

1 ANDREA SHERIDAN ORDIN, County Counsel
2 ROGER H. GRANBO, Assistant County Counsel
3 JONATHAN McCAVERTY, Deputy County Counsel
(SBN [REDACTED])
4 648 Kenneth Hahn Hall of Administration
5 500 West Temple Street
6 Los Angeles, California 90012-2713
7 Telephone: [REDACTED]

8 Attorneys for Real Party in Interest
9 LOS ANGELES COUNTY SHERIFF'S
10 DEPARTMENT

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 OKSANA GRIGORIEVA,
14 Real Party in Interest,
15 v.
16 LOS ANGELES COUNTY SHERIFF'S
17 DEPARTMENT, LEE BACA and Does 1-100
18 inclusive

CASE NO.

**LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT'S OPPOSITION TO
OKSANA GRIGORIEVA'S MOTION FOR
RETURN OF SEIZED PROPERTY;
DECLARATION OF RODNEY WAGNER**

[Assigned to the Hon. Scott M. Gordon,
Dept. 88]

DATE: October 21, 2010
TIME: 1:30 p.m.
DEPT.: 88

19 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

20 **PLEASE TAKE NOTICE** that on October 21, 2010 at 1:30 p.m. or as soon thereafter as
21 this matter may be heard in Department 88 of the above-entitled court, Real Party in Interest, the
22 Los Angeles County Sheriff's Department will hereby oppose Oksana Grigorieva's Motion to
23 Return Property because the property was confiscated pursuant to a valid search warrant is the
24 subject of an ongoing and active criminal investigation.


25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

This Opposition is based upon the attached Memorandum of Points and Authorities, the Declaration of Rodney Wagner, the documents and records on file herein, and on such other evidence and arguments as may be presented at the time of the hearing of this Motion.

DATED: October 19, 2010

Respectfully submitted,
ANDREA SHERIDAN ORDIN, County Counsel

By 
JONATHAN McCAVERTY
Deputy County Counsel

Attorneys for Real Party in Interest
LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Oksana Grigorieva brings the instant motion as a special proceeding pursuant to Penal
4 Code § 1536, for the return of private, personal and privileged items unrelated to the investigation
5 and for the establishment of a search protocol.

6 The Los Angeles County Sheriff's Department opposes the relief sought because there is a
7 current, ongoing and active criminal investigation regarding extortion allegations where Ms.
8 Grigorieva is the criminal suspect. Any attempt to limit law enforcement investigators from
9 conducting a thorough search would impeded a proper criminal investigation and would be
10 privileged under Evidence Code § 1040 and Government Code § 6254(f).

11 STATEMENT OF FACTS

12 On October 1, 2010, Los Angeles County Sheriff's Department Detective Rodney Wagner
13 obtained a search warrant, from the Honorable Scott M. Gordon, for the original forensic image
14 made of the Hard Drive (Hatachi, Model HT5543232L9SA02, Serial # [REDACTED]) from the
15 computer Mac Book Pro, Serial # [REDACTED] located at Kroll/Altegrity Risk International,
16 [REDACTED] Fountain Valley, California, 92708. (Wagner Decl. ¶ 3).

17 Due to the sensitive information contained in the supporting documentation, the Court
18 ordered that the affidavit, search warrant, statement of probable cause and the return to search
19 warrant be maintained under seal. (Wagner Decl. ¶ 4).

20 Detective Wagner served the search warrant on October 7, 2010 and took possession of the
21 property listed on the search warrant return evidence list, specifically the forensic image of the
22 Hard Drive listed above. (Wagner Decl. ¶ 5).

23 Based on Detective Wagner's training and experience in extortion investigations, it is
24 common for evidence of a crime to be found on a suspect's computer. Such evidence is often
25 concealed in hidden or mis-identified computer files to conceal criminal activity. A thorough
26 search of the seized Hard Drive is necessary for a complete criminal investigation given the nature
27 of the evidence sought and the specific type of criminal investigation. (Wagner Decl. ¶ 6).

1 Presenting evidence to or filtering evidence through a criminal suspect's attorney prior to
2 the filing of criminal charges completely undermines law enforcement criminal investigations and
3 is counter to law enforcement principles. (Wagner Decl. ¶ 7).

4 The Los Angeles County Sheriff's Department and Detective Wagner oppose any
5 interference on the scope of Detective Wagner's investigation. Detective Wagner is engaged in an
6 ongoing and active criminal investigation involving extortion allegations. The Hard Drive listed
7 above is being re-formatted by Department members with the Southern California High Tech Task
8 Force, so investigators can search for evidence of a crime. Evidence obtained from the Hard Drive
9 would be used in a forthcoming criminal prosecution when Detective Wagner's findings are
10 presented to the District Attorney's Office. (Wagner Decl. ¶ 8).

11 ARGUMENT

12 I. **THE SUBJECT PROPERTY SHOULD REMAIN UNDER THE CUSTODY AND** 13 **CONTROL OF THE COURT UNTIL THE CRIMINAL INVESTIGATION IS** 14 **COMPLETED**

15 The subject property was seized by an experienced extortion investigator on October 7,
16 2010, and since that time, the investigating detective has been actively conducting an ongoing
17 criminal investigation. (See Wagner Decl.) As set forth in Detective Wagner's declaration,
18 extortion investigations are unique, specifically ones involving electronic evidence. It is common
19 for evidence to be found on a suspects computer and hidden or mis-labeled in a particular
20 computer file. As such, law enforcement investigators need to conduct a thorough search to find
21 both inculpatory and exculpatory evidence of a crime. To request that investigators in a *criminal*
22 *investigation* present evidence obtained and uncovered, to a suspects attorney *before* the filing of
23 criminal charges would completely undermine law enforcement criminal investigations and is
24 counter to law enforcement principles.

24 A. **The Search and Seizure was Conducted Under A Valid Search Warrant** 25 **Supported by Probable Cause**

26 California Evidence Code § 1525 requires that a search warrant be issued based upon
27 probable cause. In *Illinois v. Gates*, the Supreme Court adopted a totality of the circumstances
28 approach in determining whether probable cause exists and held,

1 "The task of the issuing magistrate is simply to make a practical, common sense
2 decision whether, given all the circumstances set forth in the affidavit before him,
3 including the 'veracity' and 'basis of knowledge' of persons supplying hearsay
4 information, there is a fair probability that contraband or evidence of a crime will
5 be found in a particular place."

6 462 U.S. 213, 238 (1983).

7 The Court also held that the standard of probable cause only requires the probability of
8 criminal activity. *Id.* at 235. In determining whether a search warrant is supported by probable
9 cause, the crucial element is not whether the target of the search is suspected of a crime but
10 whether it is reasonable to believe that the items to be seized will be found in the place to be
11 searched. *Zurcher v. Stanford Daily*, 436 U.S. 547-556 (1970).

12 First, Ms. Grigorieva does not bring a motion to quash or traverse the search warrant. She
13 likewise does not attack the probable cause for the issuance of the warrant. Any attack on the
14 warrant, the probable cause, scope or particularly is subject to a later motion, if any, brought by
15 Ms. Grigorieva and not subject to this Court at this time.

16 Second, the Hard Drive was seized pursuant to a valid warrant supported by probable
17 cause. Specifically, on October 1, 2010, this Court reviewed the affidavit by lead Detective
18 Rodney Wagner and concluded that probable cause existed to seize the original forensic image of
19 the subject Hard Drive. (Wagner Decl. ¶ 3). No other restrictions were placed on the search.
20 Moreover, Ms. Grigorieva does not complain, via this motion, that any misconduct occurred
21 during or is in fact occurring during the pendency of this investigation.

22 Third, Ms. Grigorieva's property has been returned because it was never seized originally
23 by the Sheriff's Department. Unlike typical seizures where the criminal suspect loses actual
24 possession of the seized property, this is not the case here. As noted above, the Sheriff's
25 investigators seized a *copy* of the Hard Drive, not the actual computer. Ms. Grigorieva does not
26 nor can she claim any actual prejudice as a result of her inability to use or access her computer
27 and/or hard drive files.

28 ///

1 **B. The Records of a Criminal Investigation are Prohibited from Disclosure**

2 Government Code § 6254(f) prohibits the production of records from an ongoing criminal
3 investigation, with only certain limited exceptions that do not apply in this case. Under
4 Government Code § 6254(f), the privilege afforded to ongoing investigations includes
5 "investigations conducted by . . . local police agency . . . for law enforcement purposes."

6 Ongoing investigations are precluded from discovery when the "disclosure would endanger
7 the successful completion of the investigation or a related investigation." *Id.* See also, *County of*
8 *Orange v. Superior Court* (2000) 79 Cal.App.4th 759, 764 ("Evidence gathered by police as part
9 of an ongoing criminal investigation is by its nature confidential. This notion finds expression in
10 both case and statutory law. ") Furthermore, premature disclosure of information in this special
11 proceeding could hamper other pending investigatory efforts.

12 Presently, the Sheriff's Department is engaged in an ongoing criminal investigation
13 involving extortion. It is believed that evidence of possible extortion is contained on the Hard
14 Drive seized pursuant the above noted search warrant. Such evidence would tend to show that a
15 felony has been committed or that a particular person has committed a felony. The records subject
16 to this motion are therefore involved in an ongoing criminal investigation and not subject to
17 disclosure.

18 The records sought are further barred from disclosure as part of the Official Information
19 Privilege codified in Evidence Code § 1040(b)(2). Under this provision of the Evidence Code, the
20 Sheriff's Department may refuse to disclose official information when "disclosure of the
21 information is against the public interest because *there is a necessity for preserving the*
22 *confidentiality of the information that outweighs the necessity for disclosure in the interest of*
23 *justice.*" (Emphasis added)

24 Without question, preserving the confidentiality of information in ongoing criminal
25 investigations outweighs Ms. Grigorieva's interest in the return of the seized properties. Because
26 Ms. Grigorieva has failed to demonstrate an overriding need that would warrant potential
27 endangerment of the criminal investigations, her motion must be denied.

28 ///

TMZ

**DECLARATION OF
RODNEY WAGNER**

DECLARATION OF RODNEY WAGNER

I, Rodney Wagner, declare as follows:

1. I have been employed by the Los Angeles County Sheriff's Department for approximately 22 years. I am currently assigned as a detective at the Major Crimes Bureau, specializing in the crimes against persons, specifically, but not limited to extortion. In this role, I have been involved and investigated numerous extortion allegations. I have interviewed hundreds of suspects and have questioned them concerning the manner in which they commit their crimes and conceal the evidence.

2. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

3. On October 1, 2010, I obtained a search warrant, from the Honorable Scott M. Gordon, for the original forensic image made of the Hard Drive (Hatachi, Model HT5543232L9SA02, Serial # [REDACTED]) from the computer Mac Book Pro, Serial # [REDACTED] located at Kroll/Altegrity Risk International, [REDACTED] Fountain Valley, California, 92708.

4. Due to the sensitive information contained in the supporting documentation, the Court ordered that the affidavit, search warrant, statement of probable cause and the return to search warrant be maintained under seal.

5. I served the search warrant on October 7, 2010 and took possession of the property listed on the search warrant return evidence list, specifically the forensic image of the Hard Drive listed above.

6. Based on my training and experience in extortion investigations, it is common for evidence of a crime to be found on a suspect's computer. Such evidence is often concealed in hidden or mis-identified computer files to conceal criminal activity. A thorough search of the seized Hard Drive is necessary for a complete criminal investigation given the nature of the evidence sought and the specific type of criminal investigation.

1 7. Presenting evidence to or filtering evidence through a criminal suspect's attorney
2 prior to the filing of criminal charges completely undermines law enforcement criminal
3 investigations and is counter to law enforcement principles.

4 8. I oppose any interference on the scope of my investigation. I am engaged in an
5 ongoing and active criminal investigation involving extortion allegations. The Hard Drive listed
6 above is being re-formatted by Department members with the Southern California High Tech Task
7 Force, so investigators can search for evidence of a crime. Evidence obtained from the Hard Drive
8 would be used in a forthcoming criminal prosecution when my findings are presented to the
9 District Attorney's Office.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed on October 19, 2010, at Whittier, California.

13
14 
15 _____
16 RODNEY WAGNER
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

Case No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF CALIFORNIA, County of Los Angeles:

Cheryl Natividad states: I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-2713

That on October 19, 2010 I served the attached

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT'S OPPOSITION TO OKSANA GRIGORIEVA'S MOTION FOR RETURN OF SEIZED PROPERTY; DECLARATION OF RODNEY WAGNER

upon Interested Party(ies) by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows as stated on the attached service list:

LAW OFFICE OF DANIEL HOROWITZ
[REDACTED]
LAFAYETTE, CALIFORNIA 94549

By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses on the attached service list (specify one):

- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California:

By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed on the service list. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached. The fax number or electronic notification address from which I served the documents is 925-283-3498.

By electronic service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed on the service list. Horowitz@whitecollar.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 19, 2010, at Los Angeles, California.

Cheryl Natividad

(NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)