

1 TIMOTHY A. SCOTT (SBN 215074)
2 NICOLAS O. JIMENEZ (SBN 295057)
3 **SCOTT TRIAL LAWYERS, APC**
4 1350 Columbia Street, Suite 600
5 San Diego, California 91913
6 Telephone: (619) 794-0451
7 Facsimile: (619) 652-9964
8 email: tas@scotttriallawyers.com
9 noj@scotttriallawyers.com

10 Attorneys for Defendant
11 [REDACTED]

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF RIVERSIDE

14 THE PEOPLE OF THE STATE OF) Case No. [REDACTED]
15 CALIFORNIA,)
16) **MEMORANDUM OF POINTS &**
17) **AUTHORITIES IN SUPPORT OF**
18) **DEFENDANT’S MOTION TO**
19) **TRAVERSE SEARCH WARRANT FOR**
20) **GOOGLE EMAIL ACCOUNT;**
21) **REQUEST FOR EVIDENTIARY**
22) **HEARING [PENAL CODE § 1538.5]**
23)
24) *filed concurrently with Notice of Motion;*
25) *Declaration of Timothy A. Scott.*
26)
27) DATE: November 25, 2019
28) TIME: 8:30 a.m.
29) DEPT: 63
30)
31) BEFORE THE HONORABLE
32) SAMUEL DIAZ, JR.
33) SUPERIOR COURT JUDGE

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101 **I. INTRODUCTION AND ISSUE PRESENTED**

102 The People obtained a search warrant for [REDACTED], Defendant [REDACTED]
103 [REDACTED] Gmail account. The supporting affidavit made the bald statement that [REDACTED] was a “co-
104 conspirator” who exchanged “many emails” with a doctor involved in medical-insurance [REDACTED]
105 The factual support for that claim—in its entirety—was this:

106 “During the course of this investigation, Trujillo, Taylor, Franke, Moore, [REDACTED] and Miles,
107 have been identified as co-conspirators based on information received by SIU
108 Investigators along with information obtained by law enforcement agencies associated
109 with this investigation.”

1 Exhibit A at page 9 of 16.

2 Neither [REDACTED] nor his email account are ever mentioned in the affidavit again. *See Exhibit*
3 *A, pages 8-16.* The affiant provided *literally nothing* to suggest who [REDACTED] is, what he did, how
4 he fits in to the case, whether he committed a crime, or why evidence would be found in his
5 email account. Because no reasonable law-enforcement official could have believed that this
6 affidavit provided probable cause as to Mr. [REDACTED] and his email account, and because the affiant
7 hid the fact that he was seeking to seize thousands of attorney-client privileged emails from the
8 Court, all fruit of this warrant should be suppressed.

9
10 **II. STATEMENT OF RELEVANT FACTS**

11 This motion challenges a search warrant issued by the San Bernardino Superior Court for
12 Defendant [REDACTED] [REDACTED] email account. As this Court knows, [REDACTED] is and was a practicing
13 attorney. Nevertheless, *without telling the judge that [REDACTED] was an attorney who represented*
14 *persons in this very case,* the warrant application requested the seizure and review of all
15 conceivable information related to the account, including “all account activity . . . all downloads,
16 all received e-mails, texts or instant messages; all forwarded e-mails, all texts or instant
17 messages; all sent e-mails, texts and instant messages; and/or all user created e-mails, texts, and
18 instant messages for account . . . [REDACTED] occurring between 10-08-2015 and
19 1-22-18.”¹

20 *But the “Summary of Probable Cause” provides literally no facts about Mr. [REDACTED] his*
21 *alleged role in the offense, or why his email account should be seized and [REDACTED]*

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25 ¹ *See Ex. A, Search Warrant with Extensions, at page 3 of 16.* The warrant was actually even broader than
26 described above, as it also permitted seizure of: “Any and all e-mail addresses, telephone numbers, IP addresses, or
27 other identifying information involved with any access, or attempted access to this account during this time period”;
28 “Connection information for other computer [sic] to which the user of the above referenced accounts connected, by
any means, during the connection period, including the destination IP address, connection date and time, disconnect
date and time, method of connection to the destination computer, and all other information related to the connection
of this ISP provider”; “Any other records related to the above referenced Names and User Names;” and bizarrely,
“Documentation of any complaints made against the subscriber for inappropriate conduct while using Google gmail,
if available.” [REDACTED]

1 The probable-cause section spans less than three pages. It begins with a general, non-
2 case-specific discussion of medical-provider fraud.² The affidavit then states that in September
3 of 2015, the L.A. District Attorney's Office indicted 15 individuals in a large insurance fraud
4 scheme for over billing and over-prescribing medicines. It does not name any of those
5 individuals or provide other details.

6 It then alleges that ownership of a medical group transferred, at least on paper, from
7 Munir Uwaydah and Paul Turley, to David Johnson, to Robin Chom, to Edwin Mirzabeigi.³ It
8 alleges that the Blue Oak Medical group took over for patients who were being treated by "the
9 above corporations," though it only names one corporation and it still does not make clear how
10 any of those facts relate to the L.A. indictment.

11 Regardless, the affidavit continues by alleging that Blue Oak appeared to be overbilling
12 for pharmaceuticals, and that the affiant had obtained a search warrant for an email account
13 related to a Dr. Edwin Mirzabeigi, MD.

14 Again, the sum total of what the affidavit says about [REDACTED] [REDACTED] is this:

15
16 **During my search of the [Mirzabeigi] files, I located many emails, both in-coming**
17 **and out-going, to several co-conspirators in this investigation. Their email accounts**
18 **were identified as:**

18 [REDACTED] (Jose Trujillo)
19 [REDACTED] (Robert Taylor)
20 [REDACTED] (David Franke)
21 [REDACTED] ([REDACTED] [REDACTED])
22 [REDACTED] (Andrew Miles)
23 [REDACTED] (Shannon Moore)
24

25
26
27 ² *Id.*, Page 8 of 16, para. 1-3.

28 ³ *Id.* at 8 of 16. Presumably, the reader is meant to infer that the entity that was indicted in L.A. bears some relationship to the entities described in the following paragraph, though the affidavit does not actually say that.

1 **During the course of this investigation, Trujillo, Taylor, Franke, Moore, [REDACTED] and**
2 **Miles, have been identified as co-conspirators based on information received by SIU**
3 **Investigators along with information obtained by law enforcement agencies**
4 **associated with this investigation.**

5 Exhibit A at 9 of 16.⁴

6 The affidavit goes on to describe the seizure of financial records in the name of an entity
7 called Parkside Solutions. It asserts that Blue Oak had received checks from various insurance
8 companies. It identifies numerous Blue Oak employees and service providers who received
9 funds out of the account, but it does not include [REDACTED] in that discussion either. It does not allege
10 a link between Mr. [REDACTED] and these financial records, institutions, or accounts.

11 Nevertheless, the San Bernardino magistrate signed the warrant, and the People, through
12 its joint investigators, seized every one of Mr. [REDACTED] emails sent to or from his account during
13 those years. The People plan to introduce many of these emails at trial. This motion to suppress
14 follows.

15 **III. DISCUSSION**

16 **A. Because the affidavit provided literally no facts about Mr. [REDACTED] or how he was**
17 **alleged to have been involved in any crime, it failed to establish probable cause.**

18 The Fourth Amendment provides that “no Warrants shall issue, but upon probable cause,
19 supported by Oath or affirmation, and particularly describing the place to be searched, and the
20 persons or things to be seized.” “The pertinent rules governing a Fourth Amendment challenge to
21 the validity of a search warrant, and the search conducted pursuant to it, are well settled. The
22 question facing a reviewing court asked to determine whether probable cause supported the
23 issuance of the warrant is whether the magistrate had a substantial basis for concluding [that] a
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28 ⁴ (Seriously—that’s it.) *Id.*

1 fair probability existed that a search would uncover wrongdoing.” *Klugman v. Superior Court*
2 (2019) 39 Cal.App.5th 1080, 1090. (internal citations omitted.)

3 The magistrate plays a crucial role in scrutinizing the affidavit for a search warrant. The
4 magistrate is expected to use his “detached scrutiny” to evaluate the affidavit for probable
5 cause—fulfilling that neutral role is considered “a more reliable safeguard against
6 improper searches than the hurried judgment of a law enforcement officer engaged in the often
7 competitive enterprise of ferreting out crime.” *People v. Amador* (2000) 24 Cal.4th 387, 396
8 (internal quotations and citations omitted).

9 This probable-cause analysis, of course, must be limited to facts in the affidavit: “a court
10 cannot resort to facts outside the affidavit to determine whether it furnishes such reasonable
11 cause. If the necessary facts are not stated in the affidavit, it comes too late for the prosecution to
12 attempt to fill the gaps after the defendant's privacy has been invaded and his property seized . . .
13 .” *People v. Frank* (1985) 38 Cal.3d 711, 729.

14 There is nothing else for Mr. ██████ to say about this affidavit, because the affidavit has
15 nothing to say about Mr. ██████. A conclusory statement that he is a “co-conspirator” does not
16 even come close to providing the “substantial basis” that the law requires. Probable cause was
17 fundamentally lacking for him and his email account. Suppression should result.

18
19 **B. By demanding all communications, without limitation, from 2015-2018, the warrant
20 was overbroad and violated the Constitution’s particularity requirement.**

21 “The requirement of particularity is designed to prevent general exploratory searches
22 which unreasonably interfere with a person's right to privacy [This] requirement is held to
23 be satisfied if the warrant imposes a meaningful restriction upon the objects to be seized.” In
24 short, “[n]othing should be left to the discretion of the officer.” *People v. Frank* (1985) 38 Cal.
25 3d 711, 724 (internal quotations and citations omitted). It is critical that the “authority of the
26 executing officer and his need to search are carefully reviewed,” and that “[l]imits are imposed
27 on the search through the requirement of particularity.” *Id.* (internal quotations and citations
28 omitted).

1 In *Burrows v. Superior Court* (1974) 13 Cal. 3d 238, 241, for example, an attorney was
2 suspected of misappropriating client funds. A search was conducted of the attorney’s office but
3 “was not limited to documents relating to the persons specified in the warrant.” Rather, the
4 search included “all of petitioner's financial records from [the preceding two years], and they
5 removed hundreds of individual items such as account books, bank statements, and cancelled
6 checks, only a few of which related to the named individuals.” The Court struck down the
7 warrant. “It is manifest that the warrant in the present case does not meet constitutional
8 standards of specificity; it permitted the seizure of all of petitioner's financial records without
9 regard to the persons with whom the transactions had occurred or the date of transactions.” *Id.*
10 249-50. So it should be here.

11 The seizure of *every email* that █████ sent or received over the course of three years was
12 at least as bad. “With respect to searches of electronic information, careful attention must be
13 paid to the dictates of the particularity requirements of the Fourth Amendment, which limits the
14 authorization to search to the specific areas and things for which there is probable cause to
15 search.” *Md. v. Garrison*, (1987) 480 U.S. 79, 84. Indeed, when a warrant seeks *all* emails or
16 account information, the search is both overbroad and lacking in particularity. *See e.g. In re*
17 *Search of premises known as: Three Hotmail Email accounts*, No. 16-MJ-8036-DJW (D. Kan.
18 Mar. 28, 2016) 2016 U.S. Dist. LEXIS 40545, at *86-87 (denying request for warrant and
19 holding that “[g]iven the substantial amount of data collected by . . . seizing and searching an
20 individual's entire email account, to issue this warrant would swing the balance between an
21 individual's right to privacy and the government's ability to effectively investigate and prosecute
22 crimes too far in favor of the government.”) *See also In re Search of Info. Associated with*
23 *@mac.com* (D.D.C. 2014) 25 F. Supp. 3d 1, 6 (“Any search of an electronic source has the
24 potential to unearth tens or hundreds of thousands of individual documents, pictures, movies, or
25 other constitutionally protected content. It is thus imperative that the government describe the
26 items to be seized with as much specificity as the government's knowledge and circumstances
27 allow.”).

1 Because the warrant was vastly overbroad and lacking in particularity (in addition to the
2 absence of probable cause described above) all fruit of it should be suppressed on this alternative
3 basis.

4 **C. The affiant misled the magistrate by failing to disclose that Mr. [REDACTED] was a
5 practicing attorney who actively represented the other supposed “co-conspirators.”**

6 The warrant should also be quashed because the affiant concealed from the issuing judge
7 that Mr. [REDACTED] was a practicing attorney, and that the broad warrant would implicate serious
8 attorney-client privilege issues.

9 The law for evaluating omissions from search warrant affidavits was stated by the
10 Supreme Court in *People v. Kurland* (1980) 28 Cal.3d 376. *Kurland* held that omissions, like
11 misstatements, can hinder “the magistrate's inference-drawing powers and increase[] the
12 likelihood that privacy will be invaded without probable cause.” *Id.* at 383, 384. An omission
13 should lead to suppression where it is “material” and not reasonably made. *See People v. Bowen*
14 (1982) 137 Cal.App.3d 1020, 1033.

15 Failing to alert the judge that Mr. [REDACTED] was an attorney, and that this was the nature of
16 Mr. [REDACTED] correspondence with Dr. Mirzabeigi, was a material omission. If the affiant had been
17 honest with the Court, he would have had to disclose that the emails he had read between
18 Mirzabeigi and [REDACTED] were regarding contracts, legal opinions, and other legal (and
19 constitutionally protected) conduct. The affiant likely did not describe incriminating emails with
20 the doctor because there were none to describe. The failure to say so was a material omission
21 that rendered the affidavit unlawful.

22 This omission also prevented the Superior Court from carrying out its legal duties to
23 protect privileged communications. In *People v. Superior Court (Bauman & Rose)* (1995) 37
24 Cal. App. 4th 1757, 1768, the court held that an attorney suspected of criminal conduct has a
25 right to a judicial hearing to determine whether attorney-client privilege protects any of the
26 seized materials. *Bauman & Rose* was clear that “the probable cause showing to obtain a search
27 warrant does not satisfy the showing required to establish the crime-fraud exception to the
28 attorney-client privilege,” and that “there is always the possibility that either by mistake or

1 misunderstandings items may be seized which are outside of the scope of the warrant.” *Id.* at
2 1769. “For both reasons, a judge, rather than the officer executing the warrant, should
3 determine the applicability of the privilege.” *Id.* (emphasis provided).

4 The California Supreme Court has since expressly affirmed *Bauman & Rose*’s holding.
5 See *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 720 (“we conclude that the court in
6 *Bauman & Rose* correctly held that the superior court has an obligation to consider and
7 determine claims that materials seized pursuant to a search warrant, from attorneys suspected of
8 criminal activity and before charges have been filed, are protected by the attorney-client
9 privilege or work-product doctrine and thus should not be inspected by or disclosed to law
10 enforcement authorities.”). “[T]he custodian of materials protected by an evidentiary privilege
11 owes a duty to the holder of the privilege to claim the privilege and to take actions necessary to
12 ensure that the materials are not disclosed improperly.” *Id.*

13 Because the affiant’s omissions prevented the Court from exercising its judicial duty to
14 determine privilege, and because it also failed to flag legitimate reasons that ██████ was
15 communicating with Mirzabeigi, the warrant was constitutionally defective.

16
17 **D. No good-faith exception applies under *Leon*, because the affidavit plainly fails to**
18 **demonstrate probable cause vis-à-vis Mr. ██████ and the affiant misled the**
19 **magistrate.**

20 Because they must, the People will likely argue that the good-faith *Leon* exception
21 precludes suppression here. But *Leon* itself carved out four different circumstances where
22 suppression could still be appropriate: 1) when a warrant is “so lacking in indicia of probable
23 cause as to render official belief in its existence entirely unreasonable”; 2) if a warrant is “so
24 facially deficient -- i. e., in failing to particularize the place to be searched or the things to be
25 seized -- that the executing officers cannot reasonably presume it to be valid”; 3) “if the
26 magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant
27 knew was false or would have known was false except for his reckless disregard of the truth”; or
28 4) “where the issuing magistrate wholly abandoned his judicial role” in the warrant process.
United States v. Leon (1984) 468 U.S. 897, 923.

EXHIBIT A

(SBCDAO Search Warrant for Mr.  G-mail Account)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
JAN 22 2018

SBSW 17- 3063A
SW# _____

BY Heather Smith ~~IN THE SUPERIOR COURT DISTRICT, CENTRAL DIVISION~~
HEATHER SMITH, DEPUTY COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

ORDER TO SEAL SEARCH WARRANT
AFFIDAVIT

Your Affiant requests that this affidavit and all other documents relating to this affidavit be sealed for the following reasons:

The warrants sought pursuant to this affidavit relate to an ongoing investigation of felony offenses, and it is expected that additional Search Warrants may be sought relating to this matter. If the information contained in this affidavit and in related documents is made public, it would compromise this investigation and make it very difficult to continue. Your Affiant believes that if information contained in this affidavit were made available to any alleged co-conspirators the destruction of potential evidence would occur, thereby hindering this investigation and the future prosecution of offenses hereto [REDACTED]

Senior Investigator David Steele
San Bernardino County District Attorney's Office
Workers' Compensation Fraud Unit

The attached Search Warrant Affidavit is sealed until further order of this Court

IT IS SO ORDERED and dated this 22nd day of JAN, 2018

Joseph B. Ballerian
JUDGE OF THE SUPERIOR COURT
CENTRAL DIVISION
COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA



FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SUPERIOR COURT OF CALIFORNIA

County of San Bernardino

SBSW 17-3063A

JAN 22 2018

SEARCH WARRANT



BY Heather Smith
HEATHER SMITH, DEPUTY

Senior Investigator David Steele, 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 property described below is lawfully seizable pursuant to Penal Code Section 1524 as indicated below, and are now located at the location(s) set forth below. Wherefore, Affiant requests that this Search Warrant be [REDACTED]

[Signature]
(Signature of Affiant)

SEALING ORDER REQUESTED: YES NO
NIGHT SEARCH REQUESTED: YES X NO

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN THE COUNTY OF San Bernardino: proof by affidavit, having been this day made before me by **Senior Investigator David Steele**, that there is probable cause to believe the collection of electronic data will provide information that may be found at the location(s) set forth herein and that it is lawfully seizable pursuant to California Penal Code 1524, as indicated below by "" (s), in that:

- Was stolen or embezzled;
- Was used as the means of committing a felony;
- Is possessed by a person with the intent to use it as a means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing discovery;
- Tends to show that a felony has been committed or that a particular person has committed a felony;
- Tends to show that a particular person has committed or is committing a felony;
- Will assist in locating an individual who has committed or is committing a felony;

STATE of CALIFORNIA, COUNTY of San Bernardino,
ATTACHED and INCORPORATED
STATEMENT OF PROBABLE CAUSE

Affiant declares under penalty of perjury that the following facts are true and that there is probable cause to believe, and Affiant does believe, that the requested information and services for the email accounts are now in the described locations:

PLACE TO BE SEARCHED:

1. MSN HOTMAIL
Attn: Custodian of Records
1065 La Avenida, Building #4
Mountain View, CA 94043
FAX: 650-693-7061

2. Google Email
Attn: Custodian of Records
1600 Amphitheatre Parkway
Mountain View, CA 94043
FAX: 650-649-2939

3. AOL-America On-Line, Inc.
Attn: Custodian of Records
22000 AOL Way
Dulles, VA 20166
FAX: 703-265-2305

FOR THE FOLLOWING PROPERTY:

- 1) All subscriber names, physical addresses, IP addresses or other identifying information regarding the creator and possessor of: dr.rct866@gmail.com; davefranke@gmail.com; and [REDACTED] gmail.com
- 2) All subscriber e-mail, text message, or instant message account information for account dr.rct866@gmail.com; davefranke@gmail.com; and [REDACTED] gmail.com
- 3) The exact date and time of the creation of account # dr.rct866@gmail.com; davefranke@gmail.com; and [REDACTED] gmail.com, to include the account creators internet IP address used for the creation of this account.

Transcripts or copies of all account activity, including all downloads, all received e-mails, texts or instant messages; all forwarded e-mails, all texts or instant messages; all sent e-mails, texts and instant messages; and/or all user created e-mails, texts, and instant messages for account # dr.rct866@gmail.com; davefranke@gmail.com; and [REDACTED] gmail.com **occurring between 10-08-2015 and 01-22-18.**

- 4) Any and all e-mail addresses, telephone numbers, IP addresses, or other identifying information involved with any access, or attempted access to this account during this time [REDACTED] This will include the sender's IP address along with all dates and times.
- 5) Any and all email addresses, telephone numbers, IP addresses, or other identifying information involved with any access, or attempted access to this account during this time [REDACTED] This will include the sender's IP address along with all dates and times.
- 6) Connection information for other computer to which the user of the above referenced accounts connected, by any means, during the connection period, including the destination IP address, connection date and time, disconnect date and time, method of connection to the destination computer, and all other information related to the connection of this ISP provider.
- 7) Any other records related to the above referenced Names and User Names, such as, correspondence, billing records, records of contact by any person or entity regarding the above referenced Name(s) and User Name(s), and any other subscriber information, referenced Name, and any other Subscriber information, Subscriber's address(es), contact person(s), account opened date(s), Screen Name(s), /email address log(s), read mail, unread mail, sent mail, other screen names/email address(es) assigned to the account, credit card/payment information and any identifying information which would tend to identify the person(s) subscribing for service, such as dates of birth, social security numbers, credit card number(s), home and/or business address(es), and home and business telephone numbers.

Documentation of any complaints made against the subscriber for inappropriate conduct while using Google gmail, if available.

FOR THE FOLLOWING PROPERTY:

- 1) All subscriber names, physical addresses, IP addresses or other identifying information regarding the creator and possessor of: joepapi913@hotmail.com and smoore26@hotmail.com.
- 2) All subscriber e-mail, text message, or instant message account information for account Joepapi913@hotmail.com and smoore26@hotmail.com.
- 3) The exact date and time of the creation of account # joepapi913@hotmail.com and smoore26@hotmail.com, to include the account creators internet IP address used for the creation of this account.

Transcripts or copies of all account activity, including all downloads, all received e-mails, texts or instant messages; all forwarded e-mails, all texts or instant messages; all sent e-mails, texts and instant messages; and/or all user created e-mails, texts, and instant messages for account # joepapi913@hotmail.com and smoore26@hotmail.com.

occurring between 10-08-2015 and 01-22-18.

- 4) Any and all e-mail addresses, telephone numbers, IP addresses, or other identifying information involved with any access, or attempted access to this account during this time [REDACTED] This will include the sender's IP address along with all dates and times.
- 5) Any and all email addresses, telephone numbers, IP addresses, or other identifying information involved with any access, or attempted access to this account during this time [REDACTED] This will include the sender's IP address along with all dates and times.
- 6) Connection information for other computer to which the user of the above referenced accounts connected, by any means, during the connection period, including the destination IP address, connection date and time, disconnect date and time, method of connection to the destination computer, and all other information related to the connection of this ISP provider.
- 7) Any other records related to the above referenced Names and User Names, such as, correspondence, billing records, records of contact by any person or entity regarding the above referenced Name(s) and User Name(s), and any other subscriber information, referenced Name, and any other Subscriber information, Subscriber's address(es), contact person(s), account opened date(s), Screen Name(s), /email address log(s), read mail, unread mail, sent mail, other screen names/email address(es) assigned to the account, credit card/payment information and any identifying information which would tend to identify the person(s) subscribing for service, such as dates of birth, social security numbers, credit card number(s), home and/or business address(es), and home and business telephone numbers.

Documentation of any complaints made against the subscriber for inappropriate conduct while using MSN HOTMAIL, if available.

FOR THE FOLLOWING PROPERTY:

- 1) All subscriber names, physical addresses, IP addresses or other identifying information regarding the creator and possessor of: drajmiles@aol.com.
- 2) All subscriber e-mail, text message, or instant message account information for account drajmiles@aol.com.
- 3) The exact date and time of the creation of account # drajmiles@aol.com, to include the account creators internet IP address used for the creation of this account.

Transcripts or copies of all account activity, including all downloads, all received e-mails, texts or instant messages; all forwarded e-mails, all texts or instant messages; all sent e-mails, texts and instant messages; and/or all user created e-mails, texts, and instant messages for account # drajmiles@aol.com.

occurring between 10-08-2015 and 01-22-18.

- 4) Any and all e-mail addresses, telephone numbers, IP addresses, or other identifying information involved with any access, or attempted access to this account during this time [REDACTED] This will include the sender's IP address along with all dates and times.
- 5) Any and all email addresses, telephone numbers, IP addresses, or other identifying information involved with any access, or attempted access to this account during this time [REDACTED] This will include the sender's IP address along with all dates and times.
- 6) Connection information for other computer to which the user of the above referenced accounts connected, by any means, during the connection period, including the destination IP address, connection date and time, disconnect date and time, method of connection to the destination computer, and all other information related to the connection of this ISP provider.
- 7) Any other records related to the above referenced Names and User Names, such as, correspondence, billing records, records of contact by any person or entity regarding the above referenced Name(s) and User Name(s), and any other subscriber information, referenced Name, and any other Subscriber information, Subscriber's address(es), contact person(s), account opened date(s), Screen Name(s), /email address log(s), read mail, unread mail, sent mail, other screen names/email address(es) assigned to the account, credit card/payment information and any identifying information which would tend to identify the person(s) subscribing for service, such as dates of birth, social security numbers, credit card number(s), home and/or business address(es), and home and business telephone numbers.

Documentation of any complaints made against the subscriber for inappropriate conduct while using AOL America On Line, if available.

The San Bernardino County District Attorney's Office, or authorized civilians of the San Bernardino County District Attorney's Office, the United States Marshall's Service (USMS) and/or any other law enforcement agency, hereby applies for a Search Warrant authorizing the producing of, disclosure of, and use of the following information, services and equipment pursuant to Penal Code Section 1546:

As required by California Penal Code § 1546.1 (d); any information obtained through the execution of this warrant that is unrelated to the objective of the warrant shall be sealed and shall not be subject to further review, use, or disclosure absent an order from the Court. If no evidence of criminal activity is discovered relating to the seized property and associated peripherals, the system will be returned promptly.


SEALING ORDER: Pending further order of the Court, this Search Warrant and all accompanying documents shall not become a public record and shall be sealed and delivered into the custody of the Clerk of the Superior Court. Grounds for sealing:

Official Information (Ca. Evidence Code § 1040) Informant Protection (Ca. Evidence Code § 1041)

YOU ARE COMMANDED, within five business days after receipt of this search warrant, to deliver by mail or otherwise, to the above named law enforcement officer, together with the declaration as set forth below, a true, durable and legible copy of the requested records listed above (See California Pen. Code, § 1524.2)

PROCEDURE: The custodian shall complete and sign the "Declaration of Custodian" which accompanies this search warrant. The "Declaration of Custodian" shall be returned with a copy of the requested records. (See California Pen. Code, §§ 1546.1(d)(3), 1524.2 (b)(4).

AND TO SEIZE IT / THEM IF FOUND and bring it / them forthwith before me, or this court, at the courthouse of this court. This **Search Warrant** and **Affidavit** and attached and incorporated **Statement of Probable Cause** were sworn to as true and subscribed before me on this 22nd day of JAN, 2018, at 1:45 **A.M. / P.M.** Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.


(Signature of Magistrate)

SEALING ORDER APPROVED: YES NO
NIGHT SEARCH APPROVED: YES NO

Judge of the Superior Court of California, County of San Bernardino



EXPERTISE OF AFFIANT:

I, David Steele, Employee No. H6915, your Affiant in this search warrant has been employed as a police officer for over nineteen years. I attended the Alan Hancock College Basic Police Academy in 1997-1998. I graduated from the academy and received a certificate of successful completion. I am currently employed by the San Bernardino County District Attorney's Office as a District Attorney Senior Investigator assigned to the Workers' Compensation Fraud Unit. Prior to my employment with the District Attorney's Office, I was employed with the City of Fountain Valley for the past nineteen years. While employed with the Fountain Valley Police Department, I worked a variety of assignments, including, but not limited to homicide, robbery, burglary, crimes against persons, gang related crimes, juvenile, and [REDACTED]

During my course of employment, I have investigated hundreds of criminal cases at a patrol officer/Detective status ranging from thefts, robberies, sexual assaults, fraud related crimes and over two hundred traffic collisions which resulted in great bodily injury/death and or property damage. I have interviewed hundreds of suspects, victims and witnesses regarding these collisions and various crimes. I have conducted follow-up investigations on hundreds of criminal cases which were initially handled by the patrol division. During these investigations, I have located and interviewed many suspects that have fled the scene after being involved in various crimes. I have attended an 80 hour POST certified course on basic investigations and 40 hours on homicide investigations.

The various assignments your affiant has worked required your affiant to conduct numerous investigations involving the collection of evidence, identifying and locating known and unknown suspects and the preparation of search warrants, arrest warrants and reports for filing and prosecution purposes.

SUMMARY OF PROBABLE CAUSE:

Medical provider fraud includes the providing of false information to claim medical reimbursements beyond the scope of payment for actual health care services [REDACTED]

Generally medical providers include medical doctors (M [REDACTED] chiropractors ([REDACTED] C), dentists, hospitals, nursing homes, pharmacies, clinics, counselors, personal care/homemaker chore companies, and any other individual or company that provides health related services. If a provider intentionally misrepresents the services rendered, and therefore increases their reimbursement from an insurer, medical provider fraud has [REDACTED]

Examples of some provider fraud are:

- Billing for medical services not actually performed
- Billing for a more expensive service than was actually rendered
- Billing for several services that should be combined into one billing
- Billing twice for the same medical service
- Dispensing generic drugs and billing for brand-name drugs
- Bribery
- Providing unnecessary services
- False cost reports
- Embezzlement of recipient funds
- Kickbacks

The following affidavit will pertain to Medical Provider Insurance [REDACTED] Based on my training and experience, interviews conducted, along with information gathered, I have learned the following:

I assisted in the investigation of the Blue Oak Medical Group case. I have personally participated in meetings with Attorney staff from both Riverside and San Bernardino Counties, SIU Investigators from Berkshire Hathaway, Argus West, and ICW regarding this case.

In September, 2015, the Los Angeles County District Attorney's Office announced the indictment of 15 individuals, in what was estimated to be a \$150 million dollar insurance fraud scheme. The indictments supporting the arrests included over-prescribing, over billing, and billing for services not [REDACTED]

In July, 2011, documents were filed with the California Secretary of State changing ownership of the medical group from Munir Uwaydah and Paul Turley to David Johnson, [REDACTED] These documents were filed after an arrest warrant was issued for Munir Uwaydah. It was brought to my attention Firstline Health was forced to make a sudden change in ownership when David Johnson was indicted, and ownership (at least on paper) was transferred to Robin Chorn, [REDACTED] The business later changed to Edwin Mirzabeigi, [REDACTED] Blue Oak Medical group took over for patients who were being treated by the above corporations.

I met with SIU Investigator, Gordon Oard, who presented a case involving Blue Oak Medical Group to the San Bernardino County District Attorney's Office. In conversation with Oard, and reports provided, it was obvious that Blue Oak Medical Group appeared to be over billing for pharmaceuticals that were not provided to the claimants. I personally spoke with numerous claimant's and questioned them in detail regarding their treatment and medication [REDACTED] Oard also provided our office with a detailed Current Procedural Terminology Code

(CPT) report which illustrated their claimant's medical visits, prescribed medication, Physician, and dates of service.

On September 19, 2017, I presented a search warrant to Judge Peel at the Superior Court of California, San Bernardino County regarding a target phone number associated with Edwin Mirzabeigi. The search warrant was granted by Judge Peel and served to AT&T Mobility on the same date.

On September 22, 2017, I received an e-mail from AT&T Mobility regarding my search warrant request. I opened the email and discovered detailed phone records for the target number listed in the search warrant. Further examination of the records revealed an email account for Edwin Mirzabeigi. The email account was identified on the AT&T Mobility billing document as, Emir2@mac.com. Based on my training and experience, I am aware the above mentioned email address is associated with Apple. Examination of the phone records did not identify any recorded text messages or email content associated with the target telephone number. I located several telephone numbers on the detailed call logs that are associated with key participants in this complex investigation.

On November 6, 2017, I prepared a search warrant for Apple Inc. regarding the above mentioned email address. This warrant was signed by Judge Bilash on the same date and served to Apple Inc. I received an electronic file from Apple Inc. a short time later with the requested information.

During my search of the files, I located many emails, both in-coming and out-going, to several co-conspirators in this investigation. Their email accounts were identified as:

<u>Joepapi913@hotmail.com</u>	(Jose Trujillo)
<u>dr.rct866@gmail.com</u>	(Robert Taylor)
<u>davefranke@gmail.com</u>	(David Franke)
<u>██████████.gmail.com</u>	(██████████)
<u>draj miles@aol.com</u>	(Andrew Miles)
<u>smoore26@hotmail.com</u>	(Shannon Moore)

During the course of this investigation, Trujillo, Taylor, Franke, Moore, ██████████ and Miles, have been identified as co-conspirators based on information received by SIU Investigators along with information obtained by law enforcement agencies associated with this investigation.

Senior Investigator ██████████ Jones (Riverside District Attorney's Office) prepared a search warrant for financial information regarding Blue Oak Medical Group. On May 17, 2017, the Honorable Michael Donner issued the search warrant (RI051720173) for California Bank and Trust. This warrant was issued to search all bank account information in the name of Parkside Solutions specifically California Bank and Trust, between the dates of September 8, 2015 through April 30, 2017. On June 9, 2017, the bank records were ██████████

Pursuit to the warrant California Bank and Trust provided records for the requested accounts. The records included deposits consisting of checks issued by numerous insurance companies such as Liberty Mutual Insurance, Church Mutual Insurance, Zurich American Insurance, State Compensation Insurance Fund, Farmers Insurance, State Farm Insurance, and Citizens Insurance Company of America. Each of those checks deposited into Parkside Solutions bank account, from the above-mentioned insurance companies, were written out to Blue Oak Medical Group.

In the Parkside Solutions bank account records, numerous checks issued to some of the people identified as Blue Oak Medical Group employees. These employees have been identified as employees by one of the following ways: their names have been submitted on medical bills which were submitted by Blue Oak Medical Group, they have been identified as employees by patients, Special Investigative Unit investigators for individual insurance companies have identified them as employees based on their individual investigations, their names appear on the Secretary of State documents as one of the companies representatives, or they were part of Firstline Medical Group, Frontline Medical Group, U.S. Health and Orthopedics and still continue to receive payment from Blue Oak Medical Group.

The list of employees receiving payments from Parkside Solutions checking account are: Dr. Edwin Mirzabeigi, Dr. Galal Goubran, Dr. Michael Price, Jose Trujillo, David Franke, Robert Taylor, Amber Woodley, Shannon Moore, and Andrew Miles. Mirzabeigi is a Medical Doctor and was listed as the Chief Executive Officer of Blue Oak Medical Group on the Secretary of State Documents, filed on March 8, 2015.

Bills have been submitted with Dr. Edwin Mirzabeigi, Dr. Galal Goubran, and Dr. Michael Price as Blue Oak's primary treating physicians and each have received frequent checks out of Parkside Solutions checking account for services [REDACTED]. Dr. Goubran has received payments starting in February 2015, Dr. Mirzabeigi starting in December 2015, and Dr. Price in January 2016. Each have received payments as recently as February 2017. Each check paid to Mirzabeigi have been deposited into a Citi bank account. Checks written out to Price have been written in the name of Michael Price, Michael Price MD, Inc, and MLP Enterprises.

Bills have been received by ICW showing Jose Trujillo and David Franke, as physician's assistants for Blue Oak Medical Group and each of them receive frequent checks for services rendered out of Parkside Solutions checking account. Both Franke and Trujillo have received payments starting in January of 2016 and have received payments as recently as April 2017. Each check paid to Trujillo has been deposited into a Bank of America or a First City Credit Union account. Each check paid to Franke has been deposited into a JP Morgan Chase bank account in his name.

Between the dates of December 31, 2015 and December 2, 2016, Edwin Mirzabeigi received approximately \$329,582 from the Parkside Solutions bank account. Between the dates of February 7, 2015, and February 21, 2017, Galal Goubran received approximately \$141,462 from the Parkside Solutions bank account. Between the dates of December 7, 2015, and February 7, 2017, Michael Price received approximately \$141,893 from the Parkside Solutions bank account. Between the dates of January 1, 2016 and April 18, 2017, Jose Trujillo received approximately \$208,148 from the Parkside Solutions bank account. Between the dates of January 13, 2016 and April 24, 2017, David Franke received approximately \$196,595 from the Parkside Solution bank account. Between the dates of December 29, 2016 and April 24, 2017, Robert Taylor received approximately \$49,125 from the Parkside Solutions bank account.

Assistance of other agencies and personnel

The San Bernardino County District Attorney's Office has been investigating the crimes outlined above with the assistance of the Riverside County District Attorney's Office and the Los Angeles County District Attorney's Office. During the course of this investigation, it appeared that crimes were committed in Los Angeles County, Riverside County, San Diego County and Orange County. I request permission to have members of these agencies assist in the service of the requested warrant and to assist in the review of any evidence [REDACTED]

I am seeking this search warrant to gain access to the subscriber information, mail logs and content detail associated with the target email accounts. I know e-mail records/Cloud information is retained for 60 days based on 18 USC 2703(d). I feel this information will show the line of communication between the co-conspirators in this investigation. This information may identify the "mastermind" of the operation or who is directing others to engage in this illegal activity.

Cloud is a file hosting, storage, and sharing service provided by service providers. Cloud can be utilized through numerous Cloud connected services, and can also be used to store iOS device backups and data associated with third party apps. Cloud connected services allow users to create, store, access, share and synchronize data on electronic devices or via [REDACTED]com on any Internet connected device.

Based on my training and experience, I know service providers maintain subscriber information and other records for billing purposes.

Good cause appearing herein, I request the Affidavit in Support of Search Warrant, the attached and incorporated Statement of Probable Cause, Search Warrant, and Return to Search warrant, be [REDACTED] These documents shall be kept in the custody of the Clerk of the Superior Court of San Bernardino County. These documents shall not be made a public record until further order of this Court. This Court finds it is necessary to seal these documents in order to implement the official information privilege pursuant to Evidence Code sections 1040 to 1042 to preserve the confidentiality of official information. This Court further finds that disclosure of the information contained in these documents is against the public interest because there is a necessity for preserving the confidentiality of official information that outweighs the necessity for disclosure. Accordingly, I request this Court grant this Sealing Order to implement the privilege pursuant to California Evidence Code sections 1040 to 1042 to protect official information.

I believed if discovered, information obtained through the service of this warrant would impede the investigation of PC 550 Insurance [REDACTED]

I am asking that a search warrant be issued, for seizure of said property, or any part thereof, between the hours of 7:00 a.m. and 10:00 p.m., good cause being shown therefore, and that the same be brought before the Magistrate or retained subject to the order of the court, or of any other court in which the offense(s) in respect to which the property or things taken, is triable, pursuant to Section 1536 of the Penal Code.

Because of the delay that is often experienced in receiving service provider records, it reasonably appears necessary to extend the time for Return to Search Warrant for 30 days from the date of service.

As required by California Penal Code § 1546.1 (d); any information obtained through the execution of this warrant that is unrelated to the objective of the warrant shall be sealed and shall not be subject to further review, use, or disclosure absent an order from the Court. If no evidence of criminal activity is discovered relating to the seized property and associated peripherals, the system will be returned promptly.

SEALING ORDER / SERVICE OF WARRANT

Good cause appearing herein, I request that the Affidavit in Support of Search Warrant, the attached and incorporated Statement of Probable Cause, Search Warrant, and Return to Search warrant, be [REDACTED]. These documents shall be kept in the custody of the Clerk of the Superior Court of San Bernardino County. These documents shall not be made a public record until further order of this Court. This Court finds it is necessary to seal these documents in order to implement the official information privilege pursuant to Evidence Code sections 1040 to 1042 to preserve the confidentiality of official information. This Court further finds that disclosure of the information contained in these documents is against the public interest because there is a necessity for preserving the confidentiality of official information that outweighs the necessity for disclosure. Accordingly, I request this Court grant this Sealing Order to implement the privilege pursuant to California Evidence Code sections 1040 to 1042 to protect official information.

I believed if discovered, information obtained through the service of this warrant would impede the investigation of PC 550 Insurance [REDACTED].


CONCLUSION

Based upon the aforementioned facts and circumstances, I have reasonable cause to believe that grounds for the issuance of a Search Warrant exist, as set forth in Section 1524 of the California Penal Code. I ask that a Search Warrant be issued based upon the aforementioned facts, for the seizure of said property, or any part thereof, good cause being shown thereof, and the same be brought before this Magistrate 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, pursuant to Section 1536 of the Penal Code.

Items attached and incorporated by Reference: YES NO

I certify (declare) under penalty of perjury that the foregoing is true and correct.

Executed at **San Bernardino**, California

 _____, 22nd day of January, 2018, at 1350 A.M./P.M.
(Signature of Affiant)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 21 2017 SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SBSW 17- 3063A

BY Heather Smith
HEATHER SMITH, DEPUTY

IN RE SEARCH OF
AOL-America On Line

ORDER TO DELAY NOTIFICATION OF
SEARCH WARRANT

ORDER

This matter having come before the Court pursuant to an application under Penal Code Section 1524 et seq, which application requests that notification of this warrant be [REDACTED]

Based upon the reading of the Search Warrant, and Affidavit in Support thereof;

IT APPEARING that there is reason to believe that the notification of the existence of the warrant to any person will result in endangering the life or physical safety of an individual; lead to flight from prosecution; lead to destruction of or tampering with evidence; lead to intimidation of potential witnesses; or otherwise seriously jeopardize an investigation or unduly delay a trial or otherwise lead to an adverse result.

IT IS ORDERED that AOL America On Line, Inc. shall delay notification of the existence of the application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person, for a period of ninety days unless otherwise directed by the Court.

IT IS FURTHER ORDERED that the notification by the government otherwise required under Penal Code Section 1546.2 (a) be delayed for a period of ninety days.

DATE: JAN 22nd, 2017

TIME: 1:45 AM/PM

[Signature]
HONORABLE JUDGE
JUDGE OF THE SUPERIOR COURT
COUNTY OF SAN BERNARDINO



FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

JAN 22 2018

COUNTY OF SAN BERNARDINO

SBSW 17-3063A

IN RE SEARCH OF Holly Smith
BY TER SMITH, DEPUTY
MSN-HOTMAIL

ORDER TO DELAY NOTIFICATION OF
SEARCH WARRANT

ORDER

This matter having come before the Court pursuant to an application under Penal Code Section 1524 et seq, which application requests that notification of this warrant be [REDACTED]

Based upon the reading of the Search Warrant, and Affidavit in Support thereof;

IT APPEARING that there is reason to believe that the notification of the existence of the warrant to any person will result in endangering the life or physical safety of an individual; lead to flight from prosecution; lead to destruction of or tampering with evidence; lead to intimidation of potential witnesses; or otherwise seriously jeopardize an investigation or unduly delay a trial or otherwise lead to an adverse result.

IT IS ORDERED that MSN HOTMAIL shall delay notification of the existence of the application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person, for a period of ninety days unless otherwise directed by the Court.

IT IS FURTHER ORDERED that the notification by the government otherwise required under Penal Code Section 1546.2 (a) be delayed for a period of ninety days.

DATE: JAN 22, 2017

TIME: 1:45 AM/PM

[Signature]
HONORABLE JUDGE
JUDGE OF THE SUPERIOR COURT
COUNTY OF SAN BERNARDINO



FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 22 2018

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SBSW 17- 3063A

BY Hester Smith
IN RE SEARCH OF [REDACTED] WITH, DEPUTY
Google Email (Gmail)

ORDER TO DELAY NOTIFICATION OF
SEARCH WARRANT

ORDER

This matter having come before the Court pursuant to an application under Penal Code Section 1524 et seq, which application requests that notification of this warrant be [REDACTED]

Based upon the reading of the Search Warrant, and Affidavit in Support thereof;

IT APPEARING that there is reason to believe that the notification of the existence of the warrant to any person will result in endangering the life or physical safety of an individual; lead to flight from prosecution; lead to destruction of or tampering with evidence; lead to intimidation of potential witnesses; or otherwise seriously jeopardize an investigation or unduly delay a trial or otherwise lead to an adverse result.

IT IS ORDERED that Google Email (Gmail) shall delay notification of the existence of the application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person, for a period of ninety days unless otherwise directed by the Court.

IT IS FURTHER ORDERED that the notification by the government otherwise required under Penal Code Section 1546.2 (a) be delayed for a period of ninety days.

DATE: JAN 22nd, 2017

TIME: 1:45 AM/PM

[Signature]

HONORABLE JUDGE
JUDGE OF THE SUPERIOR COURT
COUNTY OF SAN BERNARDINO

