevent. The risk of such proceedings is that

# 0

1. there is too much latitude within which to engage in misconduct, too much
2. temptation to break the rules and too little likelihood of being held accountable
3. because there is no one present with a motive to upset the status quo. Estes, 381
4. U.S. at 588, 85 S.Ct. at 1662 (Harlan, J., concurring). Just as Justice Mosk feared,
5. the "grim reality" made possible by the most extreme interpretations ofHobbs is
6. one in which the police claim to have come by evidence as the result of a search
7. that they refuse to justify other than behind closed doors and only in front of other
8. governmental actors. Hobbs, 7 Cal.4th at 978 (Mosk, J., dissenting). The nature
9. and source of the information on which they purport to rely is maintained as a state
10. secret from the public, the defendant and the defendant's counsel. Describing this
11. procedure as befitting a communist dictatorship, a military junta or perhaps in a
12. Kafka novel, id., Justice Mosk found that the procedures used in Hobbs violated
13. the right to due process under Crane v. Kentucky. and the right to counsel under
14. the Sixth Amendment. Id. at 981.
15. These procedures also violate an important safeguard against the tendency
16. of government for tyranny and impropriety that is embodied in the guarantee of a
17. public trial. Recognizing that a suppression hearing may be the functional
18. equivalent of a trial for many defendants, the United States Supreme Court
19. observed that "[t]he knowledge that every criminal trial is subject to
20. contemporaneous review in the forum of public opinion is an effective restraint on
21. possible abuse of judicial power." Waller, 467 U.S. at 46 n.4 (quoting In re
22. Oliver, 333 U.S. 257,270, 68 S.Ct. 499, 506 (1948)). "In addition to ensuring that
23. judge and prosecutor carry out their duties responsibly, a public trial encourages
24. witnesses to come forward and discourages perjury." Id. at 46. The latter concern
25. is always acutely present and it is particularly salient when government chooses to
26. operate in secret.
27. [T]he party seeking to close the hearing must advance an overriding
28. interest that is likely to be prejudiced, the closure must be no broader

*()* 0

1. than necessary to protect that interest, the trial court must consider
2. reasonable alternatives to closing the proceeding, and it must make
3. findings adequate to support the closure.
4. Id. at 48. The Supreme Court further made it clear that the party claiming a
5. privilege or privacy interest must be specific as to whose interests it seeks to
6. protect and how those interests might be infringed. Id. at 48. The purpose of this
7. requirement is to allow the court, ifit does close any part of the hearing, to do so
8. as narrowly as possible and close only those parts of the hearing that jeopardize
9. the interests advanced. Id. at 48-49.
10. The governmental privilege protecting information concerning its
11. investigations is qualified. Thus, "a claim of privilege made by the Government

12 may be overcome by a litigant's showing of need for the material great enough to

1. outweigh the policies favoring nondiclosure." Kinoy v. Mitchell, 67 F.R.D. 1
2. (S.D.N.Y. 1975). Moreover, in balancing the interests of the parties, as Waller
3. instructs, the weight to be given to governmental claims of privilege diminishes
4. over time. "[C]laims of privilege based upon ongoing criminal investigations do
5. not apply indefinitely. After the expiration of a reasonable period of time, the
6. privilege is lost." Jabara v. Kelley, 75 F.R.D. 475,494 (E.D.Mich. 1977);
7. Swanner v. United States, 406 F.2d 716, 719 (5th Cir. 1969). The Hobbs
8. procedure thus conflicts with federal law, which prohibits the indefinite sealing of
9. court records.4
10. [W]e start with a strong presumption in favor of access to court
11. records. Hagestad v. Tragesser, 49 F.3d 1430, 1434 (9th Cir.1995)
12. (recognizing strong presumption in context of civil trial); accord 25
13. 4 "[T]he Department of Justice may not retain documents indefinitely and keep
14. them from disclosure on a statement that the investigation is still continuing. There must be a reasonable terminus." Capital Vending Co. v. Baker, 35 F.R.D. 510, 511

28 (D.D.C. 1964).

# 0

1. United States v. Edwards, 672 F.2d 1289, 1294 (7th Cir.1982) (same
2. in context of criminal trial); United States v. Criden, 648 F.2d 814,

3 823 (3d Cir.1981) (same).

'4 Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003);

1. Offices of Lakeside Non-Ferrous Metals, Inc. v. United States, 679 F.2d 778,
2. 779-780 (9th Cir. 1982) (Kennedy, J.) (government has obligation to conduct its
3. investigation with diligence and court "should exercise its continuing jurisdiction
4. to ensure that the Government's investigation proceeds with diligence and to
5. protect the rights of the appellant, which become more critical with the passage of
6. time"); Valley Broadcasting Co. v. U.S. Dist. Court for Dist. of Nevada, 798 F.2d
7. 1289, 1294 (9th Cir. 1986) ("court may deny access, but only on the basis of
8. articulated facts known to the court, not on the basis of unsupported hypothesis or
9. conjecture"); United States v. McGrew, 122 F.3d 847, 849-50 (9th Cir. 1997)
10. (explaining, "we reject the suggestion the government made in the district court
11. that, in order to protect witnesses, it may simply refuse to produce an affidavit that
12. it contends renders an otherwise general warrant lawful").
13. The benefit of the general public is strongly served by the assurance that the
14. shield of informer anonymity will not be used to allow unwarranted and excessive
15. intrusions into the privacy of the law-abiding majority of citizens.
16. As the Supreme Court held in Waller:
17. The presumption of openness may be overcome only by an overriding
18. interest based on findings that closure is essential to preserve higher
19. values and is narrowly tailored to serve that interest. The interest is to
20. be articulated along with findings specific enough that a reviewing
21. court can determine whether the closure order was properly entered.
22. Waller, 467 U.S. at 45 (quoting Press-Enterprise Co. v. Superior Court of
23. California, 464 U.S. 501, 510, 104 S.Ct. 819 (1984)). This balancing test is to be
24. pre-weighted in favor of disclosure. Kelly v. City of San Jose, 114 F.R.D. 653,

# 0 0

1 661 (N.D.Cal. 1987).

1. The Court in Waller considered only the defendant and public's interest in
2. the Sixth Amendment's public-trial guarantee. Waller, 467 U.S. at 47 n.5. By
3. contrast, the present case, at a minimum, implicates the public's First Amendment
4. rights of privacy, access to information and redr ss of grievances,5 th« defendant's
5. rights to due process, to protection from unreasonable searches and seizures, to
6. counsel and to confrontation, as well as the right of the United States to have its
7. Constitution recognized as the supreme law of the land, not subject to dilution by
8. the legislative bodies or courts of a state. Against such interests, the "government
9. interest" asserted by the People must be clear, particular and of imminent
10. significance.6 Otherwise, disclosure must be ordered.
11. As the Supreme Court explained in Waller, the circumstances justifying
12. nondisclosure should be "rare... and the balance of interests must be struck with
13. special care." Waller, 467 U.S. at 45. While the defendants also seek the identity
14. of the informant under Roviaro v. United States, 353 U.S. 53, 64-65 (1957) on the
15. grounds that the informant is a material witness with information that is "relevant
16. and helpful" to the defense, the simple demand made in this motion, that the
17. prosecution turn over the redacted portions of the affidavit, is not as onerous as
18. requiring the full disclosure of the informant's identity, including "all pertinent
19. information which might assist the defense to locate him." Twiggs v. Superior
20. Court (1983) 34 Cal.3d 360, 365, quoting Eleazer v. Superior Court (1970). 22

23 *5*As a practical matter, it is through motions to suppress evidence that the right

of the public in general to be free of unlawful searches and seizures is most often litigated and protected.

24

25

6 In any case where a court intends on closing any part of its proceedings, it

1. must "consider alternatives.to immediate closure of the entire hearing: directing the
2. government to provide more detail about its need for closure, in camera if necessary, and closing only those parts of the hearing that jeopardized the interests advanced."

28 Waller, 467 U.S. at 48-49.

# 0

1. Nonetheless, the interests and rights at stake remain fundamental. The right of
2. disclosure assures that the rights of citizens, in general, will be protected from
3. umeasonable govermnent intrusion. As long as courts persist in routinely sealing
4. affidavits under Hobbs, these rights will remain very fragile. They will cease to
5. exist, however, if the govermnent can use the evidence it collects while an
6. impenetrable veil of secrecy never subjects its actions to the light of day or calls
7. them into question.
8. **CONCLUSION**
9. For the foregoing reasons, the affidavit in support of the wiretap application
10. must be unsealed and disclosed forthwith.
11. DATED: December 28, 2012 12

13

14 By:

15

16

17

18

19

20

21

22

##### 23

24

25

##### 26

27

28

Respectfully submitted, SHERMAN & SHERMAN

A Professional Law Corporation

::::::----....

VICTOR SHERMAN •

Attome\_y for Defendant LIDELFONSO CHAIDEZ

# 0 0

##### 1

2

3

4

5

6

7

8 **EXHIBIT**

##### 9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

!

0

SW NO.

**STATE of CALIFORNIA, COUNTY of LOS ANGELES,**

**SEARCH WARRANT and AFFIDAVIT (AFFIDAVIT)**

**Peace** Officer **Mario Garcia** swears under oath that the facts expressed by him/her in the attached and incorporated Statement of Probable Cause are true and that based thereon he/she has probable cause to believe and does believe that the articles, property, and persons described below are lawfully seizable pursuant to Penal Code Section 1524 et seq., as indl ·ted below, and are now located at the locations set forth below. Wherefore, Affiant requests that this Search Wa nt be· ed.



#### (SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN THE COUNTY OF LOS ANGELES:

proof by affidavit, having been this day made before me by **Peace** Officer Marlo Garcia that there is probable cause to believe that the property or person described herein may be found al the location(s) set forth herein and that it is lawrully seizable pursuant to Penal Code Section 1524 et seq., as Indicated below by "181"(s), in that

0 tt was stolen or embezzled;

181 II was used as the means of committing a felony;

C8J II Is possessed by a person with the intent to use ii as means of committing a public offense or is possessed by another lo

.whom he or she may have delivered it for the purpose of concealing tt orpreventing its discovery;

181 ii lends lo show that a felony has been committed or Iha!a particular person has committed a felony;

0 II tends *to* show that sexual e,cploitaUon of a chlld, In violation of Penal Code Section 311.3, or posse,sslon of matter depicting

sexual conduct of a person under the age of 18 years, in violalion of Section 311.11, has occurred oris occurring;

0 there is **a** warrant to arrest the person;

0 a provider of electronic communication service or remote compullng service has records of evidence, as specified In Penal Code Section 1524.3, showing thal property was slolen or embezzled constilutlng a misdemeanor, or that property or things are In possession of any person wilh Intent to use them as a means or committing a misdemeanor public o[ense, or in the

possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery;

**You are Therefore COMMANDED to SEARCH:** (premises, vehicles, persons)

PREMISES: THE

PREMIS!=S at **7226 Cortland Ave, Paramount,** California, **90723;** further described as a single-story dwelling house with a dark composite roof and yellow stucco exterior, and white wood trim; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon. The numbers •7226' are painted on the curb directly in front of the residence, in black lettering on a whtte background

THE PREMISES at **7614 Century Blvd, Paramount,** California, **90723;** further described **as a** single-story dwelling house with **a llght brown composite** roof and **light brown stucco** exterior, and **dark wood** trim; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon. The numbers "7614' are painted on the curb directly in front of the residence, in black lettering on a white background

THE PREMISES at 12405 Paramount Boulevard, Downey, 90242 California, further described as a single-story dwelling house with a grey colored composite roof and pink stucco exterior, and white trim; including all rooms, attics, basements, and other parts therein, the surrounding grounds and *any* garages,

,., 0 0

storage rooms, trash containers, and outbuildings of any kind located thereon. The numbers '12405" are painted on the curb directly in front of the residence, in black lettering on a white background

VEHICLES:

THE VEHICLE described as a **Silver Land Rover Range Rover** with the vehicle identification number of

**SALSH2E4XBA265085,** including containers of any kind within the vehicle.

THE VEHICLE described as a **2007 Silver Cadlllac Escalade** bearing California license# **5SVA397** including containers of any kind within the vehicle.

THE VEHICLE described as a 1971 Black Plymouth Road Runner bearing Califomia license# 6TEU917, including containers of any kind within the vehicle.

THE VEHICLE described as a 1972 Blue Ford Mustang bearing California license # 1HVH248 including containers of any kind within the vehicle.

THE VEHICLE described as a 2003 Silver Nissan Murano bearing California license# 5FAE726 including co tainers of any kind within the vehicle.

For the FOLLOWING PROPERTY, THING(s) or PERSON(s):

Cocaine, it's analogs, narcotics and controlled substances, paraphernalia and packaging related to the use and sate of cocaine, ir!cludlng boxes, baggies, containers and other packaging nlaterials. Scales and other measuring devices. Articles tending to establish and document sales of cocaine, including U.S. currency, records, pay and owe lists, customer lists, phone books, phone records and bills. Items that tend to show dominion and control of the property in question and contraband, including utility bills, mail, keys and rent receipts. Firearms, safes and other items used to secure contraband items, items that tend to show the existence of a conspiracy, Including telephone books, ledgers, notes and records.

d<ll

Judge of he Superior Court of Califomia, County of Los Angeles,

'

 Divb"Zt' /1-e....

**(M11glstrsn Pmled** NllfflO}

# 0 0

I **A 11: OT I.. AL ll"U l'C.N IA 1 I..UUN** I **T OT LU ANut:LI::::>,**

ATTACHED and INCORPORATED

### STATEMENT OF PROBABLE CAUSE

Afliant declares under penalty of petjury that the following facts are true and that there is probable cause to believe, and Affiant does believe, that the designated articles, property, and persons are now in the described locations, Including all rooms, buildings, and structures used in connection with the premises and buildings adjoining them, the vehicles and the persons:

I, Mario Garcia, declare as follows:

I am a sworn peace officer within the meaning of Penal Code Section 830. I have been a Police Officer for the city of Costa Mesa Police Department (CMPD) for over twelve (12) years. I am currently assigned to theCMPD Special Enforcement Detail (SEO), which investigates small to large-scale narcotic trafficking organizations. During my career 1 have conducted and participated in numerous narcotics Investigations including those connected with (1) unlawful importation, possession with Intent lo distribute, and distribution of controlled sabstances, (2) the laundering of monetary instruments derived from unlawful narcotics activities, (3) the

conducting of monetary transactions involving the proceeds of unlawful activities and (4) conspiracies

t •

associated with narcotics offenses, in violation of California Health and Safety Code sections 11351,

11352, 11378, 11379, possession and/or trafficking illegal substances, and sale of narcotics; 11370.6 & 11370.9, money laundering; 11379.6, manufacture of a controlled substance and Penal Code section 182, conspiracy. In conducting those investigations, I utilized a variety of investigative techniques and resources, including physical surveillance, undercover agents, and the use of cooperating individuals.

I have prepared a *"Hobbs* Attachment" that is attached to this Statement of Probable Cause and that is fully incorporated into and made part of this Search Warrant. I request that this *Hobbs* Attachment be ordered sealed by the magistrate reviewing this Search Warrant, pursuant to *People v. Hobbs* (1994) 7 Cal.4"' 948 and Evidence Code sections 1040-1042. I state that if any of the information contained within the *"Hobbs* Attachment' portion of the affidavit is made public, tt will reveal or tend to reveal the identity of any confidential informant(s), endanger the life of a confidential inforrnant(s) and disclosure of the information

is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure In the interest of justice. If the *Hobbs* request that

. appears on the face sheet of this Search Warrant is approved, I will seal the *Hobbs* Attachment and the court will retain the sealed *Hobbs* Attachment pending further order of the court.

D\_uring my experience in law enforcement, I have participated in over 100 narcotics investigations as a case agent or in a subsidiary role. I have debriefed numerous defendants, informants, and witnesses who

**Statement or Probable Cause**

# 0 0

**IA IC OT .\_,ALlf"Ut(NIA, .\_,UUN I T OT LU ANut:Lt: ,**

ATTACHED and INCORPORATED

### STATEMENT OF PROBABLE CAUSE

h d personal knowledge regarding major narcotics trafficking organizations. Additionally, I have participated in many aspects of drug investigations including wiretaps, undercover operations, conducting surveillance, and arrests. I am familiar with narcotics traffickers' methods of operation including the distribution, storage, and transportation of narcotics and the collection of money proceeds of narcotics flicking and methods of money laundering used to conceal the nature of the proceeds. I have conducted investigations regarding the unlawful importation, possession, and distribution of conlrolled substances, as well as related money laundering statutes involving the proceeds of specified unlawful activities and conspiracies associated with criminal narcotics, in violation of Title 21, United States Code,

§§ 841(a) (1), 843(b), 846, 952(a) and 963, and Title 18, United States Code,§§ 2, 1952, 1956 and 1957.

I am familiar with the methods of operation used by drug traffickers and money launderers, including the· importation, distribution, storage, and transportation of drugs; and the collection, storage, transportation and concealment of drug proceeds. Further, I am aware that drug traffickers often communicate with their associates using telephones, cellular telephones, pre-paid telephones, radios, and pagers. I am also aware that drug traffickers often change telephones, cellular telephones and pagers as a means to evade detection by law enforcement. Further, I have learned that large-scale narcotic traffickers often will utilize several cellular phones, including prepaid phones as a method to compartmentalize their drug trafficking activities and as a means to evade detection by law enforcement.

Through those investigations, my training and experience, and conversations with other agents and law enforcement personnel, I have become familiar with methods used by narcotic traffickers to traffic cocaine, smuggle, safeguard and distribute narcotics and to collect and launder narcotics related proceeds. I have become familiar with methods employed by narcotics organizations, and their sophisticated tactics, which include the utilization of debit calling cards, prepaid cellular phones, public telephones, wireless communications technology such as cellular telephones and pagers, counter surveillance, elaborately planned smuggling schemes tied to legitimate businesses, false or fictitious identities, and coded communications and conversations.

I am familiar with the facts and circumstances of this investigation because of my participation in this investigation and reports made to me by other law enforcement officers involved with this investigation,

My training and experience as a Law Enforcement Officer, my familiarity with reports by other law

I

enforcement personnel, or by individuals either associated with or who have knowledge of the illegal dn.ig

trafficking andlor money laundering activities associated with 7226 Cortland Avenue, Paramount, 7614 Century Boulevard, Paramount and 12405 Paramount Boulevard, Downey.

**Statement of Probable Cause**

() 0

.:, I **A IC or vALll"Ul'(NIA, \,UUN IT or LU.:) ANbCLc;::,,**

ATTACHED and INCORPORATED

### STATEMENT OF PROBABLE CAUSE

This affidavit is made in support of an order authorizing the search of the premises located at **7226 Cortland Avenue, Paramount, 7614 Century Boulevard, Paramount and 12405 Paramount** B'oulevard, Downey. Based on my training and experience, as well as the facts set forth in this case, I

believe that 7226 Cortland Avenue, Paramount, 7614 Century Boulevard, Paramount and 12405 Paramount **Boulevard, Downey,** are used to facilitate the illegally trafficking of cocaine and/or money proceeds and in violation of state law. I know that persons engaged in the illegally trafficking cocaine and/or money proceeds maintain additional quantities of cocaine for distribution and maintain quantities of illegal drug proceeds including United States Currency from the sale of cocaine.

It is my experience that records and paraphernalia such as weighing devices, cutting materials and containers are permanently possessed by narcotic traffickers in much the same way a business will maintain records and tools of its trade, whether or not the business has a particular item in inventory on a gl,ven day. It Is my opinion that within the location searched there will be keys that fit locks and safes at the location, wallets, purses, diaries and luggage ta s, all of which contain In or upon them, some rsonalizatlon that tends to identify the owners thereof, thus, circumstantially identifying to your affiant the occupant of the premises for the purposes of arrest, identification and crime charging.

It is your affiant's opinion that the seizure of items, despite any lapse of time between the events described and the anticipated search by this warrant will provide evidence of the events reported in this affidavit, and that the items have and will be used to aid in the commission of felony narcotics transactions.

It.is your affiant's opinion, based on training and experience gained during the service of search warrants th'at persons involved in the illegal trafficking of cocaine and/or drug proceeds almost always keep records oi their narcotic transactions. The illegal trafficking of cocaine and/or drug proceeds generates money

that requires the keeping of records. On many occasions I have observed handwritten notes, which depict narcotic transactions in pay and owe records and incustomer lists complete with telephone numbers and addresses. Narcotic dealers keep these records whether or not the dealer Is in actual possession of narcotics at any given moment.

lt"is further your affiant's opinion, based on experience and observation, that the subjects involved in the illegal trafficking of cocaine and/or drug proceeds quite often secure this money, along with narcotics,

within a safe Inside a location under their dominion and control.

**Statement of Probable Cause**

0 0

;:, I A IC OT **1.,ALll"UN:NIA, 1.,UUN I T OT LUl:i ANbCLt;l),**

ATTACHED and INCORPORATED

### STATEMENT OF PROBABLE CAUSE

I ask that a Search Warrant be issued based upon the aforementioned facts, for the seizure of saidproperty, or any part thereof, after 10:00 P.M., good cause being shown thereof, and the same be brought before this Magistrale or retained subject to the order of the court, or of any court in which the offense(s) in respect to which the property of things taken, triable, pursuant to Section 1536 of the Penal Code.

Items attached and incorporated by Reference: YES NO 0

I certify (declare) under penalty of perjury that the foregoing is true and correct. Executed at 0e,.c.=.o , California

*\_- -..:.i-=·+!.;..,'-'"'";.,..,a,*+*,,\_*' *.*---=- ' -,,--------• lLday of Sce-,e,.-4. *0010* **at** *0'-11& I* P.M.

isis@i11m, cl AffianQ

Reviewed by'--**(Signatur**,**e**.**or**.**D**,**epu**,**ty·D**=**l ct Attomit,,)**==-

dayof ,

\_,at

* + 1. **P.M.**

(l'rlnled Name ol 0eputy lllsll'<t Allomey)

**Statement of Probable Cause**

* + - * 0 0

**STATE of CALIFORNIA, COUNTY of LOS ANGELES,**

### DECLARATION and REQUEST for ORDER

**SEALING the AFFIDAVIT or PORTION of the AFFIDAVIT**

.

* + - * + Your Affiant, **Peace Officer Mario Garcia,** requests that the following portion of the Search Warrant

Affidavit/ Statement of Probable Cause be ordered sealed by the Magistrate in order to Implement the privilege under Evidence Code Sections 1040 to 1042 and to protect the identity of any confidential informant(s) and/or official information, pursuant to the Supreme Court decision in *People* v. *Hobbs* (1994) 7 Cai. 4th 948, and California Rule of Court Rule 243.1, subd. (d).

If any of the information within the requested sealed portion of the Affidavit / Statement of Probable Cause is made public, it will reveal or tend to reveal the Identity of any confidential inforrnant(s), imp­ air further related investigations and endanger the life of the confidential inforrnant(s).

I declare under penalty of perjury that the related foregoing is true and correct to the best of my knowl ge.

**ORDER**

Based upon a review of the Search Warrant Affidavit this court finds that there exists an overriding interest that overcomes the right of public access to the record; the overriding interest supports sealing the record; a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; the proposed sealing is narrowly tailored; an no less restrictive means exist to achieve the overriding interest.

Therefore it is ordered that the following portion of the Search Warrant Affidavit / Statement of Probable Cause identified as the "CONFIDENTIAL ATTACHMENT' be sealed and kept in the custody of the Affiant's law enforcement agency and not be made part of the public record until further

\/ **-4** -

order of this court or *any* competent court.

... Giw,ii.J

,Jli!:dayof -, ***l-Z-,at*** '-f l8\_ 1P.M.

Jedge of the Superior Court of California, County of **Los Angeles.** *r&=-* Dept..E\_.

& (M.-

 P:::--

{ PMtod GfM,)gWnlto I

0 0 /, *l, ,.,,,*,\_-*<JVV ..,.v I*

**STATE of CALIFORNIA - COUNTY of LOS ANGELES**

**RETURN TO SEARCH. WARRANT**

Peace Officer Detectvie Mario Garcia, being sworn, says that hefshe conducted a search pursuant to the Search Warrant described below:

Issuing Magistrate Karen Ackerson-Brazille

Magistrate's Court: Superior Court of California, County of Los Angeles, Compton Justice Center, Department 5.

Date of Issuance: September 12, 2012 Date of Service: September 12, 2012 and

searched the following location(sl, vehlcle(s}, and person(s}:

PREMISES:

THE PREMISES at 7226 Cortland Ave, Paramount, California, 90723; further described as a single-story dwelling house with a dark composite roof and yellow stucco exterior, and white wood trim; including all rooms, attics, basements, and other parts !herein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon. The numbers "7226"·are painted on the curb directly in front of the residence, inblack lettering on a white background

.·· ,

../::)

THE PREMISES at 7614 Century Blvd, Param·ount, California, 90723; further described as a single-story dwelling house with a light brown composite roof and llght brown stucco exterior, and dark wood trim; Including all room51 attics, basements, and other parts therein, the surroundir;ig grounds a\_nd any garages, storage rooms, trash containers, and outbuildings of any kind located thereon. The numbers '7614" are painted on the.curb directly in front of !he residence, in black lettering on a white background

. THE PREMISES at 12405 Paramount Boulevard, Downey, 90242 California, further described as ,a single-story dwelling house with a grey colored composite roof and pink stucco exterior, and white trim; including all rooms, attics, basements, and other parts therein, the surrounding grounds and *any* garages, storage rooms, trash containers, and outbuildings of any kind localed thereon. The numbers '12405' are painted on the curb directly in front of the residence, in black lettering on a white background

VEHICLES:

THE VEHICLE described as **a Sliver** Land **Rover Range Rover** with the vehicle identification number of

**SALSH2E4XBA265085,** including containers of any kind within the vehicle.

THE VEHICLE described as a **2007 Silver Cadillac Escalade** bearing California license # **5SVA397**

including containers of any kind within !he vehicle.

THE VEHICLE described as a 1971 Black Plymouth Road Runner bearing California license# 6TEU917,

including containers of *any* kind within the vehicle.

THE VEHICLE described as a **1972 Blue Ford Mustang** bearing California license# **1HVH248** including containers of any kind within the vehicle.

Return to search Warrant

!... 0 *,I"\*

*\\_j*

THE VEHICLE described as a 2003 Sliver Nissan Murano bearing California license # 5FAE726 including containers of any kind within the vehicle.

, ["· and **Seized the Items•**

D described in the attached and incorporated Inventory.

181 described below :

PREMISES:

THE PREMISES at 7226 Cortland Avenue, Paramount California

1. Large green plastic bag containing a large amount of U.S. currency, $69,000.00.
2. Large brown paper bag containing a large amount of U.S. currency, $850,000.00.
3. Permanent Resident Card in the name of Chaidez Flores, Alfonzo.
4. D.M.V. registration card in the name of Chaidez, Lldelfonso A.
5. Browning, 9mm, handgun, Serial #945NW01299.
6. Sig Sauer, 9mm, handgun, Serial #S311001.
7. Phoenix Arms, .22 Cal, handgun, Serial #4274563. 8.' Baratta, 9mm, handgun, Serial #H27015V.

; *;)* 9. Royal Sovereign money counter, Serial #K10H03055498.

10. 2 large bags of rubber bands.

THE PREMISES at 12405 Paramount Boulevard, Downey, California

1. Four (4) kilograms of suspected cocaine.
2. One (1) black rubber glove.
3. One (1) currency counter, "Royal Sovereign RBC-1003.'
4. One (1) wallet belonging to Javier Navldad, $430.00.
5. One (1) birth certificate belonging to Javier Navidad.
6. U.S. currency, located on the floor in a paper bag, $355,000.00. 7.. U.S. currency, located li\_nder the mattress, $15,900.00.
7. U.S. currency, located inside a tiger stuffed animal, $2,000.00.
8. Pay/Owe ledgers.

j} 10. Plastic bag containing suspected methamphetamine (an off white crystalline substance),

1. One (1) large scale.
	* Return to Search Wattanl Page2 ol3

... 0

1. One (1) roll offo.od saver bags.
2. U.S. currency, located in the top dresser, $43,000.00. 14.Miscellaneous paperwork.
3. One (1) Blackberry & charger.
4. Several wrappings consistent with those used to wrap cocaine kilogram packages.
5. One (1) bag of suspected cocaine, loca)ed in the hallway closet .8 gross pounds.
6. One (1) Food Saver heat seater.
7. One vial and one bindle of suspected cocaine.

THE PREMISES at 7614 Century Blvd. Paramount

1. 12 kilograms of cocaine.

* 2. 3 cellular phones. ',
1. Black Quicksilver backpack.
2. Blue vinyl hand bag.

')\) I further swear that this is a true and detailed account or all the property taken by me pursuant to the search warrant, and the pursuant to Penal Code Sections 1528 an 1536 this property will be retained in my custody, subject to the order of this court or of any other hich the offense in respect to which the seized property is triable.

(Stg,,ctlltOcl-)

Sworn to and Subscribed before me this *J:ff\_*day of *5k.p*f , *,:20* /2.-at M@\_

Judge of the Superior Court of California, County of Los Angeles, Compton Justice Center, Dept 5.

Retum to Searoh Warrant 

Page 3 of 3

0

1. **PROOF OF SERVICE**
2. STATE OF CALIFORNIA ss.
3. COUNTY OF LOS ANGELES
4. I, SAMUEL BROWN, declare:
5. I am employed in the County of Los Angeles, State of California. I am over
6. the age of 18 years and not a party to the within action; my business address is 701
7. E. Third Street, Suite 240, Los Angeles, California 90013.
8. On December 28, 2012, I caused the foregoing document described as:

9

1. **NOTICE OF MOTION AND MOTION TO DISCLOSE SEALED**
2. **PORTIONS OF AFFIDAVIT IN SUPPORT OF SEARCH**
3. **WARRANT; MEMORANDUM OF POINTS AND**
4. **AUTHORITIES IN SUPPORT THEREOF; EXHIBIT**

14

1. to be served upon the interested parties in this action by personal service:
2. Emily Street

D i:mty District Attorney

1. Office of the District Attorney 320 W. Temple St., Room 345
2. Los Angeles, California 90012
3. I declare under penalty of perjury that the foregoing is true and correct.
4. Executed this 28th day of December, 2012, at Los Angeles, California.

21 ,fu!

22

23

24

25

26

27

28