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11 Attorneys for Defendant,  
12 ROBERT HOLLOWAY

13 IN THE UNITED STATE DISTRICT COURT,  
14 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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16  
17 UNITED STATES OF AMERICA, ) **Case No. CR-08-00224-OWW**  
18 )  
19 Plaintiff, ) **DEFENDANT ROBERT HOLLOWAY'S**  
vs. ) **NOTICE OF MOTION AND MOTION TO**  
20 ) **SUPPRESS WIRETAPS**  
ROBERT HOLLOWAY, et. al., )  
21 ) **Date: May 26, 2009**  
22 Defendants. ) **Time: 2:00 p.m.**  
23 ) **Place: Honorable Oliver W. Wanger**  
24 )

25 **PLEASE TAKE NOTICE** that at on May 26, 2009, at 2:00 p.m., or as soon  
26 thereafter as the matter may be heard in the courtroom of the Honorable Oliver W.  
27 Wanger, defendant Robert Holloway, by and through his counsel of record, will and  
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1 hereby do move this Court for an order suppressing the evidence illegally obtained as a  
2 result of Title III wiretaps.  
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4 This motion is based on the instant notice, the attached memorandum of points and  
5 authorities in support of this motion, all applicable Constitutional, statutory and case  
6 authority, and such other evidence and arguments as may be presented to the Court at the  
7 hearing on this motion.  
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9 Dated: April 21, 2009

Respectfully submitted,

11 s/ William L. Osterhoudt  
12 WILLIAM OSTERHOUDT,

13 /s/ Roger K. Vehrs, Esq.  
14 ROGER K. VEHRs,

15 Counsel for Robert Holloway  
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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. Introduction**

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5 Robert Cliff Holloway III is a 61-year old retired law enforcement officer who,  
6 together with his son Brent, operated a motorcycle repair shop called Road Dog Cycle  
7 (RDC) in the town of Denair until his arrest on the pending charges in July 2008. It is  
8 beyond dispute that Mr. Holloway and his business contributed to the welfare of the  
9 community in significant ways, and that the shop was a gathering place for all manner of  
10 motorcycle enthusiasts, from members of Christian-oriented riding clubs to organized elder  
11 bikers and military veterans who had formed clubs to pursue their love of cycling together.  
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14 What stuck in the craw of elements of law enforcement bureaucracy, however, was  
15 that Mr. Holloway's shop also became a gathering place for cycling enthusiasts who  
16 belonged to clubs characterized by law enforcement, and often by the members themselves  
17 as "outlaw motorcycle clubs" (OMC). These groups, bearing names such as the "Jus  
18 Brothers," "Alki-Haulers," the "East Bay Dragons," and most prominently the "Hells  
19 Angels" (hereafter "HAMC") and its associated clubs, combined a love for the open road  
20 and passion for motorcycles and riding with a free-wheeling, anti-authoritarian attitude  
21 (and a notable tendency of some members to flout society's laws by among other things,  
22 manufacturing and dealing in various controlled substances) that frequently brought them  
23 into sharp conflict with law enforcement authorities.  
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27 The record in this case shows clearly that what really enraged the enforcement  
28 bureaucracy against Mr. Holloway was not only did he openly associate and fraternize with

1 OMC members at their “swap meets,” parties, and at RDC itself where several such  
2 members were at various times employed, but that Mr. Holloway was himself a long time  
3 deputy sheriff in Stanislaus County prior to his retirement in the mid-1980s and that he  
4 continued to enjoy warm personal relationships with several current and recently retired  
5 members of the Sheriff’s Department and other police agencies in the Valley. For some  
6 members of the Central Valley Gang Impact Task Force (CVGIT) it was simply too much  
7 that Mr. Holloway – a former “sworn” law enforcement officer – openly hung around with  
8 Hells Angels and the like, and that some current members of the law enforcement “family”  
9 continued to maintain their friendship with him notwithstanding.  
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13 From this dismay on the part of Stanislaus County investigators and other members  
14 of CVGIT was born the notion, central to the Title III wiretap applications and to the  
15 eventual RICO Indictment, that Mr. Holloway had made his shop into an expansive  
16 criminal “enterprise” through which active law enforcement officers combined and  
17 conspired with OMC members to promote crimes such as illegal trafficking in stolen  
18 vehicle parts, extortionate credit transactions, firearms violations and drug trafficking, and  
19 to protect OMC perpetrators of such offenses from arrest and prosecution. While we  
20 believe this notion is entirely misconceived and that it will not bear the weight of this  
21 criminal prosecution, there is no doubt that this pervasive idea animated the investigation  
22 of Mr. Holloway from the start, and that it played a major role in the government’s effort to  
23 obtain authorization for Title III electronic surveillance in the fall of 2007.  
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27 An additional motivating factor in the investigation and prosecution of Mr.  
28 Holloway, including the decision to seek wiretapping authority cannot be overlooked, and

1 that factor consists of Mr. Holloway himself, as he is viewed through the prism of the local  
2 law enforcement establishment. Mr. Holloway is a colorful, brash, out-spoken man who  
3 has always attracted controversy. He admits to having had a drug-abuse problem going  
4 back to his days as a deputy sheriff, which he overcame nearly two decades ago. As a  
5 deputy, he cut a striking figure – long haired and hard driving, never shy about expressing  
6 his opinions and no stranger to conflict within the department. In 1998, after retiring and  
7 opening his motorcycle shop, he confronted a violent criminal who was attempting to rob  
8 the store when Mr. Holloway's son, Brent, was working there. During a struggle Mr.  
9 Holloway struck the assailant with his gun, which accidentally discharged, killing the  
10 assailant. Although a meticulous investigation ruled the killing accidental, the Stanislaus  
11 County District Attorney filed a murder charge and thereafter pursued it with uncommon  
12 vigor. The homicide complaint was discharged not once, but twice, at the preliminary  
13 hearing stage. When the District Attorney finally forced the case to trial, a jury acquitted  
14 Mr. Holloway in short order.

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20 Never one to lie low if he thinks he has been wronged, Mr. Holloway publicly  
21 castigated his accusers, and fought to bring their perceived misconduct before a civil grand  
22 jury. Local prosecutors and their investigators responded in kind, pointedly invoking their  
23 evolving suspicions about Mr. Holloway's business practices and OMC associations. The  
24 result was a poisonous atmosphere in which Mr. Holloway clearly believed he was being  
25 unfairly targeted and persecuted, while pursuing deputies and agents became increasingly  
26 rigid and uncompromising in their view that Mr. Holloway was a consummate evil that had  
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1 to be destroyed, along with the careers of those law enforcement officers who had  
2 remained friendly to him.

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4 After an extensive criminal investigation by CVGIT, which by the spring of 2007  
5 included FBI agents assigned to the case, failed to turn up a prosecutable case in spite of  
6 pervasive and highly effective use of informants and surveillance, the government turned to  
7 wiretapping. The initial application for Title III federal electronic surveillance was  
8 supported by an affidavit of FBI Agent N.T. Elias. This affidavit lays bear the strong  
9 animus of local law enforcement toward Mr. Holloway, including a gratuitous and baseless  
10 attack on the murder acquittal, with a botched synopsis of the evidence and a completely  
11 unsupported “opinion” that Mr. Holloway’s testimony and that of his son (which was  
12 accepted and credited by the jury) was untruthful. In a number of ways the September 7,  
13 2007 affidavit is deficient, filled with unattributed hearsay, baseless innuendo and  
14 unsupported opinions, and entirely irrelevant statements. We argue herein that the  
15 application is facially invalid under 18 USC § 2518 and all evidence gathered in the  
16 ensuing wiretap on Mr. Holloway’s business and cellular phones should be suppressed.

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18 Following the initial 30-day authorization of September 7, 2007, the government  
19 filed subsequent applications on October 5, 2007, and November 2, 2007. These  
20 applications, in addition to rehashing the allegations contained in the initial application,  
21 recited facts which supposedly derived from the wire intercepts that had occurred. In this  
22 motion we urge that these interceptions must be suppressed because they are the fruit of the  
23 invalid initial intercept order, and because, standing alone, each is facially invalid under §  
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1 2518. We propose to analyze the facial validity of these applications in the order they were  
2 submitted.

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4 **II. Discussion**

5 A. Applicable Law Governing Title III Federal Electronic Surveillance

6 In enacting the Omnibus Crime Control and Safe Streets Act of 1968, Congress was  
7 clearly concerned about the intrusive nature of electronic snooping, and, after extensive  
8 debate, codified a number of safeguards designed to authorize electronic surveillance only  
9 when the government is able to meet stringent requirements. Although a wiretap  
10 application is closely analogous to an ordinary search warrant in that approval requires a  
11 showing of probable cause supported by oath or affirmation, establishing to the Court's  
12 satisfaction that the evidence to be seized (in this case conversation) is likely to be  
13 uncovered and will disclose the commission of various specified offenses, there are  
14 significant additional requirements for electronic surveillance that are not present in the  
15 case of ordinary warrant applications. 18 USC § 2516 requires that before an application  
16 may be presented to the District Court, the government must obtain the specific  
17 authorization of the Attorney General of the United States, a Deputy Attorney General or  
18 Associate Attorney General, or a specified qualifying Assistant Attorney General. This  
19 authorization and any subsequent application to the District Court must specify the specific  
20 offense or offenses for which the wiretap application is sought, and the statute contains a  
21 list of qualifying offenses. Unless the application shows probable cause to believe that  
22 evidence pertaining to a violation of the specified offenses will be found through electronic  
23 surveillance, the application will not be granted.  
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1 18 USC § 2518 sets out the required contents of an application to the District Court  
2 for an Order authorizing or approving interception of wire, oral or electronic  
3 communications (18 USC § 2518(1)) and of an intercept order issued by the District Court  
4 on the basis of the application (18 USC § 2518(3)).  
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6 Every application must be made on oath or affirmation and must contain, *inter alia*,  
7 the following information: (a) the identity of the investigative or law enforcement agent  
8 making the application and of the officer authorizing the application; (b) a full and  
9 complete statement of facts and circumstances relied upon by the affiant to justify his  
10 belief that an order should be issued, including details of the particular offense involved, a  
11 particular description of the nature and location of the facilities or place where the  
12 interception is to occur, a particular description of the types of communications sought and  
13 the identity of the person (if known) committing the offense of whose communications are  
14 to be intercepted; (c) a full and complete statement as to whether or not other investigative  
15 procedures have been tried and failed or why they reasonably appear to be unlikely to  
16 succeed if tried or to be too dangerous. In addition the application must state the period of  
17 time for which the interception is required, and if the application seeks an extension, facts  
18 establishing probable cause to believe that additional communications will be captured.  
19 The application must also advise the issuing judge concerning all previous applications and  
20 the circumstances surrounding them and the results gained from such prior intercept orders.  
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26 Upon such application, the Court may issue an intercept order if the judge finds that  
27 (a) there is probable cause for a believe that an individual is committing or is about to  
28 commit a particular offense enumerated in § 2516; (b) there is probable cause for belief

1 that particular communications concerning that offense will be obtained through such  
2 interception; (c) normal investigative procedures have been tried and have failed or  
3 reasonably appear to be unlikely to succeed if tried, or too dangerous; and (d) probable  
4 cause to believe that the facilities or place where the communications are to be intercepted  
5 are being used or about to be used, for the commission of the offense. Additionally, each  
6 intercept order must identify the persons, if known, to be intercepted, the nature and  
7 location of the communications facilities, a particular description of the type of  
8 communications sought to be intercepted, and other facts and circumstances specifying and  
9 defining the extent of the intercept order. The interception shall be for no longer than 30  
10 days without extension, and each order must require that monitoring agents conduct the  
11 intercept so as to minimize receipt of innocent communication falling outside the scope of  
12 the order.  
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17 Of particular significance to the present motion are the statute's requirements  
18 concerning probable cause and necessity, that is, the requirement that other, less intrusive  
19 investigative means have either been tried and failed or reasonably appear unlikely to  
20 succeed if tried or too dangerous. This requirement has been a fertile source of litigation.  
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22 In *United States v. Gonzalez, et. al.*, 412 F.3d 1102 (9<sup>th</sup> Cir. 2005) the Ninth Circuit  
23 emphasized “[w]hen Congress enacted the wiretapping provisions of the [Act] it intended  
24 to ‘make doubly sure that the statutory authority [for wiretaps] be used with restraint and  
25 only where the circumstances warrant the surreptitious interception of wire and oral  
26 communications.’ Narrow construction of the wiretapping provisions furthers Congress’  
27 dual purposes for the act of ‘(1) protecting the privacy of wire and oral communications,  
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1 and (2) delineating on a uniform basis the circumstances and conditions under which the  
2 interception of wire and oral communications may be authorized.” 412 F.3d at 1110.  
3 (internal citations omitted). To obtain authorization to conduct electronic surveillance,  
4 “the government must overcome the statutory presumption against this intrusive  
5 investigative method by proving necessity.” *United States v. Rivera*, 527 F.3d 891, 897  
6 (9<sup>th</sup> Cir. 2008). In *United States v. Blackmon*, 273 F.3d 1204, 1207 (9<sup>th</sup> Cir. 2001) the  
7 Court acknowledged that “[t]he necessity requirement ‘exists in order to limit the use of  
8 wiretaps, which are highly intrusive’” and explained “[t]he purpose of these requirements  
9 is to ensure that wiretapping is not resorted to in situations where traditional investigative  
10 techniques would suffice to expose the crime.”

14 Under § 2518, the government may establish the requisite necessity for the wiretap  
15 sought by any one of three alternative methods. Specifically “[t]he government may show  
16 that traditional investigative procedures (1) have been tried but failed; (2) reasonably  
17 appear unlikely to succeed if tried; or (3) are too dangerous to try.” See *Gonzalez, supra.*,  
18 412 F.3d at 1112.

21 Applying this analysis in *Gonzalez*, the Ninth Circuit affirmed the District Court’s  
22 ruling that the government failed to set forth a full and complete statement establishing  
23 necessity where normal investigative procedures had not been adequately utilized,  
24 unutilized investigative procedures were reasonably likely to succeed, and unutilized  
25 procedures were not too dangerous to be tried. In reaching this conclusion the Court found  
26 that the government had not adequately used or tried to use physical surveillance before  
27 seeking the wiretap, even though there was evidence that surveillance could be successful.  
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1 While the wiretap affidavit noted an incident wherein police detected counter-surveillance  
2 efforts by a suspect, the Court “rejected the notion that a single incident of failed physical  
3 surveillance could establish that any subsequent surveillance could be ruled out as unlikely  
4 to be successful or too dangerous to pursue.” 412 F.3d at 1113. See also *Blackmon, supra*.  
5 273 F.3d 1204 (9<sup>th</sup> Cir. 2001). Additionally, the Court criticized the affidavit’s terse  
6 rejection of possibly productive grand jury subpoenas or search warrants, and noted that  
7 even though one of the affidavits suggested that the use of confidential informants or  
8 undercover agents was potentially productive, this tool was under-utilized before the  
9 government sought authorization to use electronic surveillance. 412 F.3d at 1114.  
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13 In the instant case, Defendant Holloway asserts that the wiretap applications based  
14 on affidavits by Agent Elias are materially deficient. They neither meet the “complete  
15 statement” requirement of § 2518, nor do they sufficiently attribute information to any one  
16 of the numerous, disparate law enforcement sources Agent Elias apparently drew upon.  
17 Furthermore, the applications failed to establish probable cause that the interceptions  
18 sought would likely develop evidence of the specific crimes for which authorization was  
19 requested or that specific persons would be likely to be overheard conversing about such  
20 crimes. Perhaps most important, the affidavits of Agent Elias not only failed to establish  
21 the necessity requirement of § 2518, but actually affirmatively show that less intrusive  
22 investigative methods had been effectively used and could be effectively used in the future  
23 to satisfy the goals of the investigation.  
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1 B. The Electronic Surveillance in this Case Was Based on Facially Invalid  
2 Applications, and All Resulting Evidence Must Be Suppressed Under 18 USC  
3 Section 2518(10)(A)

4 In this motion defendant Holloway makes a facial challenge to the affidavits of  
5 Agent Elias upon which the intercept orders were based. Federal wiretap applications are  
6 also subject to challenge under *Franks v. Delaware*, 438 US 154 (1978) on the ground that  
7 they contain material misstatements or omissions without which the application cannot be  
8 sustained. See *Blackmon, supra.*, 273 F.3d at 1208. Here, we believe that Mr. Elias'  
9 affidavits contain numerous factual misstatements and omissions, but we are still reviewing  
10 ongoing discovery to determine the extent of these misrepresentations and omissions and to  
11 assess their materiality to the validity of the intercepts, assuming of course the applications  
12 pass this test of facial challenge. When this matter was set for hearing in a telephone  
13 conference on February 9, 2009, the parties were clear that defendants would initially file  
14 facial challenges to be heard on May 26, 2009, and that *Franks* challenges would follow if  
15 appropriate. The present motion is limited accordingly.

16 Having said this, we should note that in some circumstances evidence has already  
17 been placed before the Court that contradicts assertions made by Agent Elias in his wiretap  
18 submissions. An example concerns the "carjacking" allegation against Mr. Holloway  
19 involving Richard Baptista, which was the subject of considerable evidence and cross  
20 examination at Mr. Holloway's initial bail hearing. Testimony at that hearing clearly  
21 contradicted Agent Elias' allegations with respect to the nature and scope of the law  
22 enforcement investigation of Mr. Baptista's claim when it was first made in 2004. We will  
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1 point out this and similar circumstances as they arise in the course of our discussion of the  
2 affidavits.

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4 **1. Agent Elias' Affidavit in Support of the Government's September 7,  
5 2007 Application for the Initial Intercepts on Mr. Holloway's Phones  
6 Is Facially Deficient Under the Statutory Standards Discussed Above**

7 (a) The Affidavit Does Not Contain a Full and Complete Statement of the  
8 Facts and Circumstances Relied Upon to Justify the Affiant's Belief  
9 that an Intercept Order Should Be Issued

10 Under the provisions of 18 USC § 2518(1)(b), the affiant must set forth not merely  
11 opinions, but concrete facts and circumstances to justify his asserted belief that a particular  
12 offense listed in § 2516 has been or is being committed by particular persons, and that the  
13 extraordinary remedy of electronic surveillance will yield evidence of these violations. In  
14 this case Agent Elias is not hesitant to list no less than eleven offenses listed in § 2516 as  
15 objects of the anticipated intercept. These are:  
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- 18 1. Trafficking in motor vehicle parts knowing that ID numbers have been removed  
19 or obliterated, 18 USC § 2321;
- 20 2. Transportation, sale or receipt of stolen vehicles, 18 USC §§ 2312-2313;
- 21 3. Violent crimes in aid of racketeering, 18 USC § 1959, specified in § 1959 is  
22 murder, kidnap, maiming, assault with a deadly weapon or great bodily injury,  
23 and threats of violence, all committed or threatened as consideration for a  
24 promise of anything of pecuniary value from a racketeering enterprise; or for the  
25 purpose of gaining entrance or maintaining position in the enterprise;
- 26 4. Illegal use of firearms, 18 USC §§ 922, 924;
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- 1 5. Conspiracy to commit any of these offense, 18 USC § 371;
- 2 6. Money laundering, 18 USC §1956(a)(1);
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- 4 7. Possession with intent to distribute controlled substances, 21 USC § 841;
- 5 8. Conspiracy to distribute and possess controlled substances, 21 USC §§ 841,846;
- 6 9. Importation of controlled substances, 21 USC §§ 952, 960;
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- 8 10. Conspiracy to import controlled substances, 21 USC § 963;
- 9 11. Use of a communication facility involving controlled substances, 21 USC §
- 10 843(b).
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12 (9/7/07 Elias Affidavit (hereafter “Affidavit”) pp. 6-7).

13 It is interesting that Agent Elias, rather than addressing quickly the import of these  
14 alleged offenses, launches initially into a thorough and fundamentally flawed attack on Mr.  
15 Holloway’s character and background. Regarding the “full and complete statement”  
16 requirements of § 2518(1), the Agent tells us that these allegations about Mr. Holloway’s  
17 past are based on his review of the reports of local police officers and members of  
18 CVGITs. (Affidavit, p.8). Beyond that rather terse description, Agent Elias does not  
19 bother to attribute any of the allegations he includes about Mr. Holloway to any particular  
20 officer, agent, or member of CVGIT. Instead, Agent Elias states that Mr. Holloway has  
21 been “long suspected” by law enforcement throughout Stanislaus County of being involved  
22 in criminal activities associated with HAMC. (Id., p.13). These unattributed “suspicions”  
23 do nothing to advance the legitimacy of this application; they simply constitute an effort to  
24 put Mr. Holloway in a bad light because of the suspicions of “law enforcement.”  
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1 Agent Elias then proceeds to list “several” occasions upon which Mr. Holloway was  
2 arrested but not convicted, as if to suggest that it was only through Mr. Holloway’s sinister  
3 manipulation of law enforcement that Mr. Holloway escaped conviction. Included among  
4 the three arrests mentioned is Mr. Holloway’s 1997 arrest for murder, on which Agent  
5 Elias acknowledges that Mr. Holloway was acquitted in January 2001. These ineffectual  
6 arrests of Mr. Holloway, capped either by dismissals of all charges or a jury acquittal, do  
7 not constitute evidence of any kind against him.  
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10 More reprehensible than this is Agent Elias’ reference to Brent Holloway’s  
11 testimony in his father’s murder trial resulting in acquittal as in conflict “with facts found  
12 during the investigation.” (Id., p.15). Mr. Elias does not detail any such facts “in  
13 conflict,” and obviously a jury reviewing these facts and hearing argument of counsel,  
14 found Mr. Holloway not guilty.  
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16  
17 Later, at pages 24 through 27 of his affidavit, Agent Elias provides a botched  
18 “synopsis” of the murder prosecution evidence, ending with the “opinion” of Elias and his  
19 co-FBI Agent Seese, that Mr. Holloway and his son Brent “were not truthful in their  
20 testimony.” (Id., pp.24-27). No basis at all for this opinion is provided; it is simply thrown  
21 into the affidavit to make the Magistrate think that Mr. Holloway got away with murder  
22 through giving false testimony. This is completely reprehensible, adds nothing to the  
23 showing required for a wiretap order, and should be stricken or ignored by this Court in  
24 assessing the sufficiency, not to mention the truthfulness, of Elias’ affidavit.  
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27 At pages 13 and 21 through 23, Agent Elias starts to develop the theme underlying  
28 his entire affidavit as well as this RICO prosecution. A brief history of HAMC, from a

1 narrow law enforcement prospective and without supporting facts appears at page 21,  
2 wherein this organization is painted as a truly monolithic and somewhat demonic “gang”  
3 committing crime throughout California and beyond. Interestingly, while setting forth the  
4 fact that various members of HAMC have indeed been convicted of drug and other  
5 violations over the years, the affidavit contains no facts from which one could conclude  
6 that any court has ever found that HAMC, as a motorcycle club, was primarily devoted to  
7 criminal activity, or that this club has ever been found to constitute an “enterprise” under  
8 federal law. The cited opinion of the Stanislaus County District Attorney notwithstanding,  
9 Agent Elias’ affidavit is woefully lacking in details to support the inference that HAMC is  
10 nothing but crime, and anyone connected with it, or even friendly toward it, must be  
11 equally reprehensible.  
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16 No doubt sensing that these dire descriptions of HAMC, while interesting,  
17 contributed little by way of probable cause regarding Mr. Holloway, Agent Elias asserts  
18 that certain motorcycle repair shops are alleged (by someone) to be serving or working  
19 with HAMC chapters in Merced and Stockton. Agent Elias cites “unverified” sources that  
20 RDC is the “center point” for ongoing HAMC criminal activity in Stanislaus County, but  
21 no supporting facts are provided for this admittedly “unverified” information. Citing  
22 unattributed information, Agent Elias reports “an indicator” that HAMC might be planning  
23 to start a Modesto chapter but acknowledges that there is no evidence of such an effort.  
24 (Id., p.22). This does not keep Agent Elias from stating that “it has been theorized that  
25 Road Dog Cycle would formally serve as the HAMC motorcycle shop for the purpose of  
26 the proposed Modesto chapter.” Thus, in the end, RDC’s criminal connection with HAMC  
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1 comes down to a theory about a possible but nonexistent HAMC chapter, which is itself  
2 nothing more than a rumor. We emphasize these deficient allegations in some detail,  
3 because throughout his affidavit Agent Elias presumes a criminal connection between Mr.  
4 Holloway and his business, and HAMC as if that connection had been firmly and  
5 legitimately established. Obviously it was not.  
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8 But Agent Elias is not finished attacking the character and background of Robert  
9 Holloway. Noting that Mr. Holloway medically retired from the Stanislaus County  
10 Sheriff's Department about twenty years ago, Agent Elias states as a fact that he retired "as  
11 a result of an internal affairs investigation, in which statements he made were determined  
12 to be untruthful." (Affidavit, pp.23-24). Agent Elias says nothing about what statements  
13 he was referring to or how they were determined to be untruthful, and does not attribute his  
14 claim to any named person. He does state that Kirk Bunch, an Investigator with the  
15 Stanislaus County District Attorney, says that the IA investigation in question found an  
16 office broken into and Mr. Holloway's file missing, and asserts that Mr. Holloway's  
17 fingerprint was found on an IA cabinet. (Id.). There is absolutely no evidence presented  
18 that these statements are true. There is no showing that Detective Bunch was employed by  
19 the County at the time of Mr. Holloway's retirement, and from his testimony during Mr.  
20 Holloway's bail hearing, the Court may take judicial notice that he was not so employed.  
21 Thus Detective Bunch's statement is unattributed hearsay. There is no indication that  
22 Agent Elias followed up Bunch's statement with any attempt to locate the source of such a  
23 claim made two decades after Mr. Holloway's retirement. This stale, incomplete claim is  
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1 another attempt to assassinate the defendant's character, but adds nothing to the  
2 prosecution's probable cause showing.

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4 Echoing the sometimes strident claims of some local law enforcement officers that  
5 Mr. Holloway might be exploiting his law enforcement connections for illegal purposes,  
6 Agent Elias opines that he has developed a "reasonable suspicion" that Mr. Holloway has  
7 maintained his law enforcement ties to unlawfully obtain information for the purpose of  
8 facilitating criminal activity and protecting himself from detection by the police.  
9 (Affidavit, pp.27-28). This "suspicion" is followed by a discussion of Mr. Holloway's  
10 wife, Cathy, who formerly worked at the Sheriff's Office, where she allegedly "queried"  
11 her department computer regarding persons of presumed interest to Mr. Holloway. (Id.,  
12 pp.27-33). This, if true, undoubtedly constitutes a violation of departmental policy and the  
13 affidavit reflects that Ms. Holloway was terminated as a result. However, there is no  
14 evidence that any of these queries were used by Mr. Holloway or anyone else to engage in  
15 criminal activity, and little evidence that the queries in question involved evidence of the  
16 specific offense listed by Agent Elias as the basis for seeking the intercept order.  
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21 Nevertheless, Agent Elias reports an "ongoing concern" that certain law  
22 enforcement acquaintances remain close friends with Mr. Holloway even though he has  
23 been "suspected" of ongoing criminal activity and associating with Hells Angels, one of  
24 whom was working for him at RDC when this application was made. (Id., pp.33-34). It  
25 is at this point that Agent Elias truly descends into the abyss of guilt by association. In a  
26 lengthy paragraph on page 33 the affidavit contains numerous, generally unattributed  
27 allegations about HAMC. No specific cases or members are mentioned, nor is there any  
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1 mention of cases in which HAMC members have been acquitted, or civil cases in which  
2 HAMC has prevailed against law enforcement. See *Hells Angles Motorcycle Club v. City*  
3 *of San Jose*, District Court Case No. 99-20022 (JF); 402 F.3d 962 (9<sup>th</sup> Cir. 2005). This is  
4 simply a diatribe summarizing what “law enforcement” supposedly thinks of this  
5 organization and it is clearly designed to discredit anyone, like Mr. Holloway, who  
6 associates with or employs HAMC members.  
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9 At pages 34 through 43 Agent Elias proceeds then to list the “certain law  
10 enforcement acquaintances” of Mr. Holloway who have remained friendly with him in  
11 spite of his contacts with members of such a dastardly group. Nothing in these allegations  
12 concerning various law enforcement officers establishes any criminal connection between  
13 Mr. Holloway and HAMC, nor do these disparaging statements about these officers show  
14 that they are attempting to assist the supposed criminal activities of HAMC, in conjunction  
15 with Mr. Holloway or otherwise. At pages 36 – 37 it is claimed that one William Gordon  
16 of the California Highway Patrol has conducted VIN verifications for Mr. Holloway on  
17 various motorcycles and that on March 15, 2006 unnamed DMV investigators determined  
18 that Gordon and Mr. Holloway violated a State law while attempting to create clear title on  
19 several motorcycles. The Affiant observes, however, that no charges had been filed in the  
20 approximate 18 months intervening between that supposed finding and Agent Elias’  
21 wiretap application. Virtually everything else regarding the named officers, who had the  
22 temerity to remain on good terms with Mr. Holloway in spite of the “law enforcement”  
23 opinion of him, constitutes rank speculation. Some of these accusations border upon the  
24 absurd, such as the claim on page 34 that Stanislaus County retired under-sheriff Myron  
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1 Larson, a friend of Holloway, had investigated the homicide involving Mr. Holloway and  
2 found it accidental “but the District Attorney’s Office filed criminal charges against Mr.  
3 Holloway.” In view of Mr. Holloway’s jury acquittal on these charges, acknowledged  
4 elsewhere in the affidavit, under-sheriff Larson’s finding of accidental homicide is hardly  
5 discredited. Other allegations concerning Larson constitute pure speculation. The only  
6 credible assertion that Mr. Holloway claimed to have any “inside” knowledge of the  
7 workings of law enforcement was provided by CW-1 in consensually monitored  
8 conversations in August and December 2006. (Affidavit, pp.42-43). In those  
9 conversations, Mr. Holloway allegedly suggested that he had inside information about the  
10 arrest of a certain sheriff’s deputy for selling drugs before the deputy was arrested and  
11 made certain observations regarding the deputy and how he would likely respond to the  
12 charges. However, there are no follow-up allegations concerning this matter, or  
13 demonstrating that Mr. Holloway was indeed capable of following the progress of that  
14 particular case while it was being investigated and presented for prosecution. Nor is there  
15 any suggestion that Mr. Holloway ever learned anything of import about the case. Thus the  
16 incident has the earmarks of huffing and puffing on Mr. Holloway’s part, of which he is  
17 clearly capable. But no criminal conduct is alleged and certainly nothing that might shine a  
18 light on the offenses for which the wiretap authorization was sought.  
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25 Turning to those specific offenses, the balance of the September 7, 2007 affidavit is  
26 woefully insufficient to satisfy the government’s burden of showing probable cause that the  
27 great majority of these listed offenses occurred. There is absolutely no evidence that Mr.  
28 Holloway was involved in any of the controlled substances violations listed in the affidavit.

1 At pages 46 and 47, the Affiant discusses a parole search of Randi Picchi (said to be a  
2 Hells Angel) during which chemicals associated with methamphetamine were found and,  
3 in the house, there was a “piece of paper” with Road Dog written on it. Since it is  
4 undisputed that Mr. Holloway knew Picchi, this find is particularly irrelevant. The Affiant  
5 also discusses Picchi’s ultimate federal sentence of 120 months and cites CW-3 for the  
6 claim that Picchi put a “hit” out on the cooperating buyer who got him arrested. (Affidavit,  
7 p.65). These matters concerning Picchi carry no weight concerning Mr. Holloway.  
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10 The Affiant’s attempts to draw a connection between drug violations and Mr.  
11 Holloway are unavailing. On page 46 Agent Elias cites a “untested CI” for the claim that  
12 this individual was a methamphetamine cook for Picchi and that Picchi and Bob Holloway  
13 stored chemicals in a custom trailer. Not only is this individual “untested,” having no track  
14 record of reliability, but his information is undated and bereft of detail. Yet another  
15 untested CI is cited for his claim that three years earlier, he had delivered a box of  
16 carburetors to RDC which he subjectively thought might have contained drugs. (Id., p.48).  
17 There is no support for the claim. Finally, a sixth “untested informant” allegedly claimed,  
18 at some point, that Bob Holloway had come to the residence of a Hells Angels prospect  
19 named “Monkey” and had assisted in the transportation of four kilos of methamphetamine.  
20 This untested claim contains no detail as to when Mr. Holloway allegedly did this, how it  
21 was done, or how the “untested” informer supposedly learned of it.  
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26 Equally lacking is any evidence that Mr. Holloway participated in money laundering  
27 in violation of 18 USC § 1956, even though that offense is prominently listed among the  
28 objectives of the proposed electronic surveillance. Agent Elias claims that the wiretap will

1 uncover violent criminal activity in aid of racketeering in violation of 18 USC Section  
2 1959. But, the Affidavit fails to demonstrate any such activity. On page 31, the Affiant  
3 cites Detective Bunch's suspicion that Mr. Holloway provided advice to one Candy  
4 Mitchell as to how she could kill her abusive boyfriend without being caught. But nothing  
5 is recited except Mr. Bunch's suspicion to support this claim. And from the affidavit it  
6 would appear that Ms. Mitchell has never been charged in connection with this individual's  
7 death. In the affidavit, Agent Elias mentions the desire of CW-1, while working as an  
8 informant at RDC, to perform "extra work" in the form of collections from recalcitrant  
9 customers. While the affidavit has Mr. Holloway saying that such work might become  
10 available, and that some people who don't pay "might have to get socked," there is no  
11 evidence this ever went beyond idle conversation.  
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16 At this point it is important to recognize that § 1959 does not embrace gratuitous  
17 violence, whether merely discussed or accomplished, or violent acts allegedly performed  
18 for personal reasons not associated with enterprise liability. Rather, § 1959 criminalizes  
19 acts of murder, kidnap, maiming, felonious assaults with a deadly weapon or bodily injury,  
20 and threats of violence committed or threatened as consideration for a promise of pecuniary  
21 value from a racketeering enterprise; or for the purpose of gaining entrance or maintaining  
22 position in such an enterprise. The only act of violence actually alleged against Mr.  
23 Holloway in Agent Elias' affidavit consists of the Baptista carjacking allegation, discussed  
24 at pages 47-48. It must be conceded by the government that this allegation had nothing to  
25 do with Road Dog Cycle, the alleged criminal enterprise at issue in this case. Rather,  
26 according to the affidavit, Baptista owed Mr. Holloway money for a personal debt and  
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1 signed a piece of paper turning over his vehicle to Mr. Holloway until the debt was paid.  
2 Baptista, of course, claims, according to the Affiant, that he signed this under duress while  
3 Mr. Holloway held a gun on him. This version is seriously in dispute but, even if true, the  
4 allegation does not state an offense under § 1959 because it has nothing to do with the  
5 Road Dog Cycle enterprise described in the affidavit but was a personal matter  
6 unconnected with any pecuniary consideration from an enterprise.  
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9 Additionally, while this is a facial challenge to Agent Elias' allegation, we cannot  
10 ignore, nor should the Court, that the facts asserted at page 48 in support of the carjacking  
11 allegation are simply untrue. Under-sheriff Larson did not investigate the incident alone by  
12 speaking only with Baptista. As we know based on the record of the bail hearing for Mr.  
13 Holloway, a deputy sheriff named Seymour thoroughly investigated Baptista's claim in  
14 2004, interviewed various witnesses as well as members of Baptista's family, and  
15 ultimately concluded quite reasonably that the case did not merit further action. The  
16 impression created by Agent Elias at page 48 of his affidavit is therefore inaccurate and  
17 highly misleading.  
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20 In addition to these listed offenses, Mr. Elias alleged that there was probable cause  
21 to believe that evidence of firearms violations would be found, but no showing in support  
22 of this claim appears in the affidavit. There is simply no evidence from which one could  
23 conclude that Mr. Holloway was illegally trafficking in firearms or otherwise committing  
24 firearms offenses. In sum, there is no basis even to argue that the affidavit provides  
25 probable cause that the enumerated offenses were committed by Mr. Holloway until one  
26 arrives at the motorcycle allegations contained in the affidavit. These fall generally into  
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1 two categories. There is an allegation of probable cause that Mr. Holloway is involved in  
2 exporting stolen motorcycles and parts. (Affidavit, pp.44-46, 66-67). There is also a claim  
3 of probable cause that Mr. Holloway is trafficking and transporting stolen motorcycles and  
4 parts, and doing so in connection with Road Dog Cycle. These should be separately  
5 considered.  
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8 At pages 44 through 46, Agent Elias describes three incidents occurring over a four  
9 year period, between 1999 and 2003. In the first such incident, Immigration and Customs  
10 Enforcement (hereafter "ICE") seized four motorcycles being exported by RDC to Finland.  
11 The affidavit claims that these vehicles bore "false export documentation." But there is no  
12 indication that any action was ever undertaken or that any charges were ever brought  
13 against RDC, and for all that appears these motorcycles were exported.  
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16 The next recited incident occurred on December 20, 2001, when ICE and the CHP  
17 seized a 1968 Harley destined for Japan at Long Beach, on the ground that it contained "an  
18 altered stock number." Again, according to the affidavit, the exporter was listed as RDC.  
19 Apparently nothing was done to follow this up at the time, but in 2004 (three years after the  
20 seizure) agents checked the VIN and found it registered to one Yoshi Chikazawa of Chica  
21 Custom Cycles, in Long Beach. Mr. Chikazawa has had dealings with RDC, but the  
22 affidavit contains no indication how this matter was disposed of and it appears that no  
23 accusation was brought against RDC, or for that matter, Chica.  
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26 Finally, on September 24, 2003, ICE and CHP seized a custom built motorcycle  
27 containing a 1975 Harley engine. This motorcycle was being exported by Chica Custom  
28 Cycles. The engine, determined to be stolen, was registered to one Rodney Harris who

1 advised Agents that his motorcycle had been stolen in 1978, in Fresno. Chica thereafter  
2 paid him \$3800 as compensation for the engine so that the engine would not have to be  
3 removed from the motorcycle before it was shipped. According to Harris, Chica told him  
4 they had purchased the engine from RDC, the owner of which, Mr. Holloway, later advised  
5 Harris that he thought the engine was clean, and offered to pay Harris additional sums for  
6 any inconvenience. No charges were ever brought as a result of this incident, but the  
7 Affiant reports that an ICE Special Agent named Rice believes that Mr. Holloway and  
8 RDC are selling and transporting stolen motorcycles and parts, and that Chica is conspiring  
9 with RDC. Agent Rice's opinion is not supported by the facts.  
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13 There is no question, on the other hand, that the affidavit includes information  
14 regarding the allegation of transportation and receipt of stolen motorcycles and parts. A  
15 DMV investigator is said to have decided that Mr. Holloway and CHP Officer William  
16 Gordon had unlawfully attempted to register three Harley Davidson motorcycles which  
17 were "cloned" (i.e. bearing the VIN numbers of three other motorcycles sold through  
18 RDC). (Affidavit, pp.53-53). But, while the Affiant states that the investigating agent  
19 (Hernandez) had drawn up perjury counts against Gordon, there is no indication that  
20 charges were ever brought even though the investigation occurred in March 2006. Other  
21 recitations in the affidavit merely recount Mr. Holloway and his son Brent purchasing  
22 motorcycles at auction in San Diego, and the uneventful delivery of motorcycles to ships in  
23 Los Angeles. (Id., pp.66-69). Agent Elias includes an opinion based on his "experience  
24 and knowledge" that Mr. Holloway likes to purchase wrecked motorcycles so he can utilize  
25 their valid VINs and rebuild them utilizing stolen motorcycle parts after which he can sell  
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1 them overseas. (Affidavit, p.67). But this appears to be speculation on the Agent's part.  
2 At one point agents followed a truck containing motorcycles from Mr. Holloway's  
3 residence to Bakersfield, and then followed these motorcycles and other parts to Los  
4 Angeles after they had been placed in a container. (Id., pp. 72-77). When Agents  
5 ultimately opened the container in Los Angeles, nothing came back stolen, and the  
6 container was closed, locked and shipped.  
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9 While most of the allegations concerning alleged possession of stolen parts of  
10 motorcycles are less than persuasive, Agent Elias does include detailed statements  
11 concerning the attempt by CW-1, under law enforcement supervision to obtain a "cheap"  
12 motorcycle from RDC. (Id., pp.88-104). Of course, the import of this episode is largely  
13 controlled by the informant, who explains to agents that "cheap" is code for stolen and in  
14 other ways purports to interpret statements made by Mr. Holloway and others as indicative  
15 of guilty knowledge and intent. Standing alone, this incident, while suspicious, raises a  
16 number of questions. If the disassembled parts delivered to RDC for CW-1 were stolen,  
17 why was the registered owner (Foster) still maintaining his ownership and even paying  
18 insurance premiums on the motorcycle until after the parts were delivered to RDC, and  
19 why did he report his bike "stolen" only after the FBI contacted him following recovery of  
20 the parts delivered to RDC, and advised him to file a stolen bike report? Taken as a whole,  
21 we submit the affidavit fails to live up to its promise of showing that the listed offenses  
22 were indeed occurring and that the electronic surveillance requested would establish them.  
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1 (b) The Affidavit Fails to Provide a Full and Complete Statement Establishing  
2 the Necessity of the Requested Interception, that is, a Statement as to  
3 Whether or Not Other Investigative Procedures Have Been Tried and Failed,  
4 or Why They Reasonably Appear Unlikely to Succeed if Tried, or Too  
5 Dangerous

6 By any yardstick, this affidavit fails the test of necessity. From the face of Agent  
7 Elias' affidavit it is plain that the government had extraordinary access to Mr. Holloway  
8 and his motorcycle shop as well as his friends and associates (including various Hells  
9 Angels) through confidential informants and even undercover agents. CW-1, introduced at  
10 page 35, was determined to be reliable and to have provided verifiable and credible  
11 information to law enforcement in the past. According to Agent Elias, CW-1 had no  
12 known criminal history and was motivated by his belief that HAMC was responsible for  
13 the suicide of his brother, who was a member. (Affidavit, p.36). Throughout the  
14 investigation CW-1 provided information regarding the activities of Mr. Holloway and  
15 events transpiring at RDC. CW-1 consensually monitored conversations with Mr.  
16 Holloway in August and December 2006. CW-1 reported on intimate conversations with  
17 Mr. Holloway regarding an individual named Dominguez, who was allegedly threatened by  
18 a Hells Angel named Womack. (Id., pp.57-58). CW-1 recorded Mr. Holloway talking  
19 about his supposed knowledge of the arrest of a police officer before it occurred and  
20 engaged in several follow up conversations on this topic. (Id., pp.62-63). CW-1 recorded  
21 a conversation between Mr. Holloway and his son Brent concerning their plan to drive to  
22 San Diego the following day to purchase motorcycles at an auction. During that  
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1 conversation, according to CW-1, Mr. Holloway spoke of visiting “Hero” during the trip  
2 and of being cheated by Hero’s associate Suganuma regarding motorcycles in Japan.

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4 Importantly, CW-1 spent so much time at RDC that he was hired as a part time  
5 employee, starting his job on March 12, 2007. (Affidavit, p.71). This afforded CW-1  
6 tremendous access to all that was transpiring in the shop and he consistently reported  
7 developments to his supervising agents. (Id., pp. 71-72). Allegedly Brent Holloway  
8 discussed guns with CW-1 and actually showed him one. (Id., p.72). On March 27, 2007  
9 CW-1 reported that Mr. Holloway had a motorcycle frame that had the neck removed and  
10 replaced with a different neck at RDC. CW-1 told agents that this frame was at Mr.  
11 Holloway’s residence along with two motorcycles and various parts which would soon be  
12 transported from Mr. Holloway’s home to Bakersfield by a driver determined to be Robert  
13 Finley. Believing that the replacement of a neck, which would include the motorcycle’s  
14 VIN, was illegal, agents set in motion long distance surveillance of these items from  
15 Denair to Bakersfield and beyond. All this due to CW-1’s extraordinarily close  
16 relationship with and access to Mr. Holloway. (Id., pp. 72-75). While working at the shop,  
17 CW-1 began reporting in detail on individuals working after hours at RDC building  
18 motorcycles at Mr. Holloway’s direction. According to CW-1, Danny Dugranrut, a Hells  
19 Angel, told CW-1 that members of a new motorcycle club called “Most Envied” ride with  
20 the approval of HAMC and that they were particularly under Dugranrut’s direction. (Id.,  
21 pp. 75-76). Insinuating himself into HAMC, on March 31, 2007 CW-1 reported that a  
22 certain individual had made full patch at the Thursday night “church,” two days earlier, and  
23 was now supposed to “prove himself” over the next several days. (Id., p. 76).  
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1 As time progressed, CW-1 continued working at RDC. When Brent reduced his  
2 work schedule to two days, he agreed to pay CW-1 “under the table.” According to CW-1,  
3 Brent even shared with him a desire of some sort to commit insurance fraud. (Affidavit, p.  
4 78). Mr. Holloway confirmed to CW-1 that they would continue paying him cash under  
5 the table, and CW-1 continued to press Mr. Holloway about “extra work” he might do to  
6 earn extra money. On May 10, 2007 CW-1 was answering phones at RDC when three  
7 Hells Angels known to him called and spoke, separately, to Mr. Holloway. CW-1 went on  
8 to describe these individuals by name, and to detail the times during which they were  
9 talking to Mr. Holloway at RDC.  
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13 All of these things CW-1 avidly reported to his law enforcement handlers.  
14 Answering phones at the shop he had unlimited access to the identities of the persons  
15 calling. Obviously his relationship with the Holloways was such that they conversed freely  
16 with him about a wide range of topics, many of which were of intense interest to law  
17 enforcement. He became close to Hells Angels and reported on the activities of individual  
18 members with whom he came into contact. On May 17, 2007, he learned of the death of a  
19 former RDC mechanic alongside a rural highway and he described this individual’s duties  
20 while at RDC, putting together motorcycles throughout the night when the shop was not  
21 open to the public.  
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25 On May 26, 2007 CW-1 was assigned by Mr. Holloway to work for him during a  
26 RDC-sponsored poker run motorcycle rally from RDC to the La Grange Saloon and  
27 another saloon in Tracy. CW-1 was tasked with providing security for a party at the Mint  
28 Saloon sponsored by the HAMC’s Nomad’s chapter to conclude the motorcycle rally.

1 CW-1 was present as Mr. Holloway socialized with HAMC members, one of whom was  
2 identified by CW-1 as a suspected methamphetamine cook. CW-1 reported all of this to  
3 his handlers, including Mr. Holloway's departure from the saloon at the same time as the  
4 HAMC members. (Affidavit, p.85). On June 14, 2007 CW-1 reported on extensive  
5 conversations with Mr. Holloway regarding collections and Mr. Holloway's impending  
6 travel to Lake Havasu to pick up some motorcycles. (Id., p.86). On June 21, 2007, CW-1  
7 reported that he overheard Mr. Holloway talking with a HAMC Fresno chapter member  
8 about a stolen Harley Davidson and provided details regarding this supposed conversation.  
9 (Id., pp. 86-87).

13 Undoubtedly, CW-1's most impressive infiltration of RDC consisted of his overture  
14 to buy a "cheap" motorcycle from Mr. Holloway so that he (CW-1) could qualify as a Hells  
15 Angels prospect. As a result CW-1 received a motorcycle in parts, at RDC, which, he  
16 claimed was delivered by Ray Heffington and a Hells Angels' prospect. Through CW-1's  
17 machinations he wound up bringing the motorcycle parts to Dugranrut's residence so that  
18 Dugranrut could assemble them. Over the course of several days, CW-1 was able to record  
19 conversations with Mr. Holloway which the government subsequently used in its allegation  
20 that Mr. Holloway knew or believed that the motorcycle was not legitimate. (Id., pp. 88-  
21 104). This was a truly comprehensive operation which demonstrates the extent to which  
22 CW-1 had gained the confidence of and was able to infiltrate Mr. Holloway's circle of  
23 acquaintances. No reason appears why CW-1 could not continue this course, enjoying  
24 complete and unfettered access to the Holloways, their employees, friends and associates.  
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1 Nor was CW-1 the only informant reporting extensively on Mr. Holloway during  
2 the investigation leading up to the wiretap application of September 7, 2007. CW-2, also  
3 reportedly bitter at HAMC, provided significant assistance. He went to HAMC functions  
4 and reported on the activities of people there. (Affidavit, pp.53-54). He recorded Mr.  
5 Holloway at a swap meet in Turlock and observed Mr. Holloway conversing with two  
6 “newer” Hells Angels. He reported on Mr. Holloway’s end of two telephone conversations  
7 regarding motorcycle sales. CW-2 told agents about Roland Badatscher, who he claimed  
8 had Harley stamps he used on parts to make them appear legitimate. CW-2 said that  
9 Badatscher claimed he shipped parts overseas all the time, filling containers with  
10 miscellaneous items to throw off detection. (Id., pp. 70-78). This information sent  
11 investigators in pursuit of Badatscher who told them he had delivered two motorcycles to  
12 Mr. Holloway a week earlier to be taken to Bakersfield by Mr. Holloway. Thus through  
13 the use of CW-2 agents were able to identify Badatscher as a person who frequently did  
14 business with Mr. Holloway and was familiar with his practices.  
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19 As the investigation progressed CW-2 was in a position to provide other information  
20 or corroborate information provided by CW-1. There was also a CW-3, willing and able to  
21 provide information regarding what he knew about Hells Angels members of interest to the  
22 agents. On January 30, 2007 CW-3 told Agent Elias that Randi Picchi had put out a “hit”  
23 on the cooperating drug buyer who had caused his arrest. (Id., p.65). CW-3 appeared to be  
24 a person of considerable status whose information was valued. (Id.). He was believed  
25 reliable and had provided accurate information in the past, and he was cooperating with the  
26 police voluntarily having been made no promises.  
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1 In view of this extensive informant presence, it is difficult to understand Agent  
2 Elias' claim at pages 113 – 114 that these confidential sources, while helpful, do not “have  
3 the ability to further infiltrate into the criminal activity of the Holloway CE and assist in  
4 law enforcement efforts.” (Affidavit, p. 113). As we have demonstrated, these informants,  
5 particularly CW-1, had infiltrated deeply into Mr. Holloway's affairs and had apparently  
6 unlimited access to information. There is no satisfactory explanation as to why these  
7 promising efforts were abandoned in favor of electronic surveillance.  
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10 Moreover, this case is rather unique in that not only informers had access to Mr.  
11 Holloway and his associates, but so did actual undercover agents of the California Bureau  
12 of Alcohol, Tobacco, Firearms Enforcement (BATFE). As Agent Elias sets forth at pages  
13 50-51, on October 22, 2005, BATFE undercover agents attended a Halloween party  
14 sponsored by the Merced chapter of the HAMC, where they encountered Brent Holloway,  
15 Randi Picchi and other known HAMC members. On the following day these undercover  
16 agents met with Mr. Holloway at RDC and monitored the conversation. Mr. Holloway  
17 discussed his associations, the prevalence of methamphetamine labs in the area, and other  
18 highly private topics. They overheard Mr. Holloway, apparently discussing motorcycles,  
19 tell an unknown caller that he “sent that one to Japan.” He invited the agents to a party at  
20 Dick's Bar, a known HAMC hangout sponsored by the Nomads chapter. On October 25,  
21 2005 the agents attended this party where they were greeted by Mr. Holloway and  
22 introduced to the president of the Jus Brothers motorcycle club. The agents discussed  
23 exporting motorcycles with this individual and observed Randi Picchi arrive and socialize  
24 with Mr. Holloway. Indeed, the agents were close enough to report that Mr. Holloway and  
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1 Picchi embraced often during the evening, and they observed Picchi conducting a hand to  
2 hand narcotics transaction with someone in the parking lot of Dick's Bar. (Id., pp.50-51).

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4 As Agent Elias tells it, these agents returned to RDC to meet with Mr. Holloway on  
5 December 13, 2005. They conversed with Dugranrut who was working at the shop and  
6 dropped off a motorcycle to be repaired as they met with Mr. Holloway. They had the run  
7 of the shop where they saw "HAMC paraphernalia." When the agents left the shop that  
8 day they intentionally left information designed to legitimize their "cover story" in the  
9 saddle bags of the motorcycle being repaired. When they later picked up the motorcycle  
10 the business card was missing, indicating to the agents that their legitimizing information  
11 had been viewed. Nevertheless, these agents never returned to RDC to exploit this  
12 promising avenue of investigation. Agent Elias gives no explanation for this except the  
13 bland statement that "their effectiveness did not further develop the investigation." The  
14 only possible conclusion is that no effort was made to exploit their obvious effectiveness,  
15 as a result of which, as the agent claims, "[c]urrently there has not been any opportunity to  
16 introduce a UCA." Agent Elias' explanation for this is entirely unpersuasive. (Id., p. 115).

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21 What of the traditional means of investigation consisting of physical surveillance?  
22 Agent Elias admits, as he must, that physical surveillance has been and will continue to be  
23 used. But he unaccountably dismisses the future effectiveness of surveillance in the teeth  
24 of a clear showing that surveillance had been successful. (Id., pp. 111-113). CVGIT  
25 literally surveilled Mr. Holloway all over the place, watching him attend a retirement party  
26 for a Turlock police officer (Affidavit, p. 62), traveling with his son to and from an auction  
27 in San Diego where they purchased motorcycles, and engaging in other activities. Agents  
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1 followed a pick-up truck containing motorcycles and parts from Mr. Holloway's residence  
2 to a house in Bakersfield, and then, after these items and others were placed in a large  
3 shipping container, surveilled the movement of that container to Los Angeles, where it was  
4 eventually searched and shipped. (Affidavit, pp. 72-77). Agents surveilled developments  
5 at RDC as CW-1 in his undercover capacity purchased motorcycle parts which were  
6 allegedly stolen. In an attempt to suggest that surveillance was impractical, Agent Elias  
7 notes an incident in November 2006 when surveilling agents saw Mr. Holloway conversing  
8 with two sheriff's deputies at RDC, including one Grogan. Though there is no evidence  
9 that Grogan identified either of the surveilling agents, the affiant claims that the mere  
10 possibility that he could have done so exemplifies the difficulties of conducting physical  
11 surveillance. But this kind of conjured problem was found insufficient to discount the  
12 value of surveillance in *Gonzalez, supra*. Clearly opportunities to surveil were legion and  
13 were useful and the government abandoned these without just cause in favor of electronic  
14 surveillance.  
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19 Not only did the government develop cooperating witnesses of proven reliability  
20 and actual undercover agents to press the investigation forward, the government also used a  
21 number of "untested" informers who, while insufficiently reliable to make a case,  
22 nevertheless provided an additional opportunity to gain information that would prove  
23 useful in a traditional investigation.  
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26 Finally, the Agent's terse dismissal of the effectiveness of search warrants and grand  
27 jury subpoenas is unpersuasive. Search warrants were used on the course of the  
28 investigation and the prediction that a grand jury investigation would be unproductive is

1 speculative. While the Affiant is fond of complaining that Mr. Holloway's friendship with  
2 various Stanislaus County deputies made it difficult to conduct an investigation, the fact is  
3 that an extensive investigation was indeed conducted and that nothing in Mr. Holloway's  
4 supposed contacts brought it to a halt. In this case the government was far too quick to  
5 abandon the traditional investigative methods open to it when those methods were  
6 producing important evidence that advanced the government's case. This is a classic case  
7 in which the decision to wiretap was one of expediency and not one of necessity. For this  
8 reason, this wiretap fails to conform to the requirements of Section 2518, and the resulting  
9 evidence should be suppressed.  
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13 **2. The October 5, 2007 Affidavit from Agent Elias in Support of**  
14 **Continued Electronic Interception Is Facially Invalid and the**  
15 **Resulting Wire Interceptions Should Be Suppressed**

16 On October 5, 2007, Agent Elias authored an affidavit in support of continued  
17 interception on the cellular telephone of Mr. Holloway and the land line assigned to Road  
18 Dog Cycle. Additionally, Agent Elias' affidavit sought new authority to intercept a second  
19 land line telephone associated with Mr. Holloway.  
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21 This affidavit is subject to the same objections that pertained to the early September  
22 affidavit, especially because Mr. Elias specifically incorporates the prior affidavit by  
23 reference and relies upon it in seeking the October intercept order. (October Affidavit  
24 (hereafter "Oct. Aff."), p.11). Therefore, Agent Elias' October affidavit is invalid because  
25 it is the fruit of the poisonous tree consisting of the earlier flawed affidavit, and the  
26 interceptions resulting from the October affidavit should accordingly be suppressed. *Wong*  
27 *Sun v. United States*. 371 US 471 (1963). The October affidavit is subject to suppression  
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1 on this basis, not merely because its material allegations are invalid under the fruit of the  
2 poisonous tree doctrine, but because the entire document is fatally tainted since the impetus  
3 for seeking the second intercept order was itself infected by the prior illegality. See  
4 *Murray v. United States*, 478 US 533 (1988).  
5

6 Additionally, however, the October 5, 2007 affidavit of Agent Elias is defective  
7 standing alone and thus cannot support the ensuing intercept order. Although the affidavit  
8 lists the same eleven “target” offenses as the object of the prospective surveillance, Agent  
9 Elias in effect concedes that most of these offenses are not realistically involved. He  
10 defines the “criminal activity involving the HAMC” supported and conducted by Mr.  
11 Holloway as “the trafficking of stolen motor vehicle parts, the altering, tampering, or  
12 removing of vehicle identification numbers in an effort to conduct chop-shop operations,  
13 and violent crimes in an effort to collect extortionate extensions of credit.” In other words,  
14 in spite of the sometimes inflammatory allegations in the affidavit, there was no realistic  
15 expectation that the proposed interceptions would yield evidence of money laundering,  
16 drug trafficking, or firearms violations. (Oct. Aff., p.27).  
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18 Agent Elias’ October 5, 2007 affidavit contains the same allegations regarding Mr.  
19 Holloway’s character and background, the base nature of the HAMC and Mr. Holloway’s  
20 association with members, and his alleged exploitation of his law enforcement associations  
21 in aid of criminal activity as appeared in the earlier affidavit, and these largely baseless  
22 claims are subject to the same objections made in the proceeding section of the  
23 memorandum. Indeed, the first 65 pages of the October affidavit are a rehash of  
24 allegations made in the previous application.  
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1 On page 66 of his October affidavit, Agent Elias begins his “analysis” of the 373  
2 “pertinent calls” the FBI had intercepted under the September 7, 2007 order. Agent Elias  
3 states that these pertinent calls related to “stolen motorcycles, illegal firearms transactions,  
4 fraud, forgery, extortion, and law enforcement corruption.” (Oct. Aff., p. 66). We shall  
5 not comment on each of the intercepted phone calls discussed by Agent Elias, as the  
6 interceptions described by the Affiant are before the Court for review. We will discuss  
7 these interceptions sufficiently to support our view that, taken as a whole, they do not  
8 justify continued interception of Mr. Holloway’s private telephone conversations.  
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11 The affidavit includes more unsupported and conclusory allegations about Mr.  
12 Holloway’s supposed ties to HAMC members and his alleged exploitation of law  
13 enforcement information to protect the HAMC from law enforcement action. (Id., pp. 67-  
14 68). These conclusory allegations should be disregarded in assessing the facial validity of  
15 the affidavit. Under the general topic of “financial crimes, forgery and fraud” (id., p.68),  
16 the affiant sets out a number of calls which fall far short of establishing the commission of  
17 these offenses. These include a telephone conversation between Mr. Holloway and his son  
18 regarding a \$7500 cash transaction by Brent at a bank and bank employees advising Brent  
19 that transactions over \$3500 are now reported. Mr. Holloway seemed surprised and  
20 questioned whether the practice applied to everyone. (Id., p 68). Included also are two  
21 discussions regarding the registering of a motorcycle belonging to “Diane Blue’s” son with  
22 the DMV. The son, Brian, was serving in the military and there were difficulties in  
23 registering the motorcycle. The conversations indicate, at most, that Mr. Holloway would  
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1 attempt to cut corners at the DMV to assist. It is difficult to describe these sparse  
2 conversations as indicating a pattern of financial crimes, forgery, and fraud.

3  
4 A number of telephone calls are cited to support the claim that Mr. Holloway and  
5 RDC are engaging in criminal activities related to stolen motorcycle parts, altered parts,  
6 and/or the destruction of stolen parts. (Oct. Aff., pp. 69-72). Many of these reported calls  
7 depict the activities of a motorcycle repair shop engaged in the purchase and sale of  
8 motorcycles and parts, when on many occasions the parts brought in the shop are or may be  
9 stolen. Various calls depict Mr. Holloway telephoning police sources to learn whether  
10 things are stolen. (Id., pp. 71-72). The Affiant invariably draws the inference from such  
11 contacts that Mr. Holloway is seeking to further criminal activity by learning such  
12 information, but that inference is hardly inevitable. There are obviously good reasons for a  
13 person in Mr. Holloway's position to use available resources, on his own behalf and that of  
14 customers, to find out whether certain parts are legitimate.  
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18 The Affiant purports to identify a number of calls that he feels demonstrate "the  
19 corruption of law enforcement" through various employees who provide information to  
20 Mr. Holloway "in furtherance of other crimes." Again, the cited calls tend to focus on Mr.  
21 Holloway checking with Sheriffs Deputy Joseph Tyler and others to make sure given parts  
22 are legitimate. (Id., pp. 72-73, 76-77). Many of the calls falling into this category of the  
23 affidavit (police corruption) are between Mr. Holloway and long-time private investigator  
24 Gary Ermoian. On September 20, 2007 Ermoian called Mr. Holloway to advise him he  
25 should "watch his back" because law enforcement was conducting active surveillance on  
26 him and that "something is up." Ermoian attributed that information to "somebody right in  
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1 the court system” who would know if police were seeking some court order. (Oct. Aff., pp.  
2 72-73). In a later call the same day Mr. Holloway told Ermoian that Stephen Johnson was  
3 on his way to RDC to run his “dope dog” through the business. (Id., p. 73). Agent Elias  
4 was aware that Holloway hired Johnson to do such searches. Still later on September 20,  
5 2007 Mr. Holloway was overheard calling Danny Dugranrut, often employed at RDC and a  
6 member of HAMC, to advise him of the warning. Investigator Ermoian subsequently told  
7 Mr. Holloway that a search warrant might be executed at RDC based on information  
8 Ermoian had received. Ermoian said the matter might concern firearms, and Holloway  
9 recounted a recent incident where he had refused to “even look at” a gun someone tried to  
10 sell him under suspicious circumstances, and that he could think of no other incidents  
11 involving firearms at his shop.  
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16 We do not read these allegations as establishing a pattern of corruption of law  
17 enforcement by Mr. Holloway. As already indicated, requesting Mr. Tyler to check on the  
18 legitimacy of various items may or may not put Mr. Tyler in a good light from the  
19 perspective of his employer, but it does not establish criminal conduct on Mr. Holloway’s  
20 part. There is no indication he was seeking to “corrupt” Tyler during these conversations.  
21 Ermoian, according to both the September and October affidavits was a long time private  
22 investigator who had worked for Mr. Holloway and attorneys representing Mr. Holloway.  
23 From the allegations in this affidavit, it appears that Ermoian, in his professional capacity,  
24 was relaying pertinent information to Mr. Holloway regarding possible law enforcement  
25 interest in him and his business. There is no indication that Ermoian was asking Holloway  
26 to commit a crime or to engage in any illegal activity. To the contrary, Ermoian was  
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1 advising Mr. Holloway to make sure everything was right. Mr. Holloway responded by  
2 arranging for a “drug dog” to go over the premises and by advising his employee,  
3 Dugranrut, of the situation.  
4

5 Undoubtedly, law enforcement would have preferred that Ermoian not have  
6 received the information he subsequently relayed to Holloway and charges in the  
7 Superseding Indictment make it clear that the government regards these interactions as  
8 obstructive in nature. But Mr. Holloway does not appear to have obstructed anything.  
9 Instead he appears to have received from a legitimate investigator evidence he had not  
10 sought but nevertheless accepted, on the basis of which he conducted lawful activities to  
11 protect himself and his business and to ensure that he was not in violation of the law. In  
12 sum, the allegations on pages 72 through 77 of the October affidavit do not show probable  
13 cause to believe that Mr. Holloway was acting criminally to corrupt law enforcement.  
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17 Most of the balance of the October affidavit (pages 78 through 81) concern Mr.  
18 Holloway’s credit practices and the government’s belief that the practices were extortionate  
19 in nature. As we know from bail/detention proceedings that have taken place, these  
20 arrangements generally consisted of Mr. Holloway extending interest-free credit terms to  
21 motorcycle purchasers who did not really qualify for such credit, with the understanding  
22 that if the purchaser failed to make good on his obligation to pay or, in the alternative, to  
23 return the motorcycle to RDC, Mr. Holloway would inform the president of the motorcycle  
24 club to which the purchaser belonged so that the club, which presumably enjoyed good  
25 relations with Mr. Holloway, would persuade the member to pay the debt or return the  
26 bike. These arrangements are involved in the telephone calls described at pages 78 through  
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1 82. The purchaser principally identified in these pages was neither threatened nor harmed,  
2 and the fact that Holloway and purchaser Darnell Levingston engaged in “heated  
3 exchanges” about Levingston’s debt on his motorcycle does not establish extortion on Mr.  
4 Holloway’s part. When Mr. Holloway telephoned East Bay Dragon President Tobie Gene  
5 Levingston, the purchaser’s uncle, to get his help, Levingston advised Mr. Holloway to  
6 take Darnell to Court. While Mr. Holloway engaged in some “tough talk” during his  
7 conversation with Tobie Gene, no one threatened or harmed Levingston. Rebuffed by  
8 Tobie Gene, Mr. Holloway called another East Bay Dragon member, Alfredo Rincon, to  
9 see if he could help get the motorcycle club to “bring it up in church” (discuss the matter in  
10 a club meeting) so that Darnell Levingston would pay his debt.  
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14 These conversations are devoid of explicit threats and there in not the slightest  
15 suggestion that anyone laid a hand on Darnell Levingston. Of course, as we know now  
16 from subsequent bail proceedings in which Levingston testified for the defense, Levingston  
17 never felt threatened and indeed delayed paying Mr. Holloway for an additional nine  
18 months before settling the debt. During this time he engaged in a number of conversations  
19 with Mr. Holloway which were not threatening in nature, none of which were included in  
20 Mr. Elias’ affidavit. The agents claim (at pages 80 – 81) that unspecified credit customers  
21 of RDC appear shaken due to their “voice inflection” when speaking with Mr. Holloway is  
22 clearly conclusory and adds nothing to the extortion claim.  
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26 Agent Elias further contends that intercepted calls show that Mr. Holloway was  
27 acting as a “pawn broker” for firearms transactions. But the two telephone calls cited in  
28 support of this allegation do not make the case that this is a general practice engaged in by

1 Mr. Holloway. In one of these calls, Brent Holloway told a caller that the shop would  
2 accept his pistol as credit for payment, and in the other Holloway is described speaking  
3 with investigator Ermoian about the attempts of one Mike Keyes to sell a 45-caliber pistol  
4 to Mr. Holloway. Absolutely no details of any kind are provided regarding this  
5 conversation, whether any conclusion was reached or whether Mr. Holloway ever came  
6 into the possession of Mike Keyes' pistol. Given this lack of specificity, the Agent's  
7 conclusion that part of the business is to accept firearms with Holloway acting as a "pawn  
8 broker" or gun dealer is completely without foundation. Nor is it suggested how the cited  
9 discussions violate the federal firearms statutes listed in the preamble to the affidavit.  
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13 Finally, at pages 82 – 83, Agent Elias attempts to implicate Mr. Holloway in  
14 activities related to the "manufacturing and distribution of controlled substances, namely  
15 marijuana and methamphetamine." The sparse allegations in support of this claim are  
16 deficient. In one call John Bird asked Mr. Holloway to make him some "leafy things" to  
17 which Mr. Holloway is described as "confused." When Bird finally explains that he wants  
18 some cannabis, Mr. Holloway advises that he would bring "them" to Bird's house and  
19 leave them on the coffee table. This is the only clear reference in the affidavit to Mr.  
20 Holloway having anything to do with cannabis, and even Mr. Elias asserts that it is  
21 believed "that Holloway provides marijuana to friends and associates and is a user of  
22 marijuana." Nothing in Mr. Holloway's discussion with Bird on September 27, 2007  
23 discloses that Holloway is involved in "the manufacture and distribution of controlled  
24 substances."  
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1 The other allegations in this section do not pertain to Mr. Holloway at all, but rather  
2 to employees at RDC. It appears that one “Veronica” called employee James Wilburg to  
3 see if James (believed to be her husband) could get 1/16<sup>th</sup> of an ounce for her uncle. James  
4 said he could and that it would cost about \$60, causing investigators to believe it was  
5 methamphetamine. In another call a person named “Ray” called Danny Dugranrut at RDC  
6 and discussed an apparent project involving Dugranrut to grow marijuana believed by CW-  
7 1 to be destined for HAMC. Mr. Holloway plays no part in either of these conversations.  
8  
9 (Id., pp. 82-83).  
10

11 We submit that the conversations cited do not provide any basis for the continued  
12 interception of Mr. Holloway’s telephone conversations. In other words, the agent fails to  
13 provide a complete statement of facts and circumstances (as opposed to conclusions and  
14 opinions) of probable cause that further interception is likely to result in the disclosure of  
15 the listed crimes.  
16

17 Nor does Agent Elias’ affidavit establish that continued electronic surveillance of  
18 Mr. Holloway’s constitutionally protected conversations was necessary in October of 2007.  
19 Agent Elias opines that use of telephones “is considered the most efficient and timely way  
20 to facilitate and conduct such a complex criminal enterprise.” (Id., p. 91). It is undoubtedly  
21 true that people often facilitate and conduct their activities – legal and illegal- through the  
22 use of telephones. But if the “efficiency” of this method of communication were enough  
23 there would be no need for a carefully drawn wiretap statute and the police could simply  
24 monitor conversation in every case. Despite the agent’s attempts to paint the Holloway  
25 “enterprise” as a vast and far-flung criminal conspiracy, the *facts* gleaned from the Elias  
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1 affidavits, as distinguished from the ubiquitous opinions and conclusions, do not support  
2 this picture. At bottom, Robert Holloway and his son operated a small motorcycle repair  
3 shop in a small Central Valley town. Although he retired from law enforcement two  
4 decades ago he still had a few friends in law enforcement and, as a free and sometimes  
5 rebellious spirit, he hung around with Hells Angels and other OMC members and often  
6 employed them in his shop. His business was literally riddled with informers who fed the  
7 authorities a constant stream of detailed information about his comings and goings, his  
8 associations and his motorcycle related activities. Regardless of whether Mr. Holloway  
9 broke the law in any of the ways ascribed to him by the government, there was nothing  
10 complex or sophisticated about his operations, and no reason why only electronic  
11 surveillance could reveal offenses.  
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16 All of the alternative resources described by Agent Elias in his September 7, 2007  
17 application were still available as of October 5. There were confidential informant  
18 witnesses with virtually unrestricted access to Mr. Holloway, his employees and associates.  
19 There were at least six untested informants who provided information for agents to  
20 corroborate their reliable tested informants. There were the BATFE undercover *agents*  
21 who, through their approaches to Mr. Holloway, had infiltrated the HAMC in 2005,  
22 resulting in the arrest and conviction of Randi Picchi, and perhaps others as well. And, of  
23 course, there were the limitless opportunities for physical surveillance, which were  
24 underutilized by the government but yielded impressive results when employed.  
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27 Invariably the agent's answer to all this is that Mr. Holloway's "law enforcement  
28 experience" ( by then nearly 20 years in the past) and his supposed connections with a

1 dwindling and aging number of friends still in the Sheriff's Department or other local  
2 agencies, made all normal investigative methods impossible or intolerably difficult. This  
3 pervasive excuse will not wash. The agents had ample traditional means to investigate Mr.  
4 Holloway and employed them successfully, and deliberately chose to pursue the easier,  
5 more "efficient" path of electronic surveillance. These interceptions, and all evidence  
6 derived from them, must be suppressed.  
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9 **3. The November 2, 2007 Affidavit from Agent Elias in Support of**  
10 **Continued Electronic Interception Is Facially Invalid and the**  
11 **Resulting Wire Interceptions Should Be Suppressed**

12 On November 2, 2007 Agent Elias presented an affidavit in support of a third  
13 application for a wire interception of Mr. Holloway's telephone conversations on his  
14 cellular telephone, a private land line, and a land line at his place of work. Agent Elias'  
15 affidavit closely tracks his allegations in the applications dated September 7, 2007 and  
16 October 5, 2007. Again, Agent Elias specifically incorporates these prior affidavits in their  
17 entirety into the November 2, 2007. (November Affidavit (hereafter "Nov. Aff.") pp.30-  
18 31). For this reason the November 2, 2007 application is fatally tainted by its heavy  
19 reliance on evidence gathered during the unlawful intercepts conducted in September and  
20 October pursuant to the prior authorizations. Under the familiar doctrine of the fruit of the  
21 poisonous tree, the November application and its fruits must be suppressed.  
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25 In the November application Agent Elias practically abandons any attempt to justify  
26 reliance on electronic surveillance as opposed to alternative, less intrusive avenues of  
27 investigation. He simply repeats the mantra that these alternative means, regardless of how  
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1 successful they have been, will not adequately advance the goals of the investigation. Of  
2 course no kind of investigation, including electronic surveillance, will ever promise to  
3 fulfill all of the goals agents would like to see achieved in an investigation. Thus it is clear  
4 that agents make these statements because it is their only way of justifying what is  
5 otherwise unnecessary wiretapping.  
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7  
8 In the November affidavit Agent Elias acknowledges the work accomplished by  
9 confidential informants, but he under values that work, pointedly omitting the major  
10 inroads made into Mr. Holloway's business by CW-1 and CW-2. He does not explain  
11 why the BTAFE Agents utilized in 2005 to get at the HAMC through Mr. Holloway,  
12 cannot be utilized or why other similarly situated agents cannot be used in view of the ease  
13 with which these BTAFE agents had ingratiated them selves with Mr. Holloway and  
14 become familiar with his motorcycle shop. Even as Agent Elias decries physical  
15 surveillance as impractical to achieve the goals of the investigation, he describes the  
16 extensive use of such surveillance to trail Mr. Holloway on various trips associated with  
17 motorcycle purchases, and even a meeting with Carl Ellis and Micah Dizney to discuss a  
18 debt owed to RDC by Ellis. For the most part the allegations of the November 2, 2007  
19 affidavit rely heavily on inferences and conclusions drawn by the Agent from intercepted  
20 conversations that do not necessarily support these inferences. At pages 31 through 34, for  
21 example, the Agent details a number of monitored conversations wherein Mr. Holloway  
22 complains about a debt owed and talks CW-1 about CW-1 collecting the debt, by means  
23 the Agent concludes could be violent. But this peters out quickly, and no attempt is  
24 apparently ever made to use this or any other debt owed to RDC. Therefore the Agent's  
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1 conclusion that “this interaction with CW-1 is a regular occurrence for Holloway” and that  
2 Holloway has “repeatedly been engaged in business practices wherein failure to pay for  
3 credit extended results in the violent taking of property and physical assaults” are not  
4 supported by the paragraphs that precede it. (Nov. Aff., pp.33-34). This is particularly true  
5 since nothing apparently happened to bring harm to anybody. As is often the case, all that  
6 really happened is talk by Mr. Holloway. Similarly uses a number of paragraphs of the  
7 affidavit to discuss the possible collection of a debt owed by one “Jimbo” which the  
8 president of the motorcycle club in which Jimbo formerly belonged, is offering to assist in  
9 collection. There are a lot of telephone calls back and forth between the various Holloways  
10 to determine what Jimbo actually owes. In the end the Chapter president reports that all is  
11 well and that Jimbo will pay RDC by credit card.  
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16 From the telephone conversations involved in this matter it is difficult to really tell  
17 what is transpiring, but clearly there is no indication that Jimbo was injured or even in  
18 serious danger. Other allegations in the affidavit regarding the possible alteration of  
19 motorcycle parts or possession of mismatched and possibly unlawful parts are at best  
20 inconclusive.  
21

22 At pages 40 through 44 the Agent cites intercepted calls involving Mr. Holloway’s  
23 interaction with his employee, Danny Dugranrut, when he learned that Dugranrut’s  
24 residence was to be searched and that Dugranrut might be arrested as a result. Mr.  
25 Holloway called a law enforcement acquaintance, Captain Raul DeLeon, of the Stanislaus  
26 County Sheriff’s Department, in an effort to arrange the surrender of Dugranrut to law  
27 enforcement if a warrant were issued to avoid the necessity of an arrest occurring at his  
28

1 shop. (Nov. Aff. p.42). Agent Elias believes these calls show that Mr. Holloway was  
2 taking steps to conceal Dugranrut's whereabouts from law enforcement and that he was  
3 using his "law enforcement resources to aid the HAMC." But Dugranrut was, after all, a  
4 more or less regular employee of RDC and it was not necessarily unreasonable for Mr.  
5 Holloway to try to make arrangements for him to voluntarily surrender if charged. The  
6 affiant claims that Captain DeLeon improperly leaked to Holloway during these  
7 conversations information regarding a subpoena regarding Cathy Holloway that had been  
8 planted by CVGIT who wanted to catch DeLeon leaking it. Obviously the government  
9 took the divulging of this information very seriously and it has subsequently indicted  
10 DeLeon in the matter. Without regard to the merit of the government's position regarding  
11 DeLeon, the incident does not appear to reflect criminal conduct on the part of Mr.  
12 Holloway, who merely accepted information given him without consideration or even  
13 request.  
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18 In these and other particulars the November 2, 2007 affidavit of Agent Elias tells  
19 more about the extent of law enforcement animus toward Mr. Holloway than it does about  
20 any actual identifiable criminal conduct on his part. Most importantly, however, the fruits  
21 of this application must be suppressed because the Agent fails to show necessity for the  
22 wiretap and because the entire application is tainted and rendered invalid by its reliance on  
23 the two previous unlawful applications.  
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### 26 **III. Conclusion**

27 For the reasons set forth herein, it is respectfully submitted that the electronic  
28 surveillance conducted in this case, and all leads and evidence derived therefrom, must be

1 suppressed due to the facial invalidity of the affidavits upon which the intercept orders  
2 were based. This motion has not addressed, except occasionally in passing, the many  
3 intentional and / or reckless material misstatements and omissions that appear in these  
4 documents. Those statements and omissions are subject to a subsequent motion to be filed  
5 pursuant to *Franks v. Delaware*. Similarly, we have not utilized this facial challenge to  
6 argue the government's failure to adequately minimize the receipt of innocent conversation  
7 as required by Section 2518. That challenge, too, will be the subject of subsequent  
8 briefing.  
9

10  
11 Dated: April 21, 2009

Respectfully submitted,

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13  
14 s/ William L. Osterhoudt  
WILLIAM OSTERHOUDT,

15  
16 /s/ Roger K. Vehrs, Esq.  
ROGER K. VEHRs,

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18 Counsel for Robert Holloway  
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**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 135 Belvedere Street, San Francisco, California 94117.

On the date set forth below, I caused to be served the foregoing **DEFENDANT ROBERT C. HOLLOWAY'S MOTION TO SUPPRESS WIRETAPS** on all interested parties in this action by causing same to be served electronically to the following:

AUSA **Laurel Jackson Montoya** at email address: [laurel.j.montoya@usdoj.gov](mailto:laurel.j.montoya@usdoj.gov); and  
AUSA **Mark Eugene Cullers** at email address: [mark.cullers@usdoj.gov](mailto:mark.cullers@usdoj.gov)

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

Executed on April 21, 2009 in San Francisco, California.

/s/ Dolores T. Osterhoudt  
Dolores T. Osterhoudt