

1 CRAIG H. MISSAKIAN (CABN 125202)  
United States Attorney

2 MARTHA BOERSCH (CABN 126569)  
3 Chief, Criminal Division

4 MOLLY K. PRIEDEMAN (CABN 302096)  
ABRAHAM FINE (CABN 292647)  
5 LLOYD FARNHAM (CABN 202231)  
Assistant United States Attorneys

6 1301 Clay Street, Suite 340S  
7 Oakland, California 94612  
8 Telephone: (510) 637-3717  
molly.priedeman@usdoj.gov  
abraham.fine@usdoj.gov  
9 lloyd.farnham@usdoj.gov

10 Attorneys for United States of America

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 OAKLAND DIVISION

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 SHENG THAO,  
18 ANDRE JONES,  
19 DAVID TRUNG DUONG, AND  
ANDY HUNG DUONG,

20 Defendants.

)} No. 25-CR-0003-YGR

)} **UNITED STATES' CONSOLIDATED  
OPPOSITION TO DEFENDANTS' MOTIONS  
FOR A *FRANKS* HEARING AND FOR  
SUPPRESSION OF EVIDENCE**

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## INTRODUCTION AND SUMMARY OF ARGUMENT

2 The government’s investigation into Defendants Sheng Thao, Andre Jones, Andy Duong, and  
3 David Duong’s (“Defendants”) corruption scheme began in early 2023. By the spring of 2024, the  
4 government had amassed a significant amount of documentary evidence tying each of the Defendants  
5 and Co-Conspirator 1 to the conspiracy, including incriminating text messages, Apple notes, calendar  
6 entries, financial records showing the corrupt payments, phone records showing significant  
7 communication among Defendants at key points relating to the agreements and payments, and other  
8 documentary evidence relating to the scheme. Based on this documentary evidence alone, between  
9 February and May of 2024, two different magistrate judges issued four separate search warrants for  
10 Defendants’ iCloud accounts, email accounts, and location data for their cell phones. On June 6, 2024,  
11 the government interviewed Co-Conspirator 1 for the first time. When the government sought the  
12 residential search warrants shortly thereafter, the affiant included the same documentary evidence that  
13 had supported the previous warrants. In addition, the affiant included statements Co-Conspirator 1 made  
14 to the government, which corroborated the existence of Defendants’ bribery scheme. The affidavit  
15 noted that Co-Conspirator 1’s statements were included for merely “context and completeness,” and  
16 explicitly informed the magistrate judge that these statements to law enforcement were not necessary to  
17 a finding of probable cause. The affidavit further included a multi-page footnote disclosing information  
18 relevant to Co-Conspirator 1’s credibility that the affiant was aware of when he authored the affidavit.

19 Now, Defendants seek a *Franks* hearing relating to the June 2024 residential search warrants.  
20 The legal standard is undisputed: to be entitled to a *Franks* hearing, a defendant bears the burden of  
21 making a substantial preliminary showing that the search warrant affidavit (1) contained intentional or  
22 reckless false statements or omissions, *and* (2) that any false statements or omitted information was  
23 material, such that the reviewing judge could not have found probable cause supporting the warrant had  
24 she been apprised of the false statements or omissions. Moreover, a defendant's showing must  
25 challenge the veracity of the affiant, not that of her informant.

26 Defendants fall far short of meeting their burden to obtain a *Franks* hearing for three primary  
27 reasons. **First**, the warrant affidavit contained significant disclosures about Co-Conspirator 1's criminal  
28 history and potential concerns about his motivations and credibility. Specifically, the affidavit disclosed

1 then-pending fraud charges against Co-Conspirator 1 initiated by the Alameda County District  
2 Attorney's Office; it disclosed six sets of previous charges and arrests over a two-decade period  
3 covering grand theft, embezzlement, battery, and other offenses; and it also disclosed recent allegations  
4 of fraud relating to a \$250,000 loan. The affidavit further described Co-Conspirator 1's potential  
5 motivations for talking to the government, explicitly stating that Co-Conspirator 1 "appears to be . . .  
6 motivated by revenge against the DUONGs and a desire to obtain protection from law enforcement from  
7 the DUONGs, among any number of other potential personal motivations he may have" and also that  
8 Co-Conspirator 1 appears to talking "with the hope of obtaining some form of leniency in exchange."  
9 The affidavit also contained extensive details about Co-Conspirator 1's criminal activity and  
10 involvement above-captioned case, namely the conspiracy to commit bribery and fraud he engaged in  
11 with Defendants.

12 Simply put, the disclosures contained in the affidavit were sufficient to permit the reviewing  
13 magistrate judge to assess the credibility of Co-Conspirator 1 and his motivations for speaking with the  
14 government. Given these fulsome disclosures, the information Defendants claim was omitted—largely  
15 consisting of decades-old civil complaints and a discrepancy in Co-Conspirator 1's statements about the  
16 shooting—were not material. As described below, Ninth Circuit case law makes clear that the  
17 government's disclosures were sufficient and the cases Defendants rely on come nowhere close to  
18 supporting a *Franks* hearing in this case.

19 **Second**, the 78-page warrant affidavit submitted in support of the June 2024 residential warrants  
20 contained significant probable cause separate and apart from Co-Conspirator 1's statements to law  
21 enforcement. Defendants' characterization that the warrant affidavit relied predominantly on Co-  
22 Conspirator 1's statements to law enforcement is contradicted by the record. As described below, the  
23 affidavit described in detail documentary evidence tying Defendants and Co-Conspirator 1 to the  
24 corruption scheme, including incriminating text messages, notes and calendar entries from Co-  
25 Conspirator 1's iCloud, financial records showing the corrupt payments made directly to Jones, phone  
26 records showing significant communication among all Defendants surrounding these corrupt payments,  
27 and other documentary evidence relating to the scheme. In fact, the affidavit explicitly stated that Co-  
28 Conspirator 1's statements to law enforcement were not necessary to a finding of probable cause and

1 were included merely for context and completeness.

2       The government had been investigating Defendants' bribery scheme for over a year before  
3 interviewing Co-Conspirator 1 and two different magistrate judges determined that four separate warrant  
4 affidavits (which did not include any statements Co-Conspirator 1 gave to law enforcement) contained  
5 sufficient probable cause to issue warrants for Defendants' iCloud, email accounts, and cell phone data.  
6 Defendants have not challenged these warrants on the basis that they contained insufficient probable  
7 cause.<sup>1</sup>

8       Accordingly, even if the Court excised from the June 2024 warrant affidavit all of Co-  
9 Conspirator 1's statements to law enforcement (which it should not), there would still remain sufficient  
10 probable cause to issue the June 2024 residential warrants. Ninth Circuit case law holds that the Court  
11 can and should deny Defendant's request for a *Franks* hearing on that basis alone.

12       **Third**, and perhaps most fundamentally, Defendants have not met their burden of showing that  
13 the affidavit actually contained intentional or reckless false statements or omissions by the affiant. As  
14 laid out in detail below, the supposed omissions about Co-Conspirator 1 that Defendants rely on include  
15 several civil litigation documents (most of which consist of decades-old unsworn civil complaints), news  
16 articles, a state search warrant issued a month after the residential search warrant, a 2015-2016  
17 investigation into Co-Conspirator 1 (that was closed with no charges or arrests), and a discrepancy in  
18 Co-Conspirator 1's description of the shooting at his house (that is collateral to the corruption scheme  
19 and that the government did not discover until months after execution of the search warrant).  
20 Defendants assert that the Court should find the affiant misled the magistrate judge based on information  
21 he did not know but was available on court dockets, or could have been learned by the affiant through  
22 further investigation. But as described below, that is not the correct legal standard and Ninth Circuit  
23 case law holds the exact opposite.

24       Here, the affiant disclosed the material information he knew about Co-Conspirator 1 (including  
25 the significant disclosures described above) and was not aware of Co-Conspirator 1's litigation history

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27       <sup>1</sup> While Defendants assert that the February 2024 iCloud warrants, March 2024 cell site warrant,  
28 and May 2024 email warrants were overbroad in that they improperly permitted the seizure of certain  
data, they have not argued that those warrant affidavits failed to establish probable cause that crimes had  
been committed or that Defendants' accounts contained evidence of those crimes.

1 or the discrepancy in his statements about the shooting. Any omissions about Co-Conspirator 1 were  
2 neither intentional nor reckless because the affiant was not aware of the information, the affiant included  
3 significant disclosures about Co-Conspirator 1, and the affiant was not required to do the additional  
4 investigation Defendants describe to comply with *Franks*. Accordingly, Defendants have also failed at  
5 the first prong of the *Franks* analysis because they have not shown that any omissions were intentional  
6 or reckless.<sup>2</sup>

7       While Defendants' motions contain significant hyperbole and aggressive language, their  
8 arguments are hollow in substance and repeatedly misstate and mischaracterize the record and  
9 applicable case law. An objective and holistic review of the June 2024 warrant affidavit, as well as the  
10 applicable the Ninth Circuit case law, show that Defendants have come nowhere close to making the  
11 substantial showing necessary to obtain a *Franks* hearing. Accordingly, the government respectfully  
12 requests that the Court deny Defendants' *Franks* motion.

13       Defendants also challenge the June 2024 residential warrants on the basis that the affidavit did  
14 not sufficiently allege a "nexus" between the places to be searched (Defendants' residences, vehicles,  
15 and persons) and the crimes committed. As an initial matter, the Ninth Circuit has long held that  
16 findings of probable cause by magistrate judges are entitled to great deference, and a defendant faces a  
17 high burden to invalidate duly issued search warrants. Defendants' challenge on this front fails for two  
18 main reasons. Primarily, the affidavit did describe a sufficient nexus between Defendants' residences  
19 and the crimes they committed. Specifically, the affidavit set forth that Defendants lived at the  
20 residences to be searched and described that cell phone location data showed three of the Defendants'  
21 cell phones at their location in the days leading up to the warrant (the same cell phone numbers which  
22 the affidavit described as sending incriminating text messages). The affidavit then described, based on  
23 the affiant's training and experience, the various types of relevant records and electronic devices  
24 expected to be found at the residences, and specifically stated that individuals like Defendants often  
25 keep such records at their residences. Relevant case law makes clear that such information is sufficient

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27       <sup>2</sup> Defendant Thao also asserts that the affiant intentionally concealed evidence of Co-Conspirator  
28 1's alleged racial bias against Defendant Jones based on two short messages omitted from the affidavit.  
As described below, the record shows that the allegations about the affiant's intent are wrong and  
Defendant Thao has not cited a single case to support such an argument.

1 to establish nexus in white-collar cases, and that generally a residence and place of business is exactly  
2 where evidence of these crimes would be found. Defendants have not shown that any purported flaws  
3 overcome the great deference that this Court must give to a magistrate judge's probable cause  
4 determinations.

5 Even if this were a borderline case (which it is not), a long line of Supreme Court and Ninth  
6 Circuit cases make clear that the good faith doctrine precludes suppression in this case. The reviewing  
7 magistrate judge signed the warrants based on the assertions made in the affidavit and the agents  
8 reasonably relied on that warrant in good faith in conducting their searches. Certainly, Defendants  
9 cannot show that the affidavit failed to establish a colorable argument for probable cause such that the  
10 agents could not have relied on the search warrant in an objectively reasonable manner.

11 Finally, Defendants assert that the February 2024 iCloud warrant, March 2024 cell-site warrant,  
12 and May 2024 email warrants were partially overbroad in that they permitted seizure of items beyond  
13 what was discussed in the warrant affidavit. Defendants' motions fail for a multitude of reasons. As to  
14 the cell-site warrant, the items Defendants seek to suppress (consisting of non-content subscriber and  
15 account information) are not protected by the Fourth Amendment and thus there is no basis for  
16 suppression. For the iCloud and email warrants, the affidavits recounted relevant events dating back to  
17 July 2021 and earlier and the affidavits also described the likelihood of a preexisting financial  
18 relationship between Thao and Andy Duong. In addition, the affidavit detailed multiple instances where  
19 Andy Duong and others attempted to bribe various City of Oakland and Alameda County officials. As  
20 such, there was a basis for the reviewing magistrate judges to allow seizure of relevant items dating back  
21 to January 1, 2020 (and January 1, 2019 for the email accounts) and also to allow seizure of  
22 communications with state and local officials. Furthermore, even if these were borderline cases (which  
23 they are not), the good faith doctrine bars the partial suppression Defendants seek here.

## 24 FACTUAL BACKGROUND

### 25 I. Initiation of Investigation

26 The FBI began investigating Co-Conspirator 1 after he failed to pay for a negative political  
27 mailer targeting Thao's opponents in the lead up to the November 2022 election. Fine Decl. Ex. 6 (June  
28 2024 affidavit) at ¶ 25 As part of the investigation into Co-Conspirator 1, FBI obtained a warrant for

1 Co-Conspirator 1's iCloud account. *Id.* Messages and other electronic documents from Co-Conspirator  
2 1's iCloud account revealed evidence of a corruption scheme in which Co-Conspirator 1, Andy Duong,  
3 and David Duong agreed to fund a negative mailer campaign against Thao's opponents in the November  
4 2022 mayoral election and make payments to Thao's long-term partner, Jones, in exchange for, among  
5 other things, the promise of future official acts such as city contracts for David Duong, Andy Duong,  
6 and Co-Conspirator 1's housing company, Evolutionary Homes. *Id.* ¶ 26. Based on the information  
7 obtained Co-Conspirator 1's iCloud account, the FBI sought and obtained additional warrants for  
8 electronic data from accounts controlled by Andy Duong, David Duong, Thao, and Jones, in addition to  
9 a phone location data search warrant, as described below.

10 **II. The Government Obtained Several iCloud and Email Search Warrants Before  
11 Interviewing Co-Conspirator 1**

12 **A. February 2024 iCloud warrants for Thao, Jones, Andy Duong's accounts.**

13 On February 26, 2024, the FBI obtained warrants for Thao, Jones, Andy Duong, and Co-  
14 Conspirator 1's iCloud accounts. Fine Decl., Ex. 1. That warrant was issued by Magistrate Judge  
15 Kandis A. Westmore. The affidavit (which was longer than 50 pages) described that leading up to the  
16 2022 Oakland mayoral election, Thao promised to take official actions as mayor to benefit David  
17 Duong, Andy Duong, and Co-Conspirator 1 in exchange for various benefits to Thao and Jones. Among  
18 other acts, Thao promised to commit the City of Oakland to purchase housing units from Evolutionary  
19 Homes (Andy Duong, David Duong, and Co-Conspirator 1's housing company), to help secure a  
20 contract extension for California Waste Solutions ("CWS") (Andy Duong and David Duong's recycling  
21 company), to help push through a CWS land deal at the former Oakland Army Base, and to appoint  
22 senior city officials selected by David Duong, Andy Duong, and Co-Conspirator 1. In exchange, David  
23 Duong, Andy Duong, and Co-Conspirator 1 promised to pay \$75,000 to fund negative mailers targeting  
24 Thao's opponents in the mayoral election and to make \$300,000 in direct payments for a no-show job to  
25 Jones for the benefit of Thao and Jones.

26 The documentary evidence and information cited in the affidavit included the following  
27 evidence, which is described more fully below because it is also included in the June 14, 2024,  
28 residential warrant affidavit:

- 1       • Text messages between Thao and Co-Conspirator 1 setting up an  
2       October 7, 2022 meeting, and text messages between Co-  
3       Conspirator 1 and Andy Duong describing an agreement to have  
4       the City of Oakland purchase Evolutionary Homes units if she  
5       became mayor, but with “one catch.” *Id.* at ¶¶ 34-40.
- 6       • Messages involving variously Co-Conspirator 1, Thao, and Jones  
7       regarding Jones providing information or materials to Co-  
8       Conspirator 1, presumably for the negative mailer that Co-  
9       Conspirator 1 later orchestrated. *Id.* at ¶¶ 41-56.
- 10       • Financial records showing Co-Conspirator 1 deposited a \$75,000  
11       from CWS that was later connected with the negative mailer  
12       campaign. *Id.* at ¶¶ 48-50.
- 13       • A communication from Co-Conspirator 1 to Andy Duong that  
14       outlined the terms of a negotiated quid pro quo involving Thao,  
15       Jones, David Duong, Andy Duong, and Co-Conspirator 1,  
16       documenting an agreement from Thao to have Oakland purchase  
17       housing units, extend the CWS contract, complete a land deal, and  
18       obtain City appointments, among other items. *Id.* at ¶¶ 74-76.
- 19       • Financial information that showed significant payments to Jones  
20       from Evolutionary Homes and Co-Conspirator 1. *Id.* at ¶¶ 24, 43-  
21       44, 67-68, 81.
- 22       • Communications in March 2023 with statements consistent with  
23       the corrupt agreement, including regarding the signing of a sham  
24       consulting agreement with Jones, a draft letter of interest regarding  
25       Oakland’s purchase of Evolutionary Homes units prepared for  
26       Thao’s signature, and messages indicating that Jones was “asking  
27       for \$.” *Id.* at ¶¶ 62-77.

28       Importantly, the FBI obtained this warrant before interviewing Co-Conspirator 1 and the warrant  
1       affidavit does not contain any statements from Co-Conspirator 1 to law enforcement. Defendants have  
2       not challenged these warrants on the basis that the affidavit did not contain sufficient probable cause or  
3       that the affiant failed to disclose material information under *Franks*.

4       **B.       March 2024 cell site location data warrant.**

5       On March 29, 2024, the FBI obtained a warrant for location data for cell phones used by  
6       Defendants and Co-Conspirator 1. Fine Decl., Ex. 2. That warrant was signed by Chief Magistrate  
7       Judge Donna M. Ryu. As with the iCloud warrants issued in February 2024, the affidavit submitted in  
8       support of that warrant described in detail documentary evidence tying Defendants and Co-Conspirator  
9       1 to the corruption scheme and did not include any statements from Co-Conspirator 1 to law  
10       enforcement. The warrant affidavit specifically described several in-person meetings amongst  
11       Defendants and Co-Conspirator 1.

1 Defendants and Co-Conspirator 1, text messages, phone calls, and other instances in which Defendants  
2 used their cell phones in relevant ways during the conspiracy. Defendants have not challenged these  
3 warrants on the basis that the affidavits did not contain sufficient probable cause or that the affiant failed  
4 to disclose material information under *Franks*.

5       **C. April 2024 iCloud warrant for David Duong's account.**

6       On April 24, 2024, the FBI obtained a warrant for David Duong's iCloud account. Fine Decl.,  
7 Ex. 3. That warrant was issued by Magistrate Judge Kandis A. Westmore. As with the above-described  
8 warrants, the affidavit submitted in support of that warrant did not contain any statements from Co-  
9 Conspirator 1 to law enforcement and described in detail documentary evidence tying Defendants and  
10 Co-Conspirator 1 to the corruption scheme and did not include any statements from Co-Conspirator 1 to  
11 law enforcement. The affidavit included the documentary and financial evidence included in the  
12 February and March 2024 warrants that is described above. David Duong has not challenged or moved  
13 to suppress that iCloud warrant for his account.<sup>3</sup>

14       **D. May 2024 email warrant for David Duong, Andy Duong, and Thao's accounts.**

15       On May 7, 2024, the FBI obtained a warrant for email accounts used by David Duong, Andy  
16 Duong, Thao, and Co-Conspirator 1. Fine Decl., Ex. 4. On the same day, the FBI obtained a warrant  
17 for an email account used by Thao. Fine Decl. Ex. 5. Those warrants were signed by Chief Magistrate  
18 Judge Donna M. Ryu.<sup>4</sup> Similar to the above, those warrant affidavits did not contain any statements  
19 from Co-Conspirator 1 to law enforcement and described in detail documentary evidence tying  
20 Defendants and Co-Conspirator 1 to the corruption scheme and did not include any statements from Co-  
21 Conspirator 1 to law enforcement. The affidavit included the documentary and financial evidence  
22 included in the February, March, and April 2024 warrants that is described above. Defendants have not  
23 challenged the probable cause set forth in those warrant affidavits.

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25       <sup>3</sup> While David Duong filed a joinder in Andy Duong's motion to partially suppress the February  
26 2024 iCloud warrant and May 2024 email warrant (Dkt. No. 142), he does not have standing to  
27 challenge the February 2024 iCloud warrant because his account was not included in that warrant.

28       <sup>4</sup> The FBI obtained separate warrants for the Duongs' email accounts and Thao's email account  
because their email accounts were hosted by different companies (Microsoft and Google). The facts  
contained in those separate affidavits, however, were nearly identical, apart from separate sections  
describing how Microsoft and Google store email accounts.

1       **III. The Government Interviewed Co-Conspirator 1 on June 6, 2024.**

2       On May 5, 2024, Co-Conspirator 1 reported a dispute with the Duong family to the Oakland  
3 Police Department (OPD) and made a series of criminal allegations against the Duongs, including  
4 referencing the bribery scheme involving Thao and Jones. Fine Decl. Ex. 6 at ¶ 29. The FBI learned of  
5 those allegations in approximately the middle of May 2024. Haunold Decl. ¶ 9.

6       On June 6, 2024, the government interviewed Co-Conspirator 1 for the first time pursuant to a  
7 proffer agreement. Fine Decl., Ex. 6 at ¶ 30. During the interview, Co-Conspirator 1 admitted his  
8 involvement in the bribery scheme and confirmed Defendants' involvement in the scheme. *Id.* at ¶¶  
9 128-138. Co-Conspirator 1 described several meetings with Thao, Jones, Andy Duong, and David  
10 Duong during which the bribery scheme was explicitly discussed. *Id.* Co-Conspirator 1's statements  
11 about the bribery scheme were corroborated by text messages, phone tolls, financial records, and other  
12 evidence. *Id.* at ¶ 30, note 2. Co-Conspirator 1 also alleged that during a confrontation with the Duongs  
13 on May 3, 2024, a Duong family member called individuals who subsequently assaulted him and robbed  
14 him of his personal belongings, including a Rolex watch, a gold chain, and his cell phones. *Id.* ¶ 120.

15       **IV. The June 9, 2024, Shooting at Co-Conspirator 1's Residence.**

16       On June 9, 2024, three days after the FBI interviewed Co-Conspirator 1, Co-Conspirator 1 was  
17 involved in a shooting at his residence. *Id.* ¶ 144. Given that the shooting occurred three days after Co-  
18 Conspirator 1 spoke to federal law enforcement, Co-Conspirator 1's prior allegations that the Duongs  
19 had directed an assault on him, as well as suspicious phone tolls leading up to the shooting, the FBI  
20 believed that Co-Conspirator 1 may have been part of a targeted attack instigated by the Duongs. *Id.* ¶¶  
21 144, 148-150. In initial reports to OPD and FBI, Co-Conspirator 1 reported that on the night of the  
22 shooting, Co-Conspirator 1 confronted two individuals breaking into his vehicle, one of whom shot at  
23 him, and Co-Conspirator 1 returned fire. Stephens Decl. Exs. 18, 21.

24       In approximately August or September 2024, based on analysis of Co-Conspirator 1's interview  
25 after the shooting, surveillance videos from the shooting, and ShotSpotter reports, the FBI determined it  
26 was likely that Co-Conspirator 1 shot first, rather than returning fire. Haunold Decl. ¶ 27. On  
27 September 13, 2024, after learning that the ShotSpotter reports were consistent with Co-Conspirator 1  
28 shooting first rather than returning fire, FBI agents interviewed Co-Conspirator 1 again about the

1 circumstances surrounding the shooting. *Id.* During that interview, Co-Conspirator 1 stated that he shot  
2 first after another individual pointed a firearm at him, and he believed his life was in danger. *Id.* Co-  
3 Conspirator 1 further stated that after this initial round of shooting, the individuals retreated, and  
4 returned several minutes later and returned fire. *Id.*

5 **V. The June 2024 Residential Warrants.**

6 **A. The warrant affidavit contained significant documentary evidence independent of  
Co-Conspirator 1's statements to law enforcement.**

7 On June 14, 2024, five days after the shooting at Co-Conspirator 1's residence, FBI obtained  
8 warrants to search Defendants' persons, residences and vehicles. Fine Decl. Ex. 6. The affidavit,  
9 authored by FBI Special Agent Duncan Haunold, relied largely on the evidence previously submitted to  
10 obtain iCloud and email warrants that the FBI had gathered before interviewing Co-Conspirator 1. *Id.*  
11 That evidence included significant documentary evidence tying David Duong, Andy Duong, Thao,  
12 Jones, and Co-Conspirator 1 to the corruption scheme, including messages and notes from Co-  
13 Conspirator 1's iCloud, financial records showing the corrupt payments, phone records showing  
14 significant communication surrounding these corrupt payments, and other documentary evidence  
15 relating to the scheme. As set forth above, two different magistrate judges determined that same  
16 documentary evidence constituted sufficient probable cause to issue warrants for Thao, Jones, David  
17 Duong, and Andy Duong's iCloud accounts, email accounts, and cell site location data.

18 For example, the affidavit described records indicating that Andy Duong and Co-Conspirator 1  
19 began discussing the idea for Evolutionary Homes during the summer of 2022, and David Duong agreed  
20 to fund the project in October 2022. Fine Decl. Ex. 6 at ¶¶ 38-44. On October 5, 2022, Thao and Co-  
21 Conspirator 1 exchanged text messages setting a meeting for two days later (on October 7). *Id.* ¶ 48.  
22 Shortly after the October 7 meeting between Co-Conspirator 1 and Thao, Co-Conspirator 1 described  
23 the meeting with Thao in text messages to Andy Duong. *Id.* ¶ 53. In these messages, Co-Conspirator 1  
24 relayed to Andy Duong that Thao would commit the City of Oakland to purchase housing units from  
25 Evolutionary Homes, if she became mayor with "one catch," and that Thao would call Andy Duong "re  
26 \$\$\$." *Id.* Thirteen days later, Thao called Andy Duong and the call lasted approximately one minute.  
27 *Id.* ¶ 71.  
28

1       On October 8 (the day after he met with Thao), Co-Conspirator 1 initiated a text conversation  
2 with Jones, followed by several phone calls over the next week. *Id.* ¶ 56. After this flurry of phone  
3 calls, on October 12, Co-Conspirator 1 texted Thao and asked “Where is Andre and my stuff?” *Id.* ¶ 58.  
4 Several phone calls between Thao, Jones, and Co-Conspirator 1 followed, after which Thao messaged  
5 Jones and stated: “Hey do you have want [sic] [Co-Conspirator 1] needs? He’s asking for it . . . Pls pls  
6 connect with him . . .” *Id.* ¶ 59.

7       Within weeks, financial records reveal that Co-Conspirator 1 deposited a \$75,000 check from  
8 CWS (David Duong and Andy Duong’s family company), and Co-Conspirator 1 commissioned a  
9 negative political mailer targeting Thao’s main opponent in the November 2022 Oakland mayoral race.  
10 *Id.* ¶ 65. The affidavit described additional messages and calls between Thao, Jones, and Co-  
11 Conspirator 1, the timing of which indicate Thao and Jones’s knowledge of, and involvement in, the  
12 corruption scheme. *Id.* ¶¶ 56-62.

13       After it became likely Thao would win the mayoral election, and also that Andy Duong and Co-  
14 Conspirator 1’s preferred district attorney candidate would lose the race, Andy Duong and Co-  
15 Conspirator 1 exchanged additional text messages relating to the bribery scheme. Specifically, the  
16 affidavit sets forth that on November 18, 2022, after discussing the election results, Co-Conspirator 1  
17 stated, “[s]o we may go to jail... But we are \$100 million dollars richer.” *Id.* ¶ 74. Andy Duong  
18 replied: “Money buys everything” and Co-Conspirator 1 replied “You are right!... Plus we have a 10  
19 year extension to CWS.” *Id.*

20       The affidavit described multiple messages indicative of David Duong’s involvement in the  
21 bribery scheme. For example, the affidavit described a series of messages between Co-Conspirator 1  
22 and Andy Duong where they expressed frustration that Jones was calling David Duong about the  
23 scheme rather than Co-Conspirator 1, and described a message from Co-Conspirator 1 where he opined  
24 that Jones was calling David Duong because he wanted “direct access” to the “\$\$,” to which Andy  
25 Duong responded that if he “wants that access better get to work . . . Aint nothing free or front cuz we  
26 did all that to help her ass win.” In the same conversation, Co-Conspirator 1 stated “I feel sure David  
27 will back us up.” *Id.* ¶ 88.

28       In the context of the same conversation, Co-Conspirator 1 sent Andy Duong the following

1 explicit summary of the negotiated quid pro quo:

2 Deal Points for Sheng Thao :: Election :: Post Election ::

3 We will invest \$75k cash to hit voters with mailers – CWS

4 We will advance \$40k cash to complete mailers, design and website –  
[CO-CONSPIRATOR 1] – we may recover in the future

5 We produced and sent mailers for 68,000 households x 3

6 We produce websites / TaylorFraud.com and StopIgnacio.com

7 For:

8 The purchase of 300 of our modular units at a price point of \$300,000 each FOB at  
9 Oakland

10 AJ will be part of development team paid \$300k flat on sale of units – contract maybe  
renew for other clients

11 We will get a 10 year extension for CWS from Mayor staff

12 We will get land deal at Army base done from Mayor staff

13 One appointment to Port of Oakland commission

14 Appointments to 1. Public Works 2. Building and Permits 3. Housing and 4. City  
administrators office

15 *Id.* ¶ 90.

16 After sending the above summary to Andy Duong , Co-Conspirator 1 asked “...Am I missing  
17 something?” Then Co-Conspirator 1 wrote “We are missing communications assignments.” In  
18 response, Andy Duong confirmed that Co-Conspirator 1’s description of the corrupt deal was accurate,  
19 writing “Not missing” and “All right.” *Id.* ¶ 92. Co-Conspirator 1 then asked if they should share the  
20 summary of the arrangement with “David,” and Andy Duong responded and said that “David knows  
already,” and that Andy Duong had shared it with him numerous times. *Id.*

21 The affidavit also detailed financial records that corroborated the above-described scheme,  
22 specifically that Jones received checks totaling \$25,000 from Co-Conspirator 1 between October 2022  
23 and April 2023, and two additional checks for \$35,000 each from Evolutionary Homes in April 2023  
24 and November 2023. *Id.* ¶¶ 27, 63, 96, 109, 117. Messages and notes on Co-Conspirator 1’s iCloud  
25 account also indicated that Jones would receive additional money from Evolutionary Homes in  
26 exchange for Thao’s commitment to purchase housing units from Evolutionary Homes on behalf of the  
27 City of Oakland. *Id.* ¶¶ 27, 97.

28 Messages described in the affidavit between Co-Conspirator 1 and David Duong indicated that

1 David Duong signed off on the corrupt payments to Jones. On April 18, 2023, David Duong messaged  
2 Co-Conspirator 1 and Andy Duong and stated “[Co-Conspirator 1]. please call AJ tell him we just  
3 finished our meeting and decided to give home what he asked for but he need to sign before fund.” *Id.* ¶  
4 102. On April 26, 2023, the same day that notes from his iCloud indicated that Co-Conspirator 1 had  
5 lunch with Jones, Co-Conspirator 1 messaged David Duong and stated “Partner,” “AJ signed,” “Look  
6 happy,” “I asked him point blank if he was going to delivered [sic] he said 109 percent he will because  
7 he knows what people are saying backstage.” *Id.* ¶ 109. Two days later, Jones deposited a check for  
8 \$35,000 from Evolutionary Homes LLC into his bank account. *Id.*

9 Additional messages in the affidavit confirm David Duong, Andy Duong, Thao, and Jones’  
10 involvement in the scheme. For example, on March 7, 2023, Co-Conspirator 1 messaged Andy Duong  
11 what appears to be a screenshot of a conversation with Jones. *Id.* ¶ 80. In the screenshotted message,  
12 Co-Conspirator 1 appears to have sent Jones a draft letter of intent addressed to David Duong, as  
13 President of Evolutionary Homes and purports to be authored by Thao. *Id.* Co-Conspirator 1 then wrote  
14 to Jones “Andre – can you help us get this non binding non committal letter of interest signed” and  
15 “Also, David Duong called Sheng 3 times without a return call. Is she ok ?” *Id.*

16 On March 16, 2023, Co-Conspirator 1 wrote to Andy Duong “Hey Brother – AJ is asking for \$,”  
17 and on March 17, 2023 Co-Conspirator 1 wrote “So what we do with Andre and his \$5k can you deliver  
18 to him ?” to which Andy Duong replied “Check be ready tomorrow.” *Id.* ¶ 83. On March 18, 2023, Co-  
19 Conspirator 1 wrote “Let me know when AJ picks up check please” and “Bro AJ Is set?” Andy Duong  
20 responded “All set yesterday.” *Id.*

21 The affidavit further described a review of Thao and Jones’ financial records, which showed that  
22 their financial behavior changed after Jones began receiving money from Co-Conspirator 1 and  
23 Evolutionary Homes, indicating Thao knew that Jones was receiving the money for their mutual benefit.  
24 *Id.* ¶ 118. The affidavit further asserted that financial records, as well as communications between Thao  
25 and Jones, indicate that they struggled to pay bills and discussed money issues frequently, demonstrating  
26 a financial motivation to accept bribes. *Id.*

27  
28

1                   **B. The warrant affidavit contained significant disclosures about Co-Conspirator 1's**  
2                   **motivations and credibility.**

3                   In addition to the extensive documentary evidence, examples of which are described above, the  
4                   affidavit included additional statements made by Co-Conspirator 1 during the June 6, 2024, interview  
5                   for "context and completeness." *Id.*, at ¶ 30, n. 2. The affidavit made clear that Co-Conspirator 1's  
6                   statements were not necessary to a finding of probable cause. SA Haunold explicitly stated in the  
7                   affidavit that he believed "there is sufficient probable cause to issue the search warrants without  
8                   including any of the statements [Co-Conspirator 1] made during the June 6 interview." *Id.*

9                   The affidavit also included a lengthy footnote that spanned two pages disclosing information  
10                  about Co-Conspirator 1's criminal history and background, including pending theft charges, previous  
11                  charges and arrests, and recent allegations of fraud. *Id.* The affidavit described Co-Conspirator 1's  
12                  potential motivations for speaking with the government, explicitly stating that Co-Conspirator 1  
13                  "appears to be . . . motivated by revenge against the DUONGs and a desire to obtain protection from law  
14                  enforcement from the DUONGs, among any number of other potential personal motivations he may  
15                  have" and also that Co-Conspirator 1 appears to be interviewing with the government "with the hope of  
16                  obtaining some form of leniency in exchange." *Id.*

17                  **VI. Execution of Residential Warrants and Rollover Warrant.**

18                  On June 20, 2024, the FBI, USPIS, and IRS-CI executed search warrants at Thao and Jones's  
19                  residence, David Duong's residence, Andy Duong's residence, and CWS. Haunold Decl. ¶ 21. During  
20                  the search of Andy Duong's residence, the FBI found [REDACTED]

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

1

2 [REDACTED]

## ARGUMENT

3 **I. Defendants Have Not Made the Required Showing For a *Franks* Hearing**

4 “A defendant is entitled to an evidentiary hearing on the validity of the affidavit underlying a  
5 search warrant if the defendant can make a substantial preliminary showing that (1) the affidavit  
6 contains intentionally or recklessly false statements or misleading omissions, and (2) the affidavit cannot  
7 support a finding of probable cause without the allegedly false information.” *United States v. Reeves*,  
8 210 F.3d 1041,1044 (9th Cir. 2000). “The movant bears the burden of proof and must make a substantial  
9 showing to support both elements.” *United States v. Chavez-Miranda*, 306 F.3d 973, 979 (9th Cir.  
10 2002). “The offer of proof [for a *Franks* hearing] must challenge the veracity of the affiant, not that of  
11 his informant.” *United States v. Kiser*, 716 F.2d 1268, 1271 (9th Cir. 1983). For a false statement or  
12 omission in an affidavit to be reckless, the affiant must have a “high degree of awareness of probable  
13 falsity.” *United States v. Senchenko*, 133 F.3d 1153, 1158 (9th Cir. 1998) (citation omitted).  
14 “Allegations that the affiant negligently or innocently included false information are insufficient to  
15 require a *Franks* hearing.” *United States v. Staves*, 383 F.3d 977, 983 (9th Cir. 2004).

16 Here, Defendants’ motions fall well short of meeting either prong of the *Franks* analysis. First,  
17 Defendants have not made a substantial showing that the affiant intentionally or recklessly made false  
18 statements or omissions to mislead the magistrate judge who issued the warrants. Second, even if  
19 Defendants had satisfied this first prong, Defendants would still not be entitled to a *Franks* hearing  
20 because they have failed to satisfy the materiality element, which requires a substantial showing that  
21 without the allegedly false information, or with the allegedly intentionally misleading omissions  
22 corrected, the affidavit cannot support the magistrate judge’s probable cause determination. The  
23 affidavit here contained significant disclosures regarding Co-Conspirator 1’s credibility and motivations  
24 and also contained more than sufficient probable cause without the allegedly false or omitted  
25 information. As set forth above, two different magistrate judges found probable cause to search  
26 Defendants’ iCloud and email accounts before the government interviewed Co-Conspirator 1 and which  
27 affidavits did not include any statements from Co-Conspirator 1 to law enforcement.

1                   **A. Defendants have not made a substantial showing that the affiant intentionally or**  
2                   **recklessly made false statements or omitted material facts.**

3                   Defendants have not made the required showing that SA Haunold intentionally or recklessly  
4                   misled the magistrate judge. The breadth and length of SA Haunold’s disclosures regarding Co-  
5                   Conspirator 1, including the multi-page footnote describing Co-Conspirator 1’s criminal history and  
6                   potential motivations for cooperation, reflect SA Haunold’s efforts to ensure that the magistrate judge  
7                   was well informed about the information he had that could reasonably bear on Co-Conspirator 1’s  
8                   credibility. Defendants’ motions misstate the Ninth Circuit’s standard for an intentional or reckless  
9                   omission under *Franks* and vastly overstate the significance of the information that they allege was  
10                   omitted.

11                   Defendants’ motions repeatedly allege that SA Haunold omitted information that was “readily  
12                   available,” that was “public information,” or that was “publicly available at the time the affidavits were  
13                   submitted.” *See* Dkt. No. 119 (David Duong Motion) at 12; Dkt. No. 138 (Andy Duong Motion) at 10.  
14                   But “availability” of additional impeachment information is not the standard under *Franks*. *See, e.g.*,  
15                   *Franks v. Delaware*, 438 U.S. 154, 171 (1978) (“To mandate an evidentiary hearing, the challenger’s  
16                   attack must be more than conclusory and must be supported by more than a mere desire to cross-  
17                   examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and  
18                   those allegations must be accompanied by an order of proof.”); *Chavez-Miranda*, 306 F.3d at 979 (bare  
19                   assertion that omission was reckless or misleading falls short of the preponderance of evidence that  
20                   *Franks* requires); *United States v. Nunez*, 2021 WL 3037705 at \*9 (N.D. Cal. July 19, 2021) (“Nunez’  
21                   bald assertion of recklessness falls far short of the substantial preliminary showing required for  
22                   a *Franks* hearing.”)

23                   On the standard for an intentional or reckless omission, the Ninth Circuit’s decision in *United*  
24                   *States v. Miller*, 753 F.2d 1475, 1478 (9th Cir. 1985) is instructive. In *Miller*, the defendant made a  
25                   *Franks* challenge to a residential search warrant by asserting that the affidavit contained material  
26                   omissions regarding the key informant’s credibility. Specifically, the affidavit did not disclose that the  
27                   affiant (1) “failed to discover that [the informant] had been convicted of perjury; (2) they did not ask  
28                   county officers about the circumstances of [the informant’s] arrest and therefore did not learn of [the

1 informant's] 'bizarre' behavior as described by witnesses who were interviewed; and (3) they did not  
2 review [the informant's] rap sheet." *Id.* at 1477. After a hearing, the district court denied the *Franks*  
3 challenge because these omissions were merely negligent rather than reckless or intentional. *Id.* at 1478.

4 In rejecting the defendant's *Franks* challenge, the Ninth Circuit reiterated that "*Franks* requires  
5 that a defendant show intentional falsehoods or reckless disregard for the truth. Allegations of  
6 negligence or innocent mistake are insufficient." *Id.* (internal citations omitted). The Ninth Circuit went  
7 on to hold:

8 ***It might have been prudent for the federal agents to check on [the  
9 informant's] background and criminal record, but their failure to do so  
10 is not reckless disregard.*** The federal agents knew of the charges for  
11 which [the informant] was being held, and they knew of his Oregon  
narcotics and firearms convictions. They observed [the informant's]  
demeanor and behavior during the interview and testified that he appeared  
rational and coherent.

12 *Id.* (emphasis added).

13 Here, SA Haunold was not aware of the vast majority of the supposed omissions Defendants  
14 point to. Haunold Decl. ¶ 18. Furthermore, Defendants significantly overstate, and in some cases  
15 explicitly misstate, the record regarding the affidavit's supposed omissions. Defendant David Duong's  
16 motion (which the other Defendants have joined) argues that the affidavit failed to disclose that Co-  
17 Conspirator 1 has a "decades-long history of fraud and has been repeatedly found liable for fraud in  
18 lawsuits," and that Co-Conspirator 1 "falsely portrayed the shooting outside his residence as a targeted  
19 attack rather than a chance encounter between strangers." Dkt. No. 119 at 1, 11. In support of the  
20 suggestion that Co-Conspirator 1 has been "repeatedly found liable for fraud," the motion attached six  
21 unsworn civil complaints, all of which are over a decade old (Stephens Decl. Exs. 5, 8, 10, 12, 14, and  
22 16), a 2012 news article referencing a judgment (Ex. 6), a single default judgment divorced of any  
23 findings or facts (Ex. 7), a 2013 notice of stay of proceedings relating to a bankruptcy petition involving  
24 Co-Conspirator 1 (Ex. 9), a Court of Appeal decision in which Co-Conspirator 1 prevailed (Ex. 11), an  
25 application for the renewal of a judgment related to a 2006 complaint (Ex. 13), an order wherein Co-  
26 Conspirator 1 voluntarily agreed to surrender his real estate license (Ex. 17), and a list of lawsuits in  
27 Alameda County in which Co-Conspirator 1 appears to have been involved (many of which he was the  
28 plaintiff) (Ex. 4). The relevance of the decades-old complaints, news articles, and judgments is difficult

1 to discern, and at most, establishes that Co-Conspirator 1 has been repeatedly *accused* of fraud in civil  
2 litigation over the years. It is a far cry, however, from the “decades-long pattern of repeatedly being  
3 found liable for defrauding business partners” that Defendants purport it to be.

4 More importantly, SA Haunold was not aware of the civil lawsuits cited by the defendants.  
5 Haunold Decl. ¶ 18. Defendants do not suggest otherwise, instead arguing that SA Haunold acted  
6 “recklessly” because evidence of the civil lawsuits was “readily publicly available” by searching for and  
7 obtaining Alameda County Superior Court records. They cite no precedent for the suggestion that  
8 agents must search and disclose all court records related to civil lawsuits related to informants, nor could  
9 they. *See United States v. Meling*, 47 F.3d 1546, 1554 (9th Cir. 1995) (rejecting argument that FBI was  
10 required to search for records available at county records office). Defendants also cite to a 2015-2016  
11 money laundering investigation into Co-Conspirator 1. Dkt. 119 at 13. But that investigation was  
12 quickly closed with no arrests and no charges. Haunold Decl. ¶ 19. Given the fulsome disclosures  
13 regarding Co-Conspirator 1’s actual criminal history, his criminal involvement in Defendants’ bribery  
14 scheme, more recent criminal investigations involving fraud, and his motivations for speaking with law  
15 enforcement, not including Co-Conspirator 1’s civil litigation history (which the affiant was not aware  
16 of) cannot be considered to be reckless or material.

17 Defendants Thao, Jones, and Andy Duong have joined David Duong’s motion and allege that SA  
18 Haunold intentionally or recklessly omitted additional material from the affidavit. But these Defendants  
19 explicitly misstate the record and overstate the significance of supposed omissions. For example,  
20 Defendant Thao’s motion describes then-pending 2024 check fraud charges against Co-Conspirator 1  
21 amongst a bullet point list of supposed omissions from the warrant and asserts that “[n]ot a single one of  
22 the aforementioned incidents (nor the incidents described in David Duong’s motion) were recounted in  
23 Agent Haunold’s affidavit despite being publicly available to the government (and anyone with access to  
24 the Internet).” Dkt. No. 136 at 8-9. This is completely false. Not only did the affidavit devote over a  
25 page to describing the facts underlying the alleged check fraud, it explicitly disclosed that in 2024 the  
26 Alameda County District Attorney’s Office charged Co-Conspirator 1 “with a violation of California  
27 Penal Code § 476A(A) (passing a check with insufficient funds greater than \$950), a felony, for the bad  
28 checks he wrote to VICTIM-1. Those charges are currently pending.” Fine Decl. Ex. 6 at ¶ 30, n. 2; ¶¶

1 32-34.

2       Similarly, Defendant Thao’s motion asserts that the affidavit did not disclose that Co-  
3 Conspirator 1 was charged with grand theft and forgery and pled no contest to a misdemeanor in 2016.  
4 Dkt. No. 136 at 8. As an initial matter, the affidavit disclosed occasions on which Co-Conspirator 1 was  
5 arrested for committing grand theft (in 2017) and a separate occasion where he was charged with grand  
6 theft (in 2021). Fine Decl. Ex. 6 ¶ 30, n. 2. Moreover, the record makes clear that the incident described  
7 in Defendant Thao’s motion resulted not in a conviction, but in a deferred entry of judgment, which  
8 means that the case was dismissed after Co-Conspirator 1 met certain conditions. *See* Tarver Decl., Ex.  
9 7 at 2-3. To the extent Defendant Thao is asserting that the affiant was required to go beyond Co-  
10 Conspirator 1’s rap sheet (which did not include this incident), the Ninth Circuit has rejected that  
11 argument. *See Untied States v. Martinez-Garcia*, 397 F.3d 1205, 1215 (9th Cir. 2005) (affiant did not  
12 demonstrate intentional or reckless dishonesty by relying in good faith on criminal history, even if  
13 flawed); Haunold Decl. Ex. A. The other supposed omissions Defendant Thao points to—that Co-  
14 Conspirator 1 allegedly listed himself as a real estate broker on a 2018 campaign donation and that he  
15 was sued in 2006—do not move the needle. SA Haunold did not have knowledge of these incidents, and  
16 even if he did, they are not material when compared to the robust disclosures SA Haunold did include.

17       Defendant Jones’ motion also mischaracterizes the record. Specifically, it spends several pages  
18 describing an Alameda County District Attorney’s Office warrant affidavit and asserts “there is a  
19 reasonable inference that SA Haunold knew or should have known additional and important information  
20 as to those allegations against Co-Conspirator-1 at the time he signed and submitted the search warrant  
21 affidavit.” Dkt. No. 141 at 7. But Defendant Jones neglects to mention that this Alameda County  
22 warrant affidavit was dated July 17, 2024, more than a month *after* Judge Westmore signed the affidavit  
23 at issue here.<sup>5</sup> Haunold Decl. ¶ 20 and Ex. B. Not only was SA Haunold unaware of the allegations  
24 contained in the Alameda County warrant, he could not have been aware of the warrant itself because it

25  
26       <sup>5</sup> Defendant Jones’ motion states that the version of this document produced in discovery was  
27 “not dated or signed,” but then describes a publicly available version of the document available at  
28 [https://oaklandsid.org/wp-content/uploads/2025/11/Affidavit\\_89106176761.pdf](https://oaklandsid.org/wp-content/uploads/2025/11/Affidavit_89106176761.pdf). Dkt. No. 141 at 8,  
n.4. A review of the publicly available version shows the warrant is dated July 17, 2024, but Defendant  
Jones’ motion strategically did not explain that this state warrant post-dates the warrant at issue here by  
over a month. None of the other Defendants mentions or relies on this Alameda County warrant.

1 was issued after the residential warrant was issued in this case. Defendant Jones' assertion that "SA  
2 Haunold should have contacted Inspector Bettencourt to learn more about the status of the  
3 investigation," seemingly based on the fact that fact that SA Haunold had a separate OPD report about a  
4 separate purported victim (which was disclosed in the affidavit), is nothing but speculation and is wholly  
5 unsupported by any case law.

6 Defendants' allegations related to SA Haunold's alleged failure to disclose information related to  
7 the June 9, 2024, shooting fare no better. Defendants' argument hinges on an allegation that SA  
8 Haunold omitted information that was "available to the agent" that was inconsistent with Co-  
9 Conspirator 1's initial account of the June 9 shooting. Dkt. No. 119 at 2. This allegation relies on a  
10 post-hoc analysis of the evidence that that had not been conducted at the time that SA Haunold authored  
11 the affidavit. The Ninth Circuit has explicitly rejected the argument Defendants put forth here, that a  
12 false or inconsistent statement from the *informant* is insufficient to obtain a *Franks* hearing. Rather, a  
13 defendant must show that the *affiant* made an intentional or reckless false statement. *See United States*  
14 *v. Perdomo*, 800 F.2d 916, 921 (9th Cir. 1986) ("Perdomo's challenge to the warrant on this ground  
15 must fail because, even if Perdomo's statements are believed, they reflect only on the veracity of  
16 the informant who claims he overheard the conversation, not the veracity of the affiant. Allegations that  
17 statements reported in the affidavit and made to the affiant are false are not sufficient to satisfy the  
18 requirements for a *Franks* hearing unless the defendant contends that the affiant has misrepresented the  
19 statements made by another.").

20 Here, OPD records from the night of the shooting, as well as FBI's interview reports of Co-  
21 Conspirator 1, indicate that Co-Conspirator 1 initially told law enforcement that after Co-Conspirator 1  
22 heard unidentified individuals smash the window of his vehicle, he armed himself, and stepped outside  
23 to investigate. Stephens Decl. Exs. 18, 21. Co-Conspirator 1 initially told law enforcement that he  
24 confronted two individuals breaking into his vehicle, one of whom shot at him, and Co-Conspirator 1  
25 returned fire. *Id.*

26 In approximately August or September 2024, based on review of a number of sources of  
27 information including Co-Conspirator 1's interview after the shooting, surveillance videos from the  
28 shooting, and ShotSpotter reports, the FBI determined it was likely that Co-Conspirator 1 shot first,

1 rather than returning fire. Haunold Decl. ¶ 27. Based on that analysis, on September 13, 2024, FBI  
2 agents interviewed Co-Conspirator 1 again about the circumstances surrounding the shooting. *Id.*  
3 During that interview, Co-Conspirator 1 stated that he believed he shot first after another individual  
4 pointed a firearm at him, and he believed his life was in danger. *Id.* Co-Conspirator 1 then said that the  
5 individuals retreated, and later returned and shot at Co-Conspirator 1's residence. *Id.* Co-Conspirator 1  
6 stated that he did not remember what he initially told OPD about the shooting, and that he might have  
7 miscommunicated about the sequence of events in the aftermath of the shooting. *Id.* During that  
8 interview, Co-Conspirator 1 continued to state that he believed the shooting was orchestrated by the  
9 Duongs. *Id.*

10 The undisputed evidence demonstrates that SA Haunold was not aware that Co-Conspirator 1  
11 fired first until well after the execution of the June residential warrants. Indeed, as Defendants  
12 acknowledge in a footnote, OPD did not even receive the ShotSpotter reports until June 15, 2025, one  
13 day *after* the June residential warrant was signed, and there is no evidence suggesting that SA Haunold  
14 suspected that Co-Conspirator 1 shot first until months after the residential warrants were executed.<sup>6</sup>  
15 Dkt. No. 119 at 14, n.3; Stephens Decl. Ex. 20 at 4; Haunold Decl. ¶ 18. Regardless, even if SA  
16 Haunold had been aware that Co-Conspirator 1 shot first after confronting an armed individual in his  
17 vehicle, it would not have undermined Co-Conspirator 1 or FBI's belief at the time that the shooting was  
18 targeted due to the fact that the shooting occurred three days after Co-Conspirator 1 was interviewed by  
19 FBI along with the prior allegations by Co-Conspirator 1 that the Duong family had previously  
20 orchestrated an assault of him. Accordingly, Defendants fall far short of meeting their burden to show  
21 that SA Haunold had a "high degree of awareness of probable falsity that a finding of recklessness  
22 would require." *Senchenko*, 133 F.3d at 1158.

23 Defendants also suggest that SA Haunold omitted information suggesting that the shooting was  
24 "not an assassination attempt but a botched car burglary," specifically a statement from a witness who  
25 reported prior shooting nearby, statements from Co-Conspirator 1 that he saw the two individuals  
26

27 <sup>6</sup> Defendants point to evidence indicating that witnesses heard four initial shots, and the officers  
28 found 40 caliber casings on Co-Conspirator 1's front yard, as evidence that Co-Conspirator 1's  
statements about returning fire were inaccurate. Mot. at 14-15. It is unclear, and Defendants do not  
specify, how this evidence would have demonstrated to SA Haunold that Co-Conspirator 1 fired first.

1 breaking into car prior to the shooting, and information related to J.T.’s vehicle registration. Dkt. No.  
2 119 at 16. But the government need not include all of the information in its possession to obtain a  
3 search warrant, and none of this information available to SA Haunold indicated that Co-Conspirator 1’s  
4 account of the shooting was not true. *See United States v. Johns*, 948 F.2d 599, 606-07 (9th Cir. 1991).

5 Of course all of this post-hoc reconstruction of the evidence from the shooting incident, which  
6 Defendants have now had months to review and analyze, should be put into the context of this *Franks*  
7 motion. This is a public corruption case, not an attempted murder case, and the affidavits at issue relied  
8 on direct evidence of that corruption scheme, including communications, phone records, financial  
9 documents, and other records. The shooting incident was described in the affidavit because it involved  
10 Co-Conspirator 1 and was included in the affidavit to provide more information to the reviewing  
11 magistrate—not less—about the events, Co-Conspirator 1’s state of mind, and potential motives for their  
12 statements to law enforcement.

13 To the extent Defendant Andy Duong is challenging the June 20, 2024, rollover warrant for his  
14 residence, that challenge fails for the same reason, namely that he has failed to show that affidavit  
15 contained intentional or reckless false statements to omissions. While an FBI task force officer received  
16 the ShotSpotter reports on June 15, 2024 (after the initial residential warrant was issued), those reports  
17 were not analyzed until several weeks later. Haunold Decl. ¶ 18. And as set forth above, there is no  
18 evidence suggesting that FBI suspected that Co-Conspirator 1 shot first until months after the residential  
19 warrants were executed.

20 Finally, the government addresses Defendant Thao’s assertion that the affidavit intentionally  
21 omitted Co-Conspirator 1’s “documented racial animus” to enhance Co-Conspirator 1’s credibility  
22 because it excised two lines from a text chain between Co-Conspirator 1 and Andy Duong. *See* Dkt. No.  
23 136 at 9-10, 12. Defendant Thao does not cite a single case in support of this argument. And the record  
24 makes clear the removal of the two lines had nothing to do with bolstering Co-Conspirator 1’s  
25 credibility or concealing a known “racial animus.” Specifically, the February 2024 iCloud warrant  
26 affidavit and the May 2024 email warrant affidavit, both targeting Co-Conspirator 1 and written before  
27 he spoke with the government (and therefore before he was a cooperating witness at all), also omitted  
28 the two lines at issue from the text conversation between Co-Conspirator 1 and Andy Duong. *See* Fine

1 Decl., Ex. 1 at ¶ 72; Ex. 4 at ¶ 85; Ex. 5 at ¶ 91. The two lines were removed from the initial affidavits  
2 targeting Co-Conspirator 1 so that the reviewing magistrate judge would focus on the actual hard  
3 evidence against Co-Conspirator 1, rather than the potentially racially-charged language in the text  
4 messages. Haunold Decl. at ¶¶ 29-30. Those same text message chains were carried over to the June  
5 2024 residential warrant affidavit and there was no intent to somehow bolster Co-Conspirator 1's  
6 credibility. Lastly, even if this was an intentional omission to somehow bolster Co-Conspirator 1's  
7 credibility (which it was not), such an omission was not material to the probable cause determination.  
8 As made clear by the materiality section below, including these two lines in the affidavit would not  
9 change that the affidavit contained significant evidence supporting the magistrate judge's finding of  
10 probable cause.

11       **B. The alleged omissions are not material to the probable cause determination.**

12       As demonstrated above, the affidavit did not contain intentional or reckless false statements or  
13 omissions, and thus their motions fail at the first *Franks* prong. But the Court does not need to reach  
14 that issue because Defendants have failed to establish materiality. Courts often proceed first to  
15 materiality (skipping over the first *Franks* prong of intentional or reckless false statements or omissions)  
16 and deny *Franks* hearings on that basis alone. *See United States v. Lauria*, 70 F.4th 106, 125 (2d Cir.  
17 2023) (“The materiality requirement is often considered first because, as the Supreme Court explained  
18 in *Franks*, ‘if, when material that is the subject of the alleged falsity or reckless disregard is set to one  
19 side, there remains sufficient content in the warrant to support a finding of probable cause, no hearing is  
20 required.’” (quoting *Franks*, 438 U.S. at 171-72)). The Court can proceed to the materiality prong here  
21 and should deny Defendants’ *Franks* motion on that basis alone.

22       Here, Defendants are not entitled to a *Franks* hearing because they have not shown that the  
23 magistrate judge could not have found probable cause to support the warrant if she had been apprised of  
24 the alleged omissions. *United States v. Meling*, 47 F.3d 1546, 1554 (9th Cir. 1995). “[I]f when material  
25 that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient  
26 content in the warrant affidavit to support a finding of probable cause, no hearing is required.” *Franks*,  
27 438 U.S. at 171–72. The Court must consider “whether the affidavit, once corrected and supplemented,  
28 would provide a magistrate with a substantial basis for concluding that probable cause existed.” *United*

1 *States v. Stanert*, 762 F.2d 775, 782 (9th Cir. 1985).

2 As to materiality, the Ninth Circuit's decision in *United States v. Meling* is instructive. There, the  
3 defendant moved for a *Franks* hearing on the basis that the warrant affidavit failed to disclose sufficient facts  
4 about the FBI's principal informant. *Meling*, 47 F.3d at 1553. Specifically, the affidavit did not disclose  
5 that (1) the informant "had been convicted of forgery and fraud three times, and though each of these  
6 convictions was over ten years old, he had a panoply of parole violations for similar offenses stretching  
7 back to his first conviction," (2) that the informant had been convicted of a separate felony one year  
8 before submission of the affidavit "and had been committed to a mental institution, where he  
9 experienced auditory and visual hallucinations and was diagnosed as having schizophrenia," and (3) the  
10 affidavit "failed to mention that [the informant] came forward at least in part to obtain the \$100,000  
11 reward offered for information relating to the poisonings; to the contrary, the affidavit characterized [the  
12 informant's] motives as pure." *Id.*

13 The Ninth Circuit held that despite these glaring omissions about the key informant, the  
14 defendant was not entitled to a *Franks* hearing because they failed to demonstrate materiality. The  
15 Ninth Circuit reasoned that "[i]n determining whether an affidavit is sufficient to establish probable  
16 cause, the reviewing judge looks to the totality of the circumstances: He must assess the credibility and  
17 basis of knowledge of any informants (though neither of these factors alone determines what weight  
18 should be given the informant's tips) and weigh any other information supporting a finding of probable  
19 cause." *Id.* at 1554-1555. "Where the [affidavit] presents substantial evidence supporting a finding of  
20 probable cause independent of the information provided by an informant, that showing will compensate  
21 for an informant's low credibility." *Id.* at 1555. As to the specific omissions regarding the informant's  
22 criminal history and impure motive, the Ninth Circuit held that "including this information in the  
23 application would not completely undermine [the informant's] credibility, and thus would not require  
24 that the information he provided be completely disregarded. The omitted convictions were stale, and  
25 even if [the informant] had been motivated by the reward, that did not make him a liar." *Id.* *Meling* also  
26 pointed to other evidence corroborating the informant's allegations and also that the affidavit "contained  
27 considerable independent evidence pointing to Meling as the poisoner." *Id.*

28 As detailed above, SA Haunold included extensive information relevant to Co-Conspirator 1's

1 criminal history and background in the affidavit, including prior and pending theft and embezzlement  
2 charges, and an explicit statement that Co-Conspirator 1 appeared to be motivated by revenge. Taken  
3 together, SA Haunold's disclosures were more than sufficient for the magistrate judge to have  
4 understood Co-Conspirator 1 had potentially serious credibility issues. However, "the fact that an  
5 informant has an ulterior or impure motive in coming forward to provide information to the police does  
6 not preclude a finding that the informant is nevertheless credible." *Meling*, 47 F.3d at 1555. This is  
7 particularly true, where, as here, there is countervailing evidence to corroborate the source's reliability.

8 *See Id.*; *United States v. Ruiz*, 758 F.3d 1144, 1149-1151 (9th Cir. 2014) (finding that corroborating  
9 evidence diminished the adverse effect of the credibility issues); *Reeves*, 210 F.3d at 1045 (no *Franks*  
10 hearing necessary where informant had previously provided reliable information); *United States v.*  
11 *Elliot*, 322 F.3d 710, 715 (9th Cir. 2003) (same). Here, Co-Conspirator 1's statements in the affidavit  
12 were corroborated throughout with text messages, financial records, call logs, and other documentary  
13 evidence. Given the extensive information SA Haunold disclosed to the magistrate judge relevant to  
14 Co-Conspirator 1's credibility, combined with the documentary evidence corroborating Co-Conspirator  
15 1's statements, the omitted information about stale civil allegations of fraud and evidence that Co-  
16 Conspirator 1 made inconsistent statements about who shot first during the June 9 shooting would not  
17 have altered the magistrate judge's analysis.

18 Other Ninth Circuit cases have rejected *Franks* hearings at the materiality stage in similar  
19 circumstances where the disclosures in the affidavit were fulsome, as is the case here. *See, e.g., United*  
20 *States v. Larkins*, 2025 WL 501405 at \*2 (9th Cir. Feb. 14, 2025) (unpublished) ("The district court is  
21 correct that there was 'enough here for the magistrate judge [issuing the search warrant] to have been  
22 well aware that [CD-1] had a very serious criminal history and serious potential problems with  
23 credibility, and would be ... required to look for corroboration before finding probable cause.' The  
24 omission of certain details regarding CD-1's criminal history and arrest was therefore not 'material,' as  
25 it would not 'tip[ ] the balance on the probable cause decision.'") (citing *United States v. Meek*, 366 F.3d  
26 705, 717 (9th Cir. 2004); *United States v. Huggins*, 299 F.3d 1039, 1046 (9th Cir. 2002) (denying  
27 *Franks* motion in case where affiant did not disclose that informant was detained on pending charges  
28 because "even if Wright had known about the plea bargain, the informant's desire for favorable

1 treatment does not seem material in light of the partial corroboration of his statement.”); *United States v.*  
2 *Ward*, 237 Fed.Appx. 289, 292 (9th Cir. 2007) (“The information that was allegedly withheld from the  
3 District Court—further details about the informant’s varied criminal history, the existence of improper  
4 dealings between the informant and one of his ‘handlers’ at the FBI, and the strength of the AUSA’s  
5 feelings about Ward’s lack of credibility—was not substantially different from what was included. The  
6 affidavit clearly indicated that the informant’s statements should be taken with a grain of salt and took  
7 pains to relate the significant corroborating evidence collected by investigators. Even had all the  
8 additional information raising questions about the informant’s credibility been included in the affidavit,  
9 a reasonable district judge would still have granted the wiretap application. Thus, the omissions were not  
10 material and the District Court did not err in refusing to grant a *Franks* hearing.”).

11       Here, even if the omitted information rendered Co-Conspirator 1’s statements completely  
12 untrustworthy such that they could not be considered in any way (which it does not), the remaining  
13 evidence detailed in the affidavits supports a finding of probable cause independent of his statements to  
14 law enforcement. *Reeves*, 210 F.3d at 1044 (if omitted information renders CI’s statements unworthy of  
15 belief, “probable cause must be analyzed without those statements.”); *Bennett*, 219 F.3d at 1125 (finding  
16 that there was information supporting probable cause independent of information impeaching  
17 informant’s credibility); *Meling*, 47 F.3d at 1555 (“the untruths and omission in the original applications  
18 relate entirely to [the CS’s] credibility; they do not undermine the other evidence presented by the  
19 FBI”).

20       In this case, the Court does not have to speculate whether the magistrate judge would have found  
21 sufficient probable cause to issue the warrant absent Co-Conspirator 1’s statements to law enforcement.  
22 In February 2024, March 2024, April 2024, and May 2024, before speaking to Co-Conspirator 1, the  
23 FBI obtained iCloud, cell-site, and email warrants as to all Defendants from two different magistrate  
24 judges based solely on the documentary evidence implicating each Defendant in the bribery scheme.  
25 *See* Fine Decl. Exs. 1-5. Contrary to Defendants’ suggestion, this is not a case where “the reliability of  
26 an informant . . . was central to establishing probable cause.” Dkt. No. 119 at 18; *see also* Section I.C.  
27 below (distinguishing Defendants’ cited cases). Instead, as in *Meling*, the “bulk of the evidence  
28 supporting probable cause came from other sources,” including messages obtained from iCloud

1 warrants, financial records, and call logs. *Meling*, 47 F.3d at 1555. For example, as described above,  
2 the affidavit detailed a series of messages between Co-Conspirator 1 and Andy Duong explicitly laying  
3 out the quid pro quo with Thao and Jones, including David Duong’s involvement in the scheme, as well  
4 as financial records corroborating the payments made in furtherance of the scheme. Fine Decl. Ex 6 at  
5 ¶¶ 88, 92, 102. 109. Significantly, the FBI obtained the vast majority of this evidence before ever  
6 speaking to Co-Conspirator 1. Because the “omissions in the [affidavit] relate entirely to [Co-  
7 Conspirator 1’s] credibility; they do not undermine the other evidence presented by the FBI.” *Meling*,  
8 47 F.3d at 1555. The information provided from Co-Conspirator 1 was included for “context and  
9 completeness,” and was not essential to a finding of probable cause.

10 Defendants’ argument that Co-Conspirator 1’s statements are necessary to finding of probable  
11 cause ignores the extensive documentary evidence tying Defendants to the bribery scheme detailed in  
12 the affidavit. The affidavit described a series of messages between Co-Conspirator 1 and Andy Duong  
13 where they expressed frustration that Jones was calling David Duong to get “direct access” to the “\$\$.”  
14 Fine Decl. Ex. 6 at ¶ 88. In the same conversation, Co-Conspirator 1 stated “I feel sure David will back  
15 us up,” referencing the fact that he believed David Duong would support them in conversations with  
16 Thao and Jones about the agreed upon corrupt scheme. *Id.* And after Co-Conspirator 1 detailed the  
17 bribery scheme in a message to Andy Duong and asked Andy Duong if he should share the same  
18 information with David Duong, Andy Duong responded that “David knows already.” *Id.* ¶ 92. In  
19 addition to the explicit references to David Duong’s knowledge of the scheme, the affidavit also  
20 described financial records and a series of messages demonstrating that David Duong was aware of, and  
21 signed off on, the corrupt payments to Jones. *Id.* ¶ 27, 102, 109. None of this documentary evidence  
22 relied on Co-Conspirator 1’s statements. Contrary to Defendants’ assertions, SA Haunold’s statements  
23 tying these statements and financial records to the bribery scheme are not speculative. Law  
24 enforcement’s opinion is “an important factor to be considered in the magistrate’s determination  
25 whether probable cause existed.” *United States v. Foster*, 711 F.2d 871, 878 (9th Cir. 1983).

26 Finally, Defendant Jones suggests that under this second prong, Co-Conspirator 1’s text  
27 messages and iCloud notes, written and sent to other participants in the scheme well before he ever  
28 spoke to law enforcement or became a cooperator, and created while he was engaged in the conspiracy

1 with Defendants, should also be stricken from the affidavit under the *Franks* materiality analysis.  
2 Defendants have not cited a single case to support this argument, and the government has found no case  
3 that so holds. As set forth above, the Ninth circuit has held that if intentional or reckless material  
4 omissions are made regarding an informant's credibility, and there is nothing else in the affidavit to  
5 corroborate the informant, then only the informant's statements and testimony to law enforcement can  
6 be disregarded. *See Reeves*, 210 F.3d 1041, 1045 (9th Cir. 2000) (concluding that if intentional or  
7 reckless omissions regarding the informant's credibility were not in the affidavit, and there is nothing  
8 else to corroborate the informant's statements, then the "informant's **testimony** could not be used to  
9 support the search warrant.") (emphasis added).

10 As far as the government can tell, no case holds that an informant's text messages and notes,  
11 written before he became a government witness, can or should be excised from the affidavit under this  
12 second prong of the *Franks* analysis. Furthermore, Co-Conspirator 1's text messages and notes  
13 discussing his conspiracy with Thao, Jones, Andy Duong, and David Duong are clearly statements  
14 against his penal interests, which the Ninth Circuit has explicitly held bolster their reliability, rather than  
15 undermine it. *See, e.g., United States v. Patayan Soriano*, 361 F.3d 494, 505 (9th Cir. 2004)  
16 ("Admissions of crimes, like admissions against propriety interests, carry their own indicia of credibility  
17 – sufficient at least to support a finding of probable cause to search.") (citing *United States v. Estrada*,  
18 733 F.2d 683, 686 (9th Cir. 1984)).

19 **C. The cases Defendants cite do not support their arguments.**

20 While Defendants' motions are heavy on rhetorical language and unsupported and conclusory  
21 factual inferences, they are light on case law. That is because no case supports their request for a *Franks*  
22 hearing on the facts presented here. As set forth below, the cases Defendants rely on are far afield from  
23 the facts of our case and are readily distinguishable.

24 Defendants rely heavily on the Ninth Circuit's decision in *United States v. Hall*, 113 F.3d 157  
25 (9th Cir. 1997). In that case, state troopers arrested a drug dealer and asked for his source of supply. *Id.*  
26 at 157. After the dealer identified Hall as the source, the troopers obtained a warrant to search Hall's  
27 trailer based solely on the informant's tip. *Id.* at 158. The trooper's oral affidavit to the state judge  
28 (there was no written affidavit), however, did not disclose several of the informant's criminal matters

1 including “two criminal matters that went to the heart of [the informant’s] character and credibility,  
2 namely: the probation violation involving death threats to a wounded police officer, and the 1990  
3 conviction for the offense of falsely reporting a crime.” *Id.* The government conceded that these  
4 omissions were reckless (as the affiant knew about them) and the Ninth Circuit held suppression was  
5 appropriate because “there was virtually no evidence at all without the informant’s **testimony**. Without  
6 relying on what [the informant] said, all the magistrate knew about Hall was that he had been seen  
7 driving into a trailer court parking space in a red and white pickup truck.” *Id.* at 159 (emphasis added).

8 *Hall* is distinguishable in two clear respects from our case. First, the affiant in *Hall* omitted  
9 criminal convictions that the affiant knew about and that went to the heart of the informant’s credibility,  
10 namely that he had previously been convicted of falsely reporting a crime. Here, in contrast, the  
11 affidavit disclosed Co-Conspirator 1’s entire rap sheet as well many other facts that related to his  
12 credibility. The omissions Defendants describe, largely consisting of Co-Conspirator 1’s civil litigation  
13 history, are far afield from the omission of criminal convictions in *Hall*. Second, suppression was  
14 appropriate in *Hall* because the affidavit depended entirely on the informant’s statements to law  
15 enforcement. Here, in contrast, the 78-page affidavit contained significant documentary evidence  
16 independent of Co-Conspirator 1’s statements to law enforcement and the affidavit explicitly stated that  
17 it was not relying on Co-Conspirator 1’s statements to law enforcement to establish probable cause, but  
18 was including them for “context and completeness.” Fine Decl. Ex. 6 at ¶ 30, n. 2. Courts have  
19 distinguished *Hall* on the basis that the entire affidavit relied on the informant’s testimony to law  
20 enforcement. *See, e.g. United States v. Ruiz*, 758 F.3d 1144, 1151 (9th Cir. 2014) (“Therefore, this case  
21 is unlike *Hall*, where the only detailed description of the facts underlying the search warrant came from  
22 an informant, and there was no significant physical evidence to corroborate his tip.”) (citing *Hall*, 113  
23 F.3d at 157); *see also United States v. Alexander*, 2022 WL 743179 at \*5 (D. Alaska March 11, 2022)  
24 (distinguishing *Hall* in three material respects).

25 Next, Defendants rely on *United States v. Perkins*, 850 F.3d 1109 (9th Cir. 2017), a child  
26 pornography case wherein a warrant affidavit stated that the images at issue were unequivocally child  
27 pornography. *Id.* at 1115-16. But the affidavit in *Perkins* omitted that Canadian authorities had  
28 reviewed the same images and determined they were not actually pornographic, leading to dismissal of

1 the Canadian charges against the defendant. *Id.* at 1116. With this omission corrected, the Ninth Circuit  
2 affirmed suppression, holding that “a warrant application explaining that an individual with two 20–  
3 year-old convictions was in legal possession of two non-pornographic images while traveling through  
4 Canada is insufficient to support probable cause to search his home computers in Washington for child  
5 pornography.” *Id.* at 1116. Unlike the copious cases the government relies on above (such as *Meling*,  
6 *Miller*, *Perdomo*, and many others), *Perkins* had nothing to do with informants or supposed omissions  
7 about their credibility. Furthermore, *Perkins* held that once the omissions were corrected, the affidavit  
8 fell well short of establishing probable cause. The affidavit in our case, in contrast, included significant  
9 documentary evidence independent of Co-Conspirator 1’s statements to law enforcement.

10 Defendants also cite to *United States v. Stanert*, 762 F.2d 775 (9th Cir. 1985). But *Stanert* did  
11 not address omissions about an informant’s credibility, but rather described explicit false statements  
12 made by the law enforcement affiant. In *Stanert*, a state judge issued a warrant based on an oral  
13 affidavit presented by a San Diego Sheriff’s officer stating that she believed there to be a clandestine  
14 drug laboratory in a residence. *Id.* at 777. The defendant asserted that the affiant intentionally  
15 misrepresented information given by an informant, fabricated assertions about the alleged laboratory’s  
16 smell, misrepresented the target’s criminal history and residential history, and neglected to advise the  
17 judge that agents had unsuccessfully sought a warrant from a different judge. *Id.* at 778. The Ninth  
18 Circuit remanded for a *Franks* hearing, holding that these false statements were material because the  
19 affidavit, once corrected and supplemented, did not “provide a magistrate with a substantial basis for  
20 concluding that probable cause existed.” *Id.* at 782. Once again, this case is distinguishable because it  
21 did not involve supposed omissions about an informant’s credibility and did not involve the same level  
22 of independent probable cause that is present in our case.

23 Defendant Andy Duong’s motion also cites to two district court cases—*United States v. Loloee*,  
24 2025 WL 671107 (E.D. Cal. Mar. 3, 2025) and *Donahoe v. Arpaio*, 986 F. Supp. 2d 1091 (D. Ariz.  
25 2013).<sup>7</sup> In *Loloee*, however, the court denied the defendants’ motion for a *Franks* hearing and held that  
26 the warrants at issue did not contain material omissions. *Loloee*, 2025 WL 671107 at \*16-17. As such,  
27

28 <sup>7</sup> Defendants Thao and Jones’ motions cite generally to the case setting forth the *Franks* standard, but do not appear to analyze or rely on other specific legal authority.

1 the government fails to see how this case helps Defendants. Similarly, *Donahoe* was a civil case that did  
2 not involve application of the *Franks* standard.

3 At bottom, this is not a case where the sole or primary assertions of probable cause rely on  
4 uncorroborated statements of an informant, because in this affidavit there was significant documentary  
5 evidence that was created during the crime and amongst co-conspirators. Cases that present a different  
6 set of facts are inapposite. In sum, the government respectfully submits that an objective review of the  
7 case law, as well as the applicable affidavit, show that Defendants have come nowhere close to making  
8 the showing necessary to obtain a *Franks* hearing.

9 **II. The June 2024 Affidavit Establishes Probable Cause to Search Defendants' Residences**

10 Separate from their *Franks* motion, Defendants also move to suppress the fruits of the June 2024  
11 warrant on the basis that the affidavit failed to set forth a sufficient nexus between the crimes  
12 Defendants committed and the places the warrant authorized agents to search. Defendants' motion fails  
13 for two primary reasons. First, the affidavit did set forth a sufficient nexus. Second, even if this were a  
14 borderline case (which it is not), the good faith doctrine precludes suppression because the reviewing  
15 magistrate issued the warrant based on the facts set forth in the affidavit and that affidavit was not so  
16 objectively lacking as to render reliance on it unreasonable.

17 **A. The affidavit alleged a sufficient nexus between Defendants' residences and the  
18 crimes they committed.**

19 A magistrate judge may issue a warrant for a residence if a "reasonable nexus" exists between  
20 the residence and the evidence sought; that is, the magistrate "need only find that it would be reasonable  
21 to seek the evidence there." *United States v. Chavez-Miranda*, 306 F.3d 973, 978 (9th Cir.  
22 2002) (citation omitted). In making this determination, the magistrate judge must make a "practical,  
23 common-sense" decision. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). "The magistrate's probable cause  
24 determination should be paid great deference by reviewing courts. Review is limited to ensuring that the  
25 magistrate had a substantial basis for concluding that probable cause existed." *United States v. Kvashuk*,  
26 29 F.4th 1077, 1085 (9th Cir. 2022) (internal citation omitted). "Additionally, issuing judges may rely  
27 on the training and experience of affiant police officers." *Chavez-Miranda*, 306 at 978.

28 Here, the affidavit set forth a sufficient nexus between the crimes committed and Defendants'

1 residences, persons, and vehicles. Specifically, the affidavit stated that each Defendant received mail at  
2 their listed address and that agents observed Defendants' vehicles located at those addresses in the days  
3 leading up to the search warrants. Fine Decl. Ex. 6 at ¶¶ 151-154. The affidavit further described that  
4 cell phone location data showed Defendants Thao, Jones, and Andy Duong's cell phones at their  
5 residences in the days leading up to the search warrants. *Id.* ¶¶ 152-153. As to David Duong, the  
6 affidavit stated that while his phone displayed a location on the East Coast in the days before the search  
7 warrants, his iCloud indicated he had a medical appointment in the East Bay on June 21, 2024, and was  
8 thus likely to be in the East Bay before that date. *Id.*, ¶ 154. Given the copious text messages, phone  
9 tolls, and other electronic data described in the affidavit, those cell phone were very likely to have  
10 relevant evidence on them and likely to be found at Defendants' residences.

11 The affidavit further described that, based on the affiant's training and experience, individuals  
12 like Defendants involved in bribery schemes maintain various forms of records, correspondence, and  
13 other electronic files in their residences, vehicles, or on their person. *Id.*, ¶¶ 157-165. The affidavit goes  
14 on to describe various computer or storage mediums that could be found on the subject premises,  
15 vehicles, or persons. *Id.*, ¶¶ 166-167. The affidavit then asserts that based on the affiant's review of  
16 evidence related to the investigation, computer equipment was used to generate documents used in the  
17 bribery scheme and "[t]hus, there is reason to believe that there is a computer system currently located"  
18 at the residences, vehicles, or on Defendants' persons. *Id.*, ¶ 167(e).

19 The question raised by Defendants' nexus challenge is this and only this: whether the affidavits  
20 at issue provide sufficient probable cause to believe that evidence of the conspiracy, including in  
21 electronic devices that the agent asserted were likely at the targets' residences, would be found in the  
22 targets' residences. The answer to that question is yes, as Judge Westmore determined when reviewing  
23 the warrants in the first instance. This Court must give "great deference" to that determination, making  
24 the answer even more clear. *Kvashuk*, 29 F.4th at 1085.

25 Ninth Circuit and other case law makes clear that the assertions contained in the affidavit, based  
26 on an affiant's training and experience, are sufficient to establish nexus in a white-collar and document-  
27 heavy case such as this. In *United States v. Sayakhom*, 186 F.3d 928 (9th Cir. 1999), the Ninth Circuit  
28 rejected a nexus argument similar to the one Defendants present here, holding as follows:

Sayakhom next argues that the warrant failed to establish probable cause to believe that any evidence of mail fraud would be found in her residence or car. An affidavit is sufficient if the stated facts would reasonably allow the magistrate to believe that the evidence will be found in the stated location. The relevant search warrant identified the subjects of the search as Sayakhom's residence, her person and her automobile. United States Postal Inspector George Kaufman, in an affidavit incorporated by reference in the warrant, stated his experience and belief that operators of businesses that involve paperwork typically maintain and carry business records into and out of their offices, in their cars and to and from their residences. This affidavit provided sufficient facts to allow the reasonable conclusion that the evidence described in the warrant would be found in Sayakhom's vehicle and residence. We affirm the denial of the motion to suppress.

*Id.* at 934 (citation omitted).

Additional cases hold similarly, affirming the basic proposition that subjects in white-collar and fraud cases often keep relevant documentary and electronic evidence at their residences and such assertions in an affidavit are sufficient to establish nexus. *See United States v. Abboud*, 438 F.3d 554, 572 (6th Cir. 2006) (“Defendant’s argument that there was no nexus between the locations searched, his home and his businesses, and the evidence sought is without merit. One does not need Supreme Court precedent to support the simple fact that records of illegal business activity are usually kept at either a business location or at the defendant’s home. Likewise, personal financial records are also usually stored at a person’s home or place of business. Defendant’s claim that these were conclusory statements based on the affiant’s ‘meager experience’ misses the mark.”); *Kvashuk*, 29 F.4th at 1085 (“the nexus between the items to be seized and the place to be searched can rest on normal inferences as to where a criminal would be likely to hide evidence of his crimes.”).

#### **B. The good faith exception precludes suppression in this case.**

In *United States v. Leon*, 468 U.S. 897 (1984) the Supreme Court held that the fruits of a search must not be invalidated if the police acted in good faith in executing a warrant later determined to be invalid. Decisions from the Ninth Circuit and elsewhere regularly apply the good faith doctrine in nexus cases so long as the “the affidavit was not so lacking in indicia of probable cause as to render reliance upon it objectively unreasonable.” *United States v. Crews*, 502 F.3d 1130, 1136 (9th Cir. 2007) (reversing a district court’s suppression order as to nexus because the good faith exception applied); *United States v. Ramos*, 923 F.2d 1346, 1354 (9th Cir. 1991) (“[W]hile the affidavit supporting the

1 Ramos search warrant may not have been the model of thoroughness, it cannot be said that the document  
2 did not link this location to the defendant.”) (overruled on other grounds) (citation omitted); *United*  
3 *States v. Lewis*, 733 Fed.Appx 83, 85 (4th Cir. 2018) (“Viewing the investigation summary along with  
4 other information in the affidavit regarding the investigating officer’s knowledge that perpetrators of  
5 financial frauds maintain and conceal records and indicia of their frauds in their residences, we conclude  
6 that the affidavit was not so lacking in indicia of probable cause as to nexus.”). Furthermore, “[i]n  
7 borderline cases, preference will be accorded to warrants and to the decision of the magistrate issuing  
8 it.” *United States v. Terry*, 911 F.2d 272, 275 (9th Cir. 1990) (citation omitted).

9 Here, even if this were a borderline case (which it is not), the good faith exception precludes  
10 suppression. As set forth above, the affidavit tied the subject locations to Defendants and the crimes at  
11 issue, and based on these assertions, Judge Westmore issued the search warrant. Given these assertions,  
12 “the affidavit was not so lacking in indicia of probable cause as to render reliance upon it objectively  
13 unreasonable.” *Crews*, 502 F.3d at 1136.

14 The cases Defendants rely on are distinguishable. In *United States v. Hove*, 848 F.2d 137 (9th  
15 Cir. 1988), the portion of the warrant affidavit describing nexus was not sent to the magistrate judge due  
16 to a stenographer’s error. *Id.* at 139. Accordingly, the Ninth Circuit held suppression was appropriate  
17 because due to that error, the affidavit “never linked Kimberly Hove or any suspected criminal activity  
18 in any way with the 2727 DeAnza residence.” *Id.* In contrast, the affidavit in our case linked each  
19 Defendant to the residences to be searched. The Ninth Circuit’s decision in *United States v. Grant*, 682  
20 F.3d 827 (9th Cir. 2012) is also far afield from our case. There, the affidavit to search Grant’s residence  
21 for a murder weapon was based solely on the allegations that his sons participated in the crime and did  
22 not tie Grant or his residence to the crime in any way. *Id.* at 832-33. Our affidavit, in contrast,  
23 described each Defendant’s role in the offense and the items expected to be found at their residences.  
24 Defendants also cite *United States v. Seybold*, 726 F.2d 502 (9th Cir. 1984). But in that case the Ninth  
25 Circuit held the affidavit sufficiently established nexus and rejected the defendant’s suppression  
26 argument. Other cases Defendants cite, such as *Untied States v. Weber*, and *United States v.*  
27 *Underwood*, were not cases in which nexus was at issue.

28 As set forth above, case law from the Ninth Circuit, as well as other courts, make clear that the

1 good faith exception is applicable to our case. None of the cases Defendants cite supports their  
2 argument that suppression is appropriate here.

3 **III. The March 2024 Cell Site Warrant Was Not Overbroad**

4 Defendants do not contest that the March 2024 cell site warrant affidavit contained sufficient  
5 probable cause to issue a warrant for Defendant's cell phone location information. Rather, Defendants  
6 assert that the warrant was overbroad because in addition to location information, it authorized seizure  
7 of "subscriber identities and addresses; billing and payment information; account start and service  
8 records; device and instrument identifiers; and complete connection/session records, including IP  
9 addresses, sector information, and timing-advance data." Dkt. No. 119 at 23.

10 Defendant's motion fails for several reasons. First, courts have long held that the non-content  
11 subscriber and account information Defendants seek to suppress is not protected by the Fourth  
12 Amendment. As such, the March 2024 cell site warrant was not overbroad and no suppression is  
13 warranted. *See United States v. Perrine*, 518 F.3d 1196, 1204 (10th Cir. 2008) ("Every federal court to  
14 address this issue has held that subscriber information provided to an internet provider is not protected  
15 by the Fourth Amendment's privacy expectation."); *United States v. Forrester*, 512 F.3d 500, 510 (9th  
16 Cir. 2008) (email and Internet users have no reasonable expectation of privacy in source or destination  
17 addresses of email or the IP addresses of websites visited); *Guest v. Leis*, 255 F.3d 325, 336 (6th Cir.  
18 2001) (finding no Fourth Amendment protection for network account holders' subscriber information  
19 obtained from communication service provider). In a recent case, the Ninth Circuit addressed this issue  
20 head on, holding that "a defendant has no expectation of privacy in IP addresses or basic subscriber  
21 information because internet users should know that this information is provided to and used by Internet  
22 service providers for the specific purpose of directing the routing of information." *United States v.*  
23 *Rosenow*, 50 F.4th 715, 737-38 (9th Cir. 2022) (citing *Forrester*, 512 F.3d at 510) (internal citations  
24 omitted).

25 The federal Stored Communications Act also makes clear that the information Defendants seek  
26 to suppress is not protected by the Fourth Amendment. *See* 18 U.S.C. §§ 2701-2713. While affirming  
27 that a warrant is required to obtain the *content* of electronic communications, the statute states that the  
28 government may obtain the following non-content information by issuing a subpoena (rather than a

1 warrant) from a provider of electronic communication: name; address; local and long distance telephone  
2 connection records, or records of session times and durations; length of service (including start date) and  
3 types of service utilized; telephone or instrument number or other subscriber number or identity,  
4 including any temporarily assigned network address; and means and source of payment for such service  
5 (including any credit card or bank account number). 18 U.S.C. § 2703(c)(2). Consistent with these  
6 requirements, during its investigation the government has obtained similar non-content cell phone  
7 records via subpoena and court orders for pen register trap and trace information. Fine Decl. at ¶ 3. The  
8 fact that the government also obtained this information via the March 2024 cell-site warrant is no  
9 different. Furthermore, even if there were a violation of the Stored Communications Act (which there  
10 was not), suppression would not be the proper remedy. *See United States v. Smith*, 155 F.3d 1051, 1056  
11 (9th Cir. 1998) (“[T]he Stored Communications Act expressly rules out exclusion as a remedy”);  
12 *Perrine*, 518 F.3d at 1202 (“[V]iolations of the ECPA do not warrant exclusion of evidence.”).

13 Second, Defendants’ motion is simply wrong on the facts. Specifically, Defendants assert that  
14 the “warrant sought broad categories of cellular data that were never even mentioned in the affidavit.”  
15 Dkt. No. 119 at 2. This is incorrect. As set forth above, the affidavit described the various cell-site data  
16 being sought by the government (Fine Decl. Ex. 3 at ¶¶ 83-84), call detail and toll records, including the  
17 date, time, and duration of calls (*id.* at ¶ 85), subscriber information, including names, addresses,  
18 methods of payment, and transactional records (*id.* at ¶ 86), among other types of records maintained by  
19 the cell phone companies. The affidavit further stated that this information “may constitute evidence of  
20 the crimes under investigation because the information can be used to identify the Target Telephones  
21 users and may assist in the identification of co-conspirators and/or victims.” *Id.* at ¶ 86. Based on the  
22 information contained in the affidavit, Chief Magistrate Judge Ryu issued the warrant.

23 Third, even if the cell site warrant were overbroad (which it is not), the good faith exception bars  
24 suppression. *See Crews*, 502 F.3d, at 1136 (9th Cir. 2007); *Terry*, 911 F.2d at 275. Here, for the  
25 reasons set forth above, it was not objectively unreasonable for the government to rely on the judicially-  
26 issued warrant and thus the good faith exception bars suppression.

1      **IV. The February 2024 iCloud Warrant and the May 2024 Email Warrants were not  
2      Overbroad**

3      The Ninth Circuit has long held that reviewing courts “are required to accord deference to the  
4      magistrate’s finding of probable cause and to uphold the magistrate if there is a substantial basis for  
5      concluding that the affidavit in support of the warrant established probable cause.” *United States v.*  
6      *Greany*, 929 F.2d 523, 524 (9th Cir. 1991). Furthermore, the good faith exception applies to the duly-  
7      issued iCloud and email warrants at issue here. Accordingly, the Court may not disturb the warrants  
8      unless the affidavits were so lacking in indicia of probable cause as to render reliance on upon them  
9      objectively unreasonable. *See Crews*, 502 F.3d at 1136.

10     Here, as with the cell-site warrant, Defendants do not contest that the affidavits at issue  
11    contained sufficient probable cause to issue warrants for Defendant’s iCloud and email accounts.  
12    Rather, Defendants assert that the warrants were overbroad because they permitted the government to  
13    seize evidence dated before December 1, 2021, and permitted seizure of communications between CWS  
14    employees (including David and Andy Duong) and state and local government officials aside from those  
15    specifically named in the affidavit.<sup>8</sup> Defendants fall far short of showing that the affidavits were so  
16    lacking in probable cause as to these areas so to render the government’s reliance on upon them  
17    objectively unreasonable.

18     As to the date range, the iCloud and email affidavits contained significant relevant facts dating  
19    back to July 2021 and earlier. For example, the affidavit described that in July 2021, the Oakland City  
20    Council (of which Thao was then a member) approved a CWS project at the former Oakland Army Base  
21    and that there was further City Council activity regarding CWS’s project in November of 2021, and  
22    relevant text messages in December of 2021. Fine Decl. Ex. 1 at ¶¶ 86-88; Ex. 4 at ¶¶ 125-127. This

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24     <sup>8</sup> This part of Defendants’ motion appears targeted at subsection h. of Attachment B, III., which  
25    permits the government to seize “Evidence, records, or communications related to any interactions  
26    between California Waste Solutions, Inc. (or any of its employees or representatives), and any state or  
27    local government body or government officials.” Fine Decl., Ex. 1 at Attachment B, III., h. (page 66 of  
28    the document). Even if this subsection were stricken, however, other subsections of Attachment B could  
     permit seizure of communications with state and local officials. For example, subsection d. permits  
     seizure of evidence, records, or communications related to Evolutionary Homes, which could include  
     communications with government officials, and Defendants’ motions do not challenge those other  
     portions of Attachment B.

1 fact is especially important because the affidavit also describes that the CWS project at the former  
2 Oakland Army Base was an essential part of Defendants' bribery scheme. *See* Fine Decl. Ex. 1 at ¶ 74;  
3 Ex. 4 at ¶ 87 (describing "Deal Points for Sheng Thao" and a land deal at Army base from Mayor staff  
4 as part of bribery scheme). Evidence relating to the City Council's initial approval of the CWS Army  
5 Base project in July 2021 (on which Thao voted) is relevant to the Army Base land deal that was part of  
6 Defendants' bribery scheme.

7 The affidavits further described the PEC's investigation into allegedly conduit political  
8 contributions made by Andy Duong and CWS to Thao and others between 2016 and 2018 and asserted  
9 that this "corroborates a pre-existing financial relationship between A. DUONG and THAO . . . and is  
10 consistent with a scheme whereby A. DUONG provides city officials financing in exchange for benefits,  
11 including official acts." Fine Decl. Ex. 1 at ¶ 104, n. 19; Ex. 4 at ¶ 144, n. 24. Given these assertions,  
12 Defendants cannot show that the affidavits were so lacking in probable cause as to information dated  
13 after July of 2021, as well as information dating back to 2020 and 2019 given the description of the  
14 preceding PEC investigation.

15 On this point, Judge Alsup's decision in *United States v. Lam*, 2020 WL 4349851 (N.D. Cal. July  
16 29, 2020) is instructive. In that case, the defendants asserted that a search warrant, which allowed  
17 seizure of materials from January 1, 2009, to September of 2017, was overbroad as to date range  
18 because "the alleged trade secret theft occurred between December 2013 and the summer of 2015." *Id.*  
19 at \*3. The order noted that the only assertions in the affidavit from 2009 were a single email dated  
20 August 11, 2009, that could be interpreted innocuously, and that the defendants maintained consulting  
21 relationships with competitors dating back to 2009. *Id.* at \*4. In denying the motion to suppress and  
22 "affording deference to Chief Magistrate Judge Spero," the order found that probable cause was shown  
23 only to allow searches dating back to August 11, 2009 (the date of the email). *Id.* The order further  
24 held, however, that the good faith exception applied to allow searches going back further to January 1,  
25 2009, because the warrant "was not so overbroad or so lacking in probable cause where it would have  
26 been objectively unreasonable to believe that evidence from that time period could be seized." *Id.*  
27 Accordingly, Judge Alsup denied the motion to suppress in its entirety and allowed searches for the full  
28 date range.

1        So too here. While most of the conduct described in the iCloud and email affidavits occurred  
2 after 2021, the affidavits contained relevant events dating back to at least July 2021 and earlier regarding  
3 the City Council’s approval of CWS’ Army Base deal and the potential pre-existing financial  
4 relationship between Thao and Andy Duong. Accordingly, Defendants have failed to show that the  
5 affidavit was so lacking in probable cause that it would have been objectively unreasonable to rely on  
6 the date range approved by Magistrate Judges Ryu and Westmore.<sup>9</sup>

7        Defendants’ challenge to communications between CWS employees (including Andy Duong and  
8 David Duong) and any state or local government officials fares no better. While the warrant affidavits  
9 named several City of Oakland and Alameda County officials that Defendants and Co-Conspirator 1 had  
10 relevant interactions with and/or attempted to bribe, the warrant should not be limited to  
11 communications with only those named individuals. The affidavits laid out in detail that Andy Duong,  
12 David Duong, and Co-Conspirator 1 engaged in a scheme to bribe public officials to benefit  
13 Evolutionary Homes and CWS. Accordingly, the duly-issued warrants reasonably permitted the  
14 government to seize communications between CWS employees and state or local officials. Defendants  
15 do not cite any case holding that a warrant must be limited to communications among people explicitly  
16 named in the affidavit. Accordingly, Defendants have not shown that the affidavits were so lacking in  
17 probable cause such that it would have been objectively unreasonable to believe they could seize  
18 communications between CWS personnel and state and local officials.

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25        <sup>9</sup> Should the Court find that any of the warrants is overbroad as to date range, and also find  
26 the good faith exception does not apply, under the Ninth Circuit’s severance doctrine, partial  
27 suppression, allows a court to strike invalid portions from a warrant and keep those that satisfy the  
28 requirements of the Fourth Amendment. *United States v. Sears*, 411 F.3d 1124, 1129 (9th Cir. 2005).  
Under the severance doctrine, “[o]nly those articles seized pursuant to the invalid portions need be  
suppressed.” *Id.* Accordingly, if the Court were to grant Defendants’ motion for partial suppression, it  
should only do so with respect to material dated before July of 2021.

## CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny Defendants' motion for a *Franks* hearing, deny Defendant's motion to suppress the fruits of the June 2024 residential warrants, and deny Defendants' motion to partially suppress the fruits of the February 2024 iCloud warrant, the March 2024 cell-site warrant, and the May 2024 email warrants.

DATED: January 14, 2026

Respectfully submitted,

CRAIG H. MISSAKIAN  
United States Attorney

/s/  
ABRAHAM FINE  
MOLLY K. PRIEDEMAN  
LLOYD FARNHAM  
Assistant United States Attorneys