

# Exhibit 1



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June 2, 2008

Honorable Michael J. Aguirre  
City Attorney  
City of San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101-4100

RE: Report of the California Attorney General: San Diego City Attorney Michael Aguirre's Allegations Against Mayor Jerry Sanders Regarding the Sunroad Project

Dear Mr. Aguirre:

I am writing in response to your letter of May 22 to Attorney General Brown requesting that certain aspects of the report we issued be corrected on pages 20 and 21.

We have carefully reviewed your letter and the attached materials, and we conclude that there were no oversights or mistakes in our report that warrant a change in our conclusion that the facts and law do not support your allegations of corruption against the mayor. Indeed, the part of the report you take issue with merely recounts details leading up to your allegations but does not relate to the merits of the allegations themselves. Furthermore, in some respects the materials you provided actually support and corroborate the report's findings.

Thank you for your comments.

Sincerely,

DANE R. GILLETTE  
Chief Assistant Attorney General

For EDMUND G. BROWN JR.  
Attorney General

# Exhibit 2

Databases selected: ProQuest Newspapers, Hoover's Company Records

## Sanders cleared in Sunroad dealings

Matthew T Hall. *The San Diego Union - Tribune*. San Diego, Calif.: May 21, 2008. pg. B.1

### Abstract (Summary)

The report gives [Michael Aguirre]'s challengers "another club to bash him with," he said. It also lets Aguirre complain about being the victim of a conspiracy, which works because "the people who believe you believe you even more, and he doesn't have to worry about the people who don't believe him," [Chris Crotty] said.

The 36-page report further suggests that if anyone acted inappropriately, it was Aguirre. The report notes that [Jerry Sanders] and his aides said Aguirre and a top aide told them the city attorney would "go easy" on the mayor over the Sunroad flap if Sanders accommodated Aguirre on an office staffing issue. It also says an Aguirre aide warned a Sanders aide that Aguirre would accuse the mayor of corruption if the accommodation wasn't made.

[Steve Francis] called the timing of the attorney general's report "a little strange" but added he was "not going to even come close" to suggesting "there was some sort of plan by anybody" to coordinate its release.

### Full Text (802 words)

Copyright Union-Tribune Publishing Co. May 21, 2008

SAN DIEGO --

Eleven months after City Attorney Michael Aguirre accused Mayor Jerry Sanders of being corrupt in his dealings with Sunroad developer Aaron Feldman, the state Attorney General's Office called the allegation unfounded.

Sanders had requested the report on San Diego's handling of a Kearny Mesa office tower that was first built too tall for air traffic from nearby Montgomery Field.

Aguirre quickly dismissed the report for its contents and timing as "blatantly political."

Two weeks before Election Day, both Sanders and Aguirre face much tougher fights than the typical incumbent from challengers who are largely setting the agendas. Yesterday, the report became the central topic in both races.

The development may seem to be a positive one for Sanders, one that follows closely the long-awaited restoration of the city's credit rating last week. But Democratic political consultant Chris Crotty cautioned that any mention of the Sunroad scandal also could be "an absolute negative" for Sanders.

For Aguirre, the effects are two-fold, said Crotty, a consultant who is not working on any local campaign.

The report gives Aguirre's challengers "another club to bash him with," he said. It also lets Aguirre complain about being the victim of a conspiracy, which works because "the people who believe you believe you even more, and he doesn't have to worry about the people who don't believe him," Crotty said.

The report says flatly on its first page that "the record does not support the allegations made by the city attorney against the mayor," which came in repeated public forums.

Aguirre accused Sanders of a back-room deal and giving special access to Feldman, who with his associates gave more than \$3,000 to Sanders' mayoral campaign and \$10,000 to ballot measures he pushed.

Aguirre declined to cooperate with the attorney general's review, saying yesterday he thought the outcome was

preordained.

The 36-page report further suggests that if anyone acted inappropriately, it was Aguirre. The report notes that Sanders and his aides said Aguirre and a top aide told them the city attorney would "go easy" on the mayor over the Sunroad flap if Sanders accommodated Aguirre on an office staffing issue. It also says an Aguirre aide warned a Sanders aide that Aguirre would accuse the mayor of corruption if the accommodation wasn't made.

Aguirre countered yesterday that the Mayor's Office had been the one playing "hardball."

After reading the report, City Council President Scott Peters called on the district attorney to investigate Aguirre for "extortion."

Peters is one of four candidates challenging Aguirre on the June 3 ballot, but the news release from his council office did not mention that. It began: "While this day justly offers satisfaction and vindication for the mayor, it is another sad chapter in the history of our City Attorney's Office."

Sanders has called the Sunroad scandal his biggest mistake as mayor. It began when Sunroad Enterprises, a company led by executives who helped elect Sanders, built the office tower in Kearny Mesa above an aviation height limit. It erupted after the mayor met privately with the developer and was slow to join a loud chorus led by Aguirre to remove the top floors of the building.

The building eventually was lowered from 180 feet to 160 feet.

Businessman Steve Francis, the main challenge to Sanders' re-election, has made the Sunroad issue a central theme of his multimillion-dollar campaign to unseat Sanders. It is the focus of a mailer and a television ad in which Francis bills himself as a "mayor that developers can't buy."

Francis called the timing of the attorney general's report "a little strange" but added he was "not going to even come close" to suggesting "there was some sort of plan by anybody" to coordinate its release.

Francis said rather than giving the mayor a boost, the report serves as "a painful reminder of what this administration has put us through."

The Attorney General's Office was silent on the report. The office did not return calls for comment about the report and its timing, and it did not say who wrote it.

Attorney General Jerry Brown is a Democrat, as are Aguirre and Peters. Francis and Sanders are Republicans. The Mayor's Office is nonpartisan, but at a news conference touting the report, Sanders noted that Aguirre and Brown are Democrats.

#### HIGHLIGHTS

From the attorney general's report on Mayor Jerry Sanders and the Sunroad office tower:

\*

"It is false to assert that the mayor 'allowed' Sunroad to construct an illegal building which endangered public safety. The construction was properly and legally permitted by the city's established process."

\*

"There was no 'back room deal.' "

\*

"The facts do not support a conclusion that Sunroad Enterprises or Aaron Feldman had 'special access' or enjoyed 'undue influence' with the mayor."

Credit: STAFF WRITER

**[Illustration]**

1 CHART; Caption: HIGHLIGHTS

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# Exhibit 3

MICHAEL J. AGUIRRE  
SAN DIEGO CITY ATTORNEY

OFFICE OF  
THE CITY ATTORNEY  
CITY OF SAN DIEGO  
MICHAEL J. AGUIRRE  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
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VIA FAX and REGULAR MAIL

May 17, 2007

Honorable Arnold Schwarzenegger  
Governor  
San Diego Office  
1350 Front Street, Suite 6054  
San Diego, CA 92101

Re: *Compliance with FAA Notice of Hazard*

Dear Governor Schwarzenegger:

Introduction

I am writing as the City Attorney of the City of San Diego to request your assistance in securing help from the office of the Attorney General in the City's efforts to have the top floors removed from a building being constructed in a highly used airport flight path that the Federal Aviation Administration has declared to be a hazard. Simply stated, the building endangers the lives of San Diegans. The California Department of Transportation has issued numerous warnings to the City and the developer of the building, going so far as calling the building "illegal." As the San Diego City Attorney, I have filed a lawsuit in California Superior Court seeking a declaration that construction on the top floors of the building must stop. Recently the California Pilots Association joined the lawsuit. I respectfully request that you ask the California Department of Justice Office of the Attorney General to join in this lawsuit aimed to protect the public safety of San Diegans.

Please find below the chronology of events which detail the City's and the developer's brazen disregard for codes and laws issued by the California Department of Transportation in allowing the construction of a building standing in the path of a highly traveled local airport runway.

Background

On 24 April 2006 the Federal Aviation Administration (FAA) issued a Presumed Hazard letter to Sunroad Enterprises based upon an initial finding that the Sunroad 12 office building at 180 feet exceeded obstruction standards and/or would have an adverse physical or electromagnetic interference affect upon navigable airspace or air navigation facilities.



On 20 June 2006 FAA Obstruction Evaluation Specialist Karen McDonald sent an email to Sunroad reminding Sunroad that the FAA had issued a Presumed Hazard letter advising that the maximum acceptable height for the Centrum 12 office building was 160 feet. The letter warned that after 24 June 2006 the FAA would be in a position to issue a Determination of Hazard to Air Navigation for any height greater than 160 feet.

Also on 20 June 2006 Sunroad sent a letter to the FAA representing that Sunroad conditionally agreed to the 160-foot height specified in the FAA letter of 24 April 2006.

On 22 June 2006 Sunroad filed with the FAA a form 7460-1 representing that the height of the Centrum 12 building would be 160 feet.

On 27 June 2006 the FAA issued a determination of No Hazard for the Spectrum 12 office building based upon the building height being limited to 160 feet.

On 26 July 2006 Sunroad filed a Supplemental Notice with the FAA informing the FAA that the Centrum 12 building was 180 feet.

On 11 August 2006 the FAA issued a Notice of Hazard to air navigation in and around the Montgomery Airport. The FAA based the notice on its finding that the Centrum 12 office building at a height of 180 feet "would have a substantial adverse affect on the safe and efficient utilization of the navigable airspace by aircraft and/or on the operation of air navigation facilities."

On 29 September 2006 Jeff R. Brown, aviation safety officer of the California Department of Transportation, stated that the "construction of the Sunroad Centrum 1 building is a violation of PUC Section 21659(a). Without issuance of a permit by the Department, continued construction of any part of the building that exceeds 160 above ground level is unlawful. That height as specified by the FAA in their Notice of Presumed Hazard, dated April 24, 2006, was the maximum height an object in that location could reach without resulting in a Determination of Hazard to air navigation . . . . If construction in violation PUC Section 21659 proceeds, you are proceeding at your own risk, as you have been notified of the Department's position. Additionally, if aircraft accident occurs at the site of this Sunroad Centrum 1 building because of this PUC violation, you are assuming all liability for the accident. Further attempts to obfuscate the issue or cause of additional delay with your legal responsibility to comply with Section 21659 of the State Aeronautics Act will result in enforcement action by the Department."

On 19 October 2006 the San Diego City Attorney wrote a letter to Jim Waring, deputy chief operating officer for the City of San Diego. This letter informed Mr. Waring that the FAA had determined that the Centrum 12 office building at 180 feet was a hazard to air navigation. The letter went on to state that "under California Government Code section 50485.2 the City has a duty has a duty to prevent the creation of any hazard to air navigation using the police powers of the City." The letter also cited San Diego Municipal Code section 121.0302(b)(4) and informed Mr. Waring that the section "makes it unlawful for any person to maintain or allow the existence of any condition that creates a 'public nuisance.'" The letter continued, "[W]ith knowledge of

the declaration by the FAA that the building is a 'hazard to air navigation,' the knowledge that it is a public nuisance under both state and local law, and the knowledge that the building is being constructed in violation of state law, the City must issue a 'Stop Work Order' for the Project."

On 27 October 2006 the City of San Diego's Development Services Department issued a Stop Work Notice "regarding the top 17 feet of" the Centrum 12 building. The notice provided that "no work was to be done in this section of the structure until authorized by this department."

On 9 November 2006 Jeff R. Brown, aviation safety officer for the California Department of Transportation, wrote a letter to Ms. Marcella Escobar-Eck, director of the Development Services Department for the City of San Diego, expressing concern that the Stop Work Order stated that "FAA regulation must be clarified prior to the continuing construction of the structure." Mr. Brown went on to remind the City that "the construction of this structure is a violation of California Public Utilities code Section 21659. This violation was made evident to the City in the City Attorney's letter dated October 19, 2006, and in our letters to the developer or the developer's attorney dated September 14, 2006, September 26, 2006, and October 13, 2006, copies of which were provided to City's Land Use and Economic Development Department staff either directly or via e-mail."

On 14 November 2006 Sunroad Vice President for Development Tom Story appeared before the City of San Diego Airports Advisory Committee at the Montgomery Field Airport Lobby. During this meeting, according to the meeting minutes, Mr. Story admitted Sunroad had decided to not amend the building plans for the Centrum 12 building to the 160-foot height, as represented to the FAA, "out of financial consideration." According to the meeting minutes, "Tom Story, Vice President for Development of Sunroad Enterprises, said that when it became known that 180 feet was going to be a hazard, they considered stopping at 160 feet but they would have had to redraw the plans. They decided not to amend the plans out of financial consideration. Sunroad's rights are fully vested. He believes the hazard is mitigated through the NOTAM and by raising the approach minimums. Mr. Story stated that the project was in full compliance with the City requirements."

On 21 November 2006 Sunroad Vice President of Development Tom Story wrote a letter to the City's Development Services Department requesting "authorization for the Development Services Department to install roofing on the Centrum 12 building ...." Mr. Story represented that completing the roof was needed "to protect the in-progress construction work and materials that are being installed in the lower 160 feet of the building and to avoid further delay of our project." In his letter Mr. Story went on to request that Sunroad be allowed to complete nine specific construction tasks. Mr. Story further stated, "[W]hile we clarify our position with the FAA we believe it prudent that Sunroad be allowed to protect our existing investment in order to minimize the cost and/or liability to the City should Sunroad determine that we must seek compensation for any incurred damages by the stop work order."

On 1 December 2006 the San Diego City Attorney wrote Jim Waring regarding the request made by Sunroad representative Tom Story on 21 November 2006. The City Attorney informed Mr. Waring that the "mere suggestion of a possible solution to the current problem certainly does not

Honorable Arnold  
Schwarzenegger

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warrant a change of status to the current Stop Work Notice." The memorandum went on to remind Mr. Waring that the Department of Transportation had specifically requested that the Stop Work Order not only be invoked, but that the City move forward with permit revocation procedures." The memorandum concluded that "for all of these reasons it is imperative that there be no change to the Stop Work Order whatsoever."

On 13 December 2006 the Department of Development Services expanded the Stop Work Notice from the top 17 feet to the top 20 feet of the Centrum 12 building.

On 15 December 2006 the San Diego City Attorney filed a civil complaint directed at the public nuisance posed by the Sunroad 12 office building based upon the Notice of Hazard Determination by the FAA.

On 21 December 2006 the City's Development Services Department sent a letter to Tom Story as agent for Sunroad which provided, "[I]n the interest of saving the structure from damage which could be caused by weather, your request will be allowed for this phase of construction with the items discussed at the field meeting of 21 December 2006 with Joe Harris subject to your concurrence with the terms of this letter."

On 19 January 2007 Jeff R. Brown wrote in a letter to Jim Waring, "[W]hen the facts of the situation show a developer failed to comply with a federal notification regulation (Federal Aviation Regulation Part 77.17), used that violation of federal regulation to obtain local planning and building approval, knowingly began construction of a building determined by a federal agency to be a hazard, constructed parts of the building in violation of State law (PUC Section 21659), and continues to defy State and local attempts to resolve the situation, the reluctance of the City to take the necessary steps to protect its citizenry is a mystery." Mr. Brown continued, "As you surely know, the City Attorney of San Diego has filed a complaint against Sunroad on behalf of the City as the necessary first legal step in removing the hazard posed by the Sunroad Centrum 1 building. We ask that you rigorously enforce the Notice, and join with the City Attorney and others united in the interest of public safety, to protect the people of San Diego and local, State, and federal interest in Montgomery Field airport for which the City has obligated itself."

On 31 January 2007 the San Diego City Attorney sent a notice to Sunroad pursuant to California Penal Code §373(a). Penal Code §373(a) provides, "every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, after reasonable notice in writing from a city attorney to remove, discontinue or abate the public nuisance has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense." The notice went on to state that "failure to take corrective action will constitute a misdemeanor" and each day the nuisance exists after service of this notice is a separate and distinct offense pursuant to California Penal Code §373(a).

On 20 March 2007 the San Diego City Attorney sent a notice to Sunroad clarifying that "no work of any kind is to be conducted on the top 20 feet of the Centrum 1 structure." The notice

Honorable Arnold  
Schwarzenegger

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May 17, 2007

further stated, "Any previous communication allowing Sunroad to 'weatherize' the structure or by implication, allow any work whatsoever to be conducted within the top 20 feet of the structure, is hereby permanently revoked."

On 15 May 2007 the San Diego City Attorney issued his 17<sup>th</sup> Interim Report regarding the Sunroad Centrum 12 building and the SDG&E Substation.

#### Discussion

It is under the dire conditions detailed above that I hereby request the Governor to direct the California Department of Justice Office of the Attorney General to join in the City Attorney's lawsuit against the developer of the building standing in the flight path. I believe assistance from the California Department of Justice Office of the Attorney General would provide the necessary force to halt the construction of this building.

It is my fear that without your assistance, work will continue on this building and further endanger the lives of citizens of the State of California.

Respectfully yours,



Michael J. Aguirre  
San Diego City Attorney

# Exhibit 4

**DEPARTMENT OF TRANSPORTATION**  
DIVISION OF AERONAUTICS – M.S.#40  
1120 N STREET  
P. O. BOX 942873  
SACRAMENTO, CA 94273-0001  
PHONE (916) 654-4959  
FAX (916) 653-9531  
TTY (916) 651-6827



*Flex your power!  
Be energy efficient!*

January 19, 2007

Mr. James T. Waring  
Deputy Chief Operating Officer  
Land Use and Economic Development  
Office of the Mayor  
City of San Diego  
202 C Street, 9<sup>th</sup> Floor  
San Diego, CA 92101

Dear Mr. Waring:

The California Department of Transportation (Department), Division of Aeronautics has obtained a copy of the revised Stop Work Notice (Notice) issued by the City of San Diego (City) on December 13, 2006 for the Sunroad Centrum 1 (aka Sunroad Centrum 12) building located at 8620 Spectrum Center Boulevard. We have also reviewed a copy of the December 21, 2006 letter from Ms. Marcia Escobar-Eck of your Development Services Department to Sunroad Enterprises (Sunroad) authorizing construction of the Sunroad Centrum 1 building above the level specified in the Notice. The City's apparent failure to enforce the Notice, which enables the developer to violate State law and seems to disregard public safety, is of great concern to the Department.

In our letter of November 9, 2006, to the Development Services Department, we directly informed the City that any construction of the building above a height of 160 feet Above Ground Level (AGL) was a violation of California Public Utilities Code (PUC) Section 21659, a State law enacted to prohibit hazards near airports. As stated above, the City's December 21, 2006 letter, particularly when reviewed with respect to Sunroad's November 21, 2006, letter to the City requesting many permanent construction features under the pretense of 'weather proofing' the building, makes it difficult to regard the City's actions as anything other than an attempt to undermine State law.

Additionally, while we appreciate that you revised the Notice from halting work in the top 17 feet of the building to the top 20 feet, our review of plans approved by the City show that stopping work in the top 20 feet is still inadequate. The "20 feet" figure was based on data provided by Sunroad to the Federal Aviation Administration for a 180-foot tall building. Twenty feet was the amount the building exceeded the Federal Aviation Administration (and Department) standards, which would have allowed a building that was 160-foot tall. However, the plans approved by the City on February 10, 2006, show that the highest point of the building is approximately 602 feet Above Mean Sea Level, which translates to a true building height of 186 feet AGL. This means that the upper 26 feet of the building constitutes a hazard. As called for by our mission to protect aviation safety, people and property, we are notifying you of this fact, and request that you revise and reissue the Notice so that no work is accomplished in the top 26 feet of the Sunroad Centrum 1 building.

Mr. James T. Waring  
January 19, 2007  
Page 2

The City's attempts to pass liability for the illegal construction on to Sunroad entirely miss the point. This issue is not about who has liability for the hazard, but taking action to remove the hazard so that liability is not an issue. When the facts of the situation show a developer failed to comply with a federal notification regulation (Federal Aviation Regulation Part 77.17), used that violation of federal regulation to obtain local planning and building approval, knowingly began construction of a building determined by a federal agency to be a hazard, constructed parts of the building in violation of State law (PUC Section 21659), and continue to defy State and local attempts to resolve the situation, the reluctance of the City to take the necessary steps to protect its citizenry is a mystery.

As you surely know, the City Attorney of San Diego has filed a complaint against Sunroad on behalf of the City as the necessary first legal step in removing the hazard posed by the Sunroad Centrum 1 building. We ask that you rigorously enforce the Notice, and join with the City Attorney and others united in the interest of public safety, to protect the people of San Diego and local, State, and federal interests in Montgomery Field airport for which the City has obligated itself. If you have any additional questions or need further assistance, please do not hesitate to contact us at (916) 654-4565 or e-mail at [jeff.brown@dot.ca.gov](mailto:jeff.brown@dot.ca.gov).

Sincerely,

Original Signed by

JEFF R. BROWN  
Aviation Safety Officer

c: Carmen Brock, Deputy City Attorney, City of San Diego  
Honorable Mayor Jerry Sanders  
Ms. Marcela Escobar-Eck, Director, Development Service Department  
San Diego City Council  
FAA Western Pacific Region

# Exhibit 5



**CONFIDENTIAL**STATE OF CALIFORNIA – COUNTY OF SAN DIEGO  
**SEARCH WARRANT**

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICE OFFICER, OR PEACE OFFICER IN THE COUNTY OF SAN DIEGO:

Proof by affidavit having been made before me by Affiant Barry A. Bruins that there is probable cause to believe that the property and records described herein may be found at the locations set forth herein and are lawfully subject to seizure pursuant to Penal Code Section 1524 (a) (2), (3), and (4) as property or business records and communications possessed by a person with the intent to use it as a means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery. And further that Affiant further believes that the same property and records may be evidence that a felony has been committed, to wit conspiracy to obstruct or pervert the due administration of the laws in violation of Penal Code Section 182 and a conspiracy in violation of Penal Code Section 182 to violate section 27.3550 of the San Diego Municipal Code, a public offense punishable as a misdemeanor.

**YOU ARE THEREFORE COMMANDED TO SEARCH:**

4445 Eastgate Mall, Suite 400, San Diego, California, 92121. It is further and more particularly described as a commercial office building, four stories high with white marble exterior and a circular grey metal structure over the middle of the roof of the building. The building is located on the south side of Eastgate Mall just slightly east of the "T" intersection of Eastgate Mall and Easter Way. The building has the words "Sunroad Corporate Center II" spelled out across the top of the east and west faces of the building just below the roofline. The Sunroad Corporate Center II building has a parking lot along the east exposure of the building and a manmade lake along the west exposure of the building. The main entrances of the building are on the east and west side in the middle of the building. Inside the entrance lobby on the east side is a black building directory with white letters showing "Sunroad Enterprises 400."

**FOR THE FOLLOWING PROPERTY:**

All writings (stored in any medium), documents, records, logs, files, correspondence, notes, voicemail and memoranda in Sunroad's possession or under its control pertaining to (1) the hiring and employment scope of Thomas Story for the years 2005 and 2006, including but not limited to his hire date and any writing concerning his employment; and (2) all writings, documents, records, files, logs, correspondence, notes, voice mail and memoranda directed to, received or reviewed by, or sent or created by Thomas Story during the years 2005 and 2006, including all meetings and discussions with City of San Diego official or staff person regarding New Century Center, Sunroad Spectrum, Sunroad Centrum 12 or Sunroad Centrum Residential

"Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court without delay. This Search Warrant and incorporated Affidavit was sworn to as true and subscribed before me this 21<sup>st</sup> day of MARCH, 2007 at 3:16 A.M./P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

Filed under Seal  yes  no

*[Handwritten Signature]*

Judge of the Superior Court  
County of San Diego

CONFIDENTIAL

CONFIDENTIAL

# Exhibit 6



























































































































































































































































































































































































































































































































































































































































