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4 Attorney for Defendant
5
6
7

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10	UNITED STATES OF AMERICA,	)	Case # 08CR1171-W
11)	
12	Plaintiff	)	Motion for Sanctions
13)	
14	v.)	
15		)	Judge: Hon. Thomas J. Whelan
16	DAVID C. JACQUOT,)	Courtroom: 7
17)	Date: Jan. 20, 2009
18	Defendant)	Time: 2:00 pm

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The Defendant, by and through his counsel of record, files this Motion for Sanctions against the government for its misconduct in this case.

1. The Defendant filed a Motion to Suppress the evidence seized by the government in a search conducted on November 4, 2004. The Defendant’s basis for the suppression of the evidence was submission of false affidavits by the government in support of the warrant.
2. In response to the Motion to Suppress, the government submitted an Opposition containing deliberately false information. The opposition was supported by the declaration of Supervisory Special Agent Brana, which was also deliberately false. The attempt by the government to justify their search with deliberately false declarations and pleadings violates the Defendant’s Constitutional Rights and should be sanctioned by the Court.

COURT'S INHERENT POWER TO SANCTION.

3. The Court possesses an inherent power to enforce proceedings so that they may properly perform their functions, Myers v. United States, 264 U.S. 95, 103 (1924). The Supreme Court has also found inherent in the Federal Courts the power to punish contempts. See Green v. U.S. 356 U.S. 165 (1958). Likewise, the Courts have inherent power to sanction attorneys. These powers derive from the fact that each Federal Judicial Circuit has power to promulgate its own rules regulating the admission and conduct of counsel. See In Re Sutter, 543 F. 2d 1030 (2d Cir. 1976); Eash v. Riggins Trucking, Inc., 757 F. 2d 557 (3d Cir. 1985). These cases describe the Court's power to impose sanctions to preserve the integrity of the judicial process for acts which impede justice. Importantly, the Court's inherent power to sanction is **in addition** to other sanctions specified in statutes or rules. In Chambers v. NASCO, Inc., 501 U.S. 32 (1991), the litigant misrepresented facts to the court and the court imposed sanctions. The Supreme Court rejected the sanctioned party's contention that by enacting 28 U.S.C. sec. 1927, and various other procedural rules, Congress had intended to limit the power of the lower Federal courts in regard to sanctions. Rather, the Supreme Court held that "inherent power could be exercised by Federal courts even where existing rules and statutes may also apply, in order to vindicate judicial authority" Chambers, 501 U.S. at 46.

PURPOSE OF SANCTIONS

4. The Courts have held that sanctions are meant to serve several purposes, including:

- deterring future abuse,
- punishing present abuse,
- compensating victims of litigation abuse, and
- streamlining court dockets and facilitating case management.

White v. General Motors Corp., 908 F.2d 675, 683 (10th Cir. 1990).

1 Of these purposes, the Supreme Court has stated that the **primary purpose of sanctions is to**
2 **deter future violations.** See Cooter & Gell v. Hartmarx, 496 U.S. 384 (1990)

3
4 **SUPPRESSION AS A SANCTION**

5
6 5. The Supreme Court held in Mooney v. Holoban, 294 U.S. 103 (1935), that the deliberate use
7 of perjured testimony by the prosecutor violates Due Process. Although the case dealt with
8 the Due Process violation as a 14th Amendment issue because a state court was involved, the
9 same would apply in Federal Court via a 5th Amendment analysis. Fifth Amendment Due
10 Process Violations are subject to the suppression of evidence pursuant to the Exclusionary
11 Rule. Bram v. U.S., 168 U.S. 532 (1897).

12 6. As described in paragraph 4 above, the primary purpose of sanctions is to deter future
13 violations. The Exclusionary Rule is consistent with that purpose, as the primary purpose of
14 the Exclusionary rule is to deter Constitutional violations. U.S. v. Leon, 468 U.S. 897. 906
15 (1984). **Therefore suppression of the evidence from the search is the appropriate**
16 **remedy for the government's submission of Agent Brana's deliberately false**
17 **declaration.**

18 **SANCTIONABLE CONDUCT IN THIS CASE**

19
20 7. AUSA Devine and Agent Brana knowingly and willfully prepared and submitted a false
21 declaration in this case (the "False Declaration").

22 8. The False Declaration **is not the first time** that the government has submitted false
23 declarations against this Defendant in this Court.

24
25 8.1. In late October 2004, the government filed an ex parte complaint, temporary restraining
26 order /receivership under seal alleging a \$500 million "Ponzi scheme" and other crimes.
27 As described below, the declaration supporting this action was false. Simultaneously, an
28 affidavit for a search warrant was filed. The Defendant is informed and believes (and

1 has previously alleged and such allegation has not been denied) that this affidavit was
 2 substantially the same as the declaration supporting the TRO application, and therefore
 3 is also false.

4 8.2. In early December 2004, the initial hearing on the TRO was heard before Judge Burns.
 5 It is case # 04-CV 2184 LAB (AJB). At the hearing, Judge Burns set aside the TRO,
 6 denied the government a Preliminary Injunction and dissolved the receivership. After
 7 considering the declarations submitted by the government in support of their case, he
 8 issued a 12 page opinion that was harsh to the government. His order included, but was
 9 not limited to, findings that:

- 10 • the government's allegations of a "ponzi scheme" are "**without merit,**"
- 11 • the government produced "**no evidence**" that the Defendants were dissipating
- 12 their assets,
- 13 • "**no evidence**" that assets are traceable to criminal activity,
- 14 • "**the government conceded**" that it can produce "**no evidence**" that the xelan
- 15 program violated internal revenue statutes or regulations,
- 16 • the government's evidence that the xelan programs were not legitimate was
- 17 "**speculative,**" and
- 18 • the government did **not** show that "**the tax implications of any particular xelan**
- 19 **product were mischaracterized.**"

20 In short, Judge Burns found that the declarations supporting the TRO and civil case were
 21 false. Since the affidavits for the search warrant are substantially the same as those
 22 declarations, they are also false.

23 **9.** When the search was challenged by the Defendant, the government prepared and submitted
 24 the False Declaration and false pleadings.

25 **10.** In the False Declaration, Agent Brana falsely states that "***We did not search any offices***
 26 ***known to us to be attorney offices...***" and "***We did not search ... any areas known to***
 27 ***contain attorney client records***" when in fact the government did. The False Declaration
 28

1 also falsely states “*Neither Mr. Lipman nor Mr. Harrington made any objection to how the*
2 *search was being conducted.*”, when in fact Mr. Harrington objected repeatedly during the
3 search. The government states in its Opposition that “*law enforcement agents did not*
4 *search any offices or premises that were occupied by lawyers*”, when in fact they did.

5 These statements are false because:

6 10.1. The Search Inventory sent out by AUSA Devine shows that the office, computer,
7 and laptop of attorney Silas Harrington were searched. See the extract attached as
8 Exhibit 2 to the Defendant’s Reply to the Government Opposition that shows the
9 following search inventory Control #s:

- 10 • A81 “*Silas Harrington’s Fujitsu Laptop...*”
- 11 • A104 “*Image of computer (C1) found in room G (Silas’ Office)...*”

12
13 10.2. Agent Brana and AUSA Devine cannot claim that she did not know that Mr.
14 Harrington was an attorney, as the False Declaration also states that:

15 “*There were several attorneys present during the search. Among those present*
16 *were Silas Harrington.*”

17
18 10.3. The Declaration of attorney Silas Harrington is attached as **Exhibit 1** and he
19 clearly states that he identified that he was an attorney and his office and laptop were
20 searched over his objection.

21 10.4. The declaration of Cheryl Bartley, a xelan employee present during the search,
22 who the government intends to call as its own witness at trial, states that Silas Harrington
23 identified himself as an attorney and objected to the search of his personal laptop. The
24 declaration of Cheryl Bartley is attached as **Exhibit 2**.

25
26 **11.** Agent Brana states in the False Declaration that “*... none of the members of the prosecution*
27 *team has reviewed ...*” potentially privileged records. This is false. The government states
28 in its Opposition that “*All potentially privileged items have been segregated and not*

1 *reviewed by members of the prosecution team.”* This is also false. These statements are
2 false because:

3
4 11.1. Exhibit C to the government’s Opposition is a forged letter on the letter head of
5 the Defendant’s law firm. This letter was forged by Michael Suverkrubbe. Mr.
6 Suverkrubbe (and/or his accomplices) cut and pasted portions of the Defendant’s
7 letterhead, the footer and signature into a document. Attached to the Defendant’s Reply
8 to the Government’s Opposition and its Exhibit C is the declaration of attorney Silas
9 Harrington that he heard Michael Suverkrubbe admit he forged this letter.

10 The fact that the letter was forged is not the issue here. **Rather the issue is that the**
11 **document appears on letterhead of the Defendant’s law firm.** This letter was
12 obviously reviewed by AUSA Devine, Agent Brana and likely by other agents on the
13 “prosecution team” before it was attached to the Opposition. As a letter on attorney
14 letterhead, it should have been identified as a “potentially privileged record”. In order
15 for AUSA Devine to **know that it exists** and **know the contents** of it, she, Agent Brana
16 and/or other members of the prosecution team needed to review it. Therefore, the
17 statements made by **both** AUSA Devine and Agent Brana that no one on the prosecution
18 team reviewed “*potentially privileged records*” is false.

19 11.2. The custodian of the records seized is Special Agent Weeks. The government
20 states in its Opposition that Agent Weeks had a computer with **images of every**
21 **document seized** (Page 6 Line 23). Additionally, the government states that Agent
22 Weeks has access to all the original documents . Agent Weeks was the agent
23 investigating the Defendant and was one of the two agents that interviewed the
24 Defendant. Attached as **Exhibit 3** is the declaration of attorney Jim Frush who states
25 that over a multiple year period Agent Weeks was investigating the Defendant and was a
26 member of the prosecution team. Therefore, the statement that no one on the
27 prosecution team has reviewed potentially privileged records is false because **the agent**
28 **investigating the Defendant was the custodian of every document seized.**

11.3. The Search Inventory sent out by AUSA Devine summarizes the items that were seized during the search. Some items seized were purportedly treated as potentially tainted and allegedly not reviewed. However, there were many other items that were **obviously** “*potentially privileged records*” that were **not treated as tainted** and were reviewed by the prosecution team. These include:

Control # A81	Silas Harrington’s Fujitsu Laptop
Control # A104	Computer in Silas Harrington’s Office
Control # B113	xwbt files: General Counsel 2001 and 2002 xwbt files: Williams Counsel correspondence
Control # C38	-xelan General Counsel Memorandum – 05/09/01 & 11/06/00 -Xelan Law Firm to xelan home office and xelan financial counselors – 10/27/00 -Xelan General Counsel memo – 03/18/99
Control #C57	Complaints/lawsuits in state and federal court against xelan Inc. and Pyramidal Funding Systems, Inc. – 2004
Control # D37	Xelan General Counsel Memos
Control # D75	Binder of General Counsel Memos
Control # D76	Letters from law offices of Miller, Canfield, Puddode and Stone
Various Control #s	Servers with DJPA files and law firm email records

In addition to the above which are obviously “*potentially privileged records,*” there are a number of items on the search inventory that most likely are “*potentially privileged records*”. These are:

Control # B25	26 Zip Disk backups and 16 hard disk misc backups
Control # B50	2004 Court Filings
Control # B72	File titled: Mike Gunter (attorney)
Control # B109	Memo re: Legal Items
Control # C24	Email to Silas Harrington (attorney)
Control # C58	Binder xelan Foundation IDR and TECH Advice – Aug 2003 and others
Control # D40	Jacquot Employment Contract 11/1/01 and 10/15/98
Control D89	Files titled: Jacquot
Control # D91	Michael Surnew Law Offices File

The government’s own search inventory clearly shows that contrary to Agent Brana’s and the government’s assertions, members of the prosecution team reviewed “*potentially*

1 *privileged records”.*

2
3 **12. AUSA Devine submitted the Opposition and False Declaration to this Court knowing**
4 **that they were false at the time she submitted them.**

5
6 12.1. AUSA Devine submitted the False Declaration. In doing so, she had an
7 obligation to inquire into the truth of the statements contained therein. Not only did she
8 fail to make such an inquiry, she submitted the False Declaration **clearly knowing it to**
9 **be false**. AUSA Devine also submitted the government’s Opposition knowing it to be
10 false. AUSA Devine knew that the False Declaration and Opposition were false because
11 prior to preparing and submitting them:

- 12 • she sent the Search Inventory to counsel showing that Mr. Harrington’s office,
13 computer and laptop were searched
- 14 • she knew that Silas Harrington was an attorney because the declaration states:

15 *“There were several attorneys present during the search. Among those*
16 *present were Silas Harrington.”*

- 17 • she knew that “potentially privileged information” had been reviewed by the
18 prosecution team, because she attached said information to the same Opposition
19 to which the False Declaration was attached
- 20 • she knew that the prosecution team had reviewed “potentially privileged records”
21 because the search inventory she sent out contained the privileged records
22 described in paragraph 11 above.

23 **STANDARD FOR REVIEW**

24 13. The evidence is compelling that the government, through AUSA Devine and Agent Brana,
25 knowingly and intentionally prepared and submitted the False Declaration and Opposition to
26 support and cover up problems with the illegal search challenged by the Defendant. Such
27 deliberate action calls for sanctions against the government. Moreover, even if AUSA
28 Devine subjectively believed that the declaration and her pleadings were correct, it is **not a**
defense to sanctions. Objective good faith is the standard for review and “An empty head

1 but a pure heart is no defense” Thorton v. Wahl, 787 F. 2d 1151, 1154 (1986). An objective
2 review of the truth of the False Declaration leads to the conclusion that it is deliberately false
3 and therefore warrants sanctions.

4
5 **PRAYER FOR RELIEF**

6
7 14. The government misconduct in this case and in the November 2004 search is **deliberate and**
8 **repetitive**. There is no excuse or defense for the intentional submission of deliberately false
9 declarations to the Court, but this has occurred twice in connection with the November 2004
10 search. Such illegal action by the government undermines the entire justice system and
11 should be harshly sanctioned. As such action violates the Defendants Constitutional right to
12 Due Process as held by the Supreme Court in Mooney v. Holoban, the appropriate sanction is
13 suppression of any evidence seized during the search pursuant to the Exclusionary Rule.

14
15 The Defendant prays that the Court:

- 16
17 1. Sanction the government by suppressing all evidence seized during the
18 November 4, 2004 search.
19 2. Impose other sanctions or relief that the Court deems appropriate.

20
21 Dated: January 6, 2009

Respectfully submitted,

22
23 /s/ Daniel A. Jenkins

Daniel A. Jenkins
Attorney for Defendant

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that I am over 18 years of age, am employed in the county of San Diego,
4 California, am not a party to the within action, and my business address is 7777 Alvarado Road, Suite
5 259, La Mesa, CA 91941.

6 On January 6, 2009, I electronically filed with the Clerk of the Court using the CM/ECF system
7 the foregoing document described as:

8 **MEMORANDUM FOR SANCTIONS**

9 which will send electronic notification of such filing to the following individual(s):

10
11 Karen P. Hewitt
12 United States Attorney
13 Faith A. Devine
14 Faith.Devine@usdoj.com
15 Counsel for United States of America

16 Executed on January 6, 2009, at La Mesa, California.

17 /s/ Daniel A. Jenkins_____

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4 Attorney for Defendant
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **UNITED STATES OF AMERICA,**) **Case # 08CR1171-W**
11)
12 **Plaintiff**) **EXHIBITS: Motion for Sanctions**
13)
14 **v.**)
15 **DAVID C. JACQUOT,**) **Judge: Hon. Thomas J. Whelan**
) **Courtroom: 7**
) **Date: Jan. 20, 2009**
16 **Defendant**) **Time: 2:00 pm**

17

18 Now comes the Defendant, by and through his counsel of record and provides the following Exhibits
19 in support of the Defendant's Motion for Sanctions:

- 20 1. Declaration of Silas Harrington
- 21 2. Declaration of Cheryl Bartley
- 22 3. Declaration of Jim Frush

23 Respectfully submitted,

24 /s/ Daniel Jenkins

25 Daniel Jenkins

26 Attorney for the Defendant
27
28

Exhibit 1

1 DANIEL A JENKINS (SBN: 232230)
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4 Attorney for Defendant
5

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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 UNITED STATES OF AMERICA,)

Case No. **08CR1171-W**

10 Plaintiff,)

**DECLARATION OF SILAS
HARRINGTON**

11 v.)

12 DAVID C. JACQUOT,)

13 Defendant.)
14

15 Silas Harrington, pursuant to 28 U.S.C. §1746, declares:
16

- 17 1. I am more than 18 years old and make this Declaration voluntarily. I reside in the State of
18 California. If called as a witness, I could testify under oath to the matters described herein
19 based on my personal knowledge.
- 20 2. I am an attorney and was admitted to the State Bar of California in June 2002. Since
21 August 2004 I have been employed by Greenbook Financial Services, Inc. ("Greenbook")
22 or its successor entity. I was also previously employed as an associate attorney of David
23 Jacquot, JD, LLM (Tax), PA.
- 24 3. On or about August 4, 2004, the United States Bankruptcy Court appointed Greenbook the
25 interim operator of several xelan entities. Greenbook operated the xelan entities at their
26 existing location at 401 West A Street, Suite 2210, San Diego.
- 27 4. When I arrived at work on November 4, 2004, I discovered a large group of federal agents
28 executing a search warrant for Suite 2210.

- 1 5. I immediately identified myself as an attorney for Greenbook, and stated that I had
2 previously represented some of the xelan entities as an associate of the law firm of David
3 Jacquot JD, LLM(Tax), PA.
- 4 6. An agent stated that Greenbook's property was not the focus of their search, and I
5 requested an opportunity to walk through the premises with an agent to identify office
6 space that was used by Greenbook or counsel.
- 7 7. I walked through the entire suite with an agent and told her which people/entities used
8 various offices within the suite. She recorded my comments on sticky memos and attached
9 them to material as I described the custodian. For instance, when I pointed to my office
10 she put a note on the door that read "Silas Harrington, Office".
- 11 8. I brought a personal laptop with me to the office that day because I intended to take the
12 laptop with me on a trip I had planned to Seattle, Washington. The laptop was in a brown
13 leather bag and contained client files and other materials that were the property of David
14 Jacquot, JD, LLM (Tax), PA.
- 15 9. After walking the agent through the space, directing Greenbook's IT staff to assist the
16 agents with their work, and making a number of cellular telephone calls, I stated my
17 intention the leave.
- 18 10. An agent told me that I would not be allowed to leave until they searched the brown leather
19 bag I had brought with me to the office. I objected strenuously that the bag had not been
20 on the premises when the warrant was executed, that the bag contained my personal
21 material that was not the subject of the warrant, and that some of the material in the bag
22 was attorney/client privileged.
- 23 11. Over my continuing objections, the agents took my bag, briefly viewed its contents and
24 removed the laptop from the bag. At no point did I agree to allow them to search the bag.
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1 12. The agents were aware that the laptop and the bag were not in Suite 2210 at the time the
2 warrant was executed and mapped the computer over my continuous objections.

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

4 Executed on December 31, 2008.

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6 Silas Harrington

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Exhibit 2

1 DANIEL A JENKINS (SBN: 232230)
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4 Attorney for Defendant
5
6

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 UNITED STATES OF AMERICA,)

Case No. **08CR1171-W**

10 Plaintiff,)

**DECLARATION OF CHERYL
BARTLEY**

11 v.)

12 DAVID C. JACQUOT,)

13 Defendant.)
14 _____)

15 Cheryl Bartley, pursuant to 28 U.S.C. §1746, declares:
16

- 17 1. I am more than 18 years old and make this Declaration voluntarily. I reside in the State of
18 California. If called as a witness, I could testify under oath to the matters described herein
19 based on my personal knowledge.
- 20 2. I was employed as an accountant for xelan, Inc., from 1999 until November 2004. My
21 office was located at 401 West A Street, Suite 2210, San Diego, California.
- 22 3. On November 4, 2004, federal agents entered Suite 2210 with a search warrant. When
23 Silas Harrington arrived, I heard him inform the agents that he was an attorney.
- 24 4. Later, when Silas Harrington was preparing to leave, I heard an agent tell Silas that they
25 were going to seize his personal laptop. I then heard Silas object to having his laptop
26 seized.
27
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1 5. My duties as an accountant at xelan, Inc., included payroll processing for Viatical
2 Liquidity, LLC, and David Jacquot, JD, LLM (Tax), PA, two entities that shared office
3 space with xelan, Inc., in Suite 2210. Some payroll records for Viatical Liquidity, LLC,
4 were kept in my office and were in my office in Suite 2210 on November 4, 2004.

5 Executed on _____, 2009.

6
7 _____
Cheryl Bartley

space with xelan, Inc., in Suite 2210. Some payroll records for Viatical Liquidity, LLC, were kept in my office and were in my office in Suite 2210 on November 4, 2004.

Executed on January 5, 2009.



Cheryl Bartley

Exhibit 3

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Attorney for Defendant

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,	)	Case # 08CR1171-W
)	
Plaintiff	)	Declaration of Jim Frush
)	
v.)	
	)	Judge: Hon. Thomas J. Whelan
DAVID C. JACQUOT,	)	Courtroom: 7
	)	Date: Jan. 20, 2009
Defendant	)	Time: 2:00 pm

1 I, **Jim Frush**, declare as follows:

2 1. I am older than 18 years old and make this Declaration voluntarily. I reside in the
3 State of Washington and am a licensed attorney and former Federal Prosecutor. If
4 called as a witness, I could testify under oath to the matters described herein based
5 on my personal knowledge.

6 2. I represented David Jacquot during 2004 to 2007 regarding the investigation of
7 xelan. AUSA Devine initiated and solicited settlement negotiations throughout
8 my representation of Mr. Jacquot in this matter. I had multiple phone
9 conversations with AUSA Faith Devine and also met face to face on several

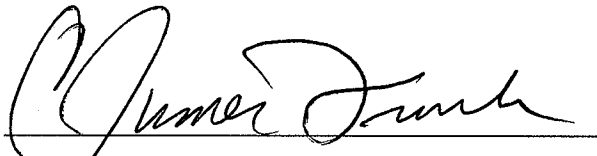
1 occasions. During these conversations, AUSA Devine indicated numerous times
2 that she was interested in having Mr. Jacquot cooperate with the government
3 regarding the investigation. AUSA Devine also made plea offers to me that were
4 unacceptable to Mr. Jacquot. Specifically:

5 a. I met with AUSA Devine and Agent John Weeks on November 28, 2005 in
6 San Diego. AUSA Devine specifically brought up the subject of
7 cooperation and a plea deal.

8 b. I met with AUSA Devine and several agents on 11 July 2006. AUSA
9 Devine brought up the subject of cooperation and a plea deal and
10 **specifically stated that she wanted Mr. Jacquot's cooperation**
11 **regarding the tax liabilities of other individuals, including Buck and**
12 **Roberts.**

13 3. During the course of the investigation, I was informed that IRS CID Agent John
14 Weeks was investigating Mr. Jacquot. I am aware that Agent Weeks and Agent
15 Robert Schreck visited and interviewed Mr. Jacquot in Idaho in July of 2004.
16 Agent Weeks continue to work on the case after the November 4, 2004 search and
17 dismissal of the TRO. I met with AUSA Devine and Agent Weeks on November
18 28, 2005. I had a conversation with AUSA Devine on 10 April 2006 in which she
19 indicated that she had spoken with Agent Weeks that day about the xelan
20 investigation.

21 Executed on Dec 19 2008 at Seattle, WA. I
22 declare under penalties of perjury under the laws of the United States that the
23 foregoing is true and correct.

24 
25 _____
26 **Jim Frush**

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United States Attorney
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3 Assistant United States Attorney
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6 E-mail: Faith.Devine@usdoj.gov

7 Attorneys for Plaintiff
United States of America

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11		)	No. 08CR1171-W
12	UNITED STATES OF AMERICA,)	
13	Plaintiff,	)	GOVERNMENT'S RESPONSE AND
14	v.	)	OPPOSITION TO DEFENDANT'S MOTION
15	DAVID C. JACQUOT,	)	FOR SANCTIONS
16	Defendant.	)	DATE: January 20, 2009
		)	TIME: 2:00 p.m.

17
18 The United States of America, by and through its counsel, Karen P. Hewitt, United States
19 Attorney, and Faith A. Devine, Assistant United States Attorney, hereby files its response to Defendant
20 David C. Jacquot's Motion for Sanctions.

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I.

ARGUMENT

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3 In his motion, Defendant claims that the Government submitted a deliberately false declaration
4 by IRS-CI Supervisory Special Agent Sara Brana. Defendant raised this dispute at the September 8,
5 2008 Motion Hearing. The Government responded and made Special Agent Brana available for
6 examination under oath about the declaration. The court declined to make any findings that Agent
7 Brana lied.

8 Defendant's supplemental submission does not prove anything other than there are differing
9 points of view as to what was said to Special Agent Brana on November 4, 2004 by Mr. Harrington
10 during the execution of a search warrant. The Government confirms the statements made in the
11 declaration and submits that they are truthful recollections by Agent Brana as to what transpired on
12 November 4, 2004.

13 Defendant's Motion also repeats his prior unsupported allegations that members of the
14 prosecution team including IRS-CI Special Agent John Weeks deliberately reviewed privileged material.
15 The declarations submitted in support of the Motion only prove that the government and the Defendant
16 have differing views on what constitutes privileged material. The Government contends that potentially
17 privileged material was segregated, sealed and not reviewed by members of the prosecution team. The
18 Government further contends that all seized items which are listed on the search warrant inventory are
19 not privileged even though they may reference the name of an attorney or are written on law firm
20 stationary. Defendant contends that some of the items on the list are privileged and therefore were
21 reviewed by the prosecution team. This difference of opinion does not warrant sanctions against the
22 Government.

23 Finally, Defendant claims that the Government submitted a forged letter to support its contention
24 that Defendant's relationship with Xelan was terminated six months before the search. This letter was
25 obtained from Xelan's files. Without conducting an investigation and handwriting analysis, the
26 Government does not know whether the letter was in fact forged or written at the direction of Defendant.
27 However, the forgery is an irrelevant issue because the letter was offered to show that Defendant was
28 not operating his law office at 401 West "A" Street, Ste. 2210 on the date of the search which defendant

1 admits. The defendant also admits that the letter was written using his law firm letterhead which states
2 that his address was “formerly at” 401 West A Street, Suite 2210 San Diego, CA 92101 and that he was
3 “in transit to a new location”. To the extent there is a dispute over the authenticity of the contents of the
4 letter, the Government hereby offers to withdraw it from evidence in this case.

5 **II.**

6 **CONCLUSION**

7
8 For the foregoing reasons, Defendants Motion for Sanctions should be denied.

9
10 DATED: January 13, 2009

Respectfully submitted,

11 KAREN P. HEWITT
12 United States Attorney

13 /S/ Faith A. Devine
14 FAITH A. DEVINE
15 Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 DAVID C. JACQUOT.,)
)
 Defendant.)
 _____)

Case No. 08cr1171-W

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Faith A. Devine, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of GOVERNMENT'S RESPONSE AND OPPOSITION TO DEFENDANT'S MOTION FOR SANCTIONS on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies him.

Daniel Jenkins - daniel@jenkinstaxlaw.com

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

Executed on January 13, 2009.

s/ Faith A. Devine
FAITH A. DEVINE

1 DANIEL A JENKINS (SBN: 232230)
7777 Alvarado Road, Suite 259
2 La Mesa, CA 91941
Telephone: (619) 713-0961
3 Facsimile: (619) 713-5067
4 Email: daniel@jenkinstaxlaw.com

5 Attorney for Defendant
6
7

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **UNITED STATES OF AMERICA,**) **Case # 08CR1171-W**
11)
12 **Plaintiff**) **REPLY: Motion for Sanctions**
13)
14 **v.**)
15 **DAVID C. JACQUOT,**) **Judge: Hon. Thomas J. Whelan**
) **Courtroom: 7**
) **Date: Jan. 20, 2009**
16 **Defendant**) **Time: 2:00 pm**

17
18 The government’s Opposition to the Motion for Sanctions seeks to have the Court sweep the
19 government’s illegal conduct under the rug as nothing more than “*differing points of view*”. The
20 government’s arguments are both factually and legally wrong.

21 Factual Errors.

22 The standard of review for the determination of submission of false evidence to the court is
23 one of objective reasonableness, not one of subjective analysis of “*differing points of view*.”
24 Subjective belief that the declaration and pleadings are correct is **not a defense to sanctions**.
25 Objective good faith is the standard for review and “*An empty head but a pure heart is no defense*”
Thorton v. Wahl, 787 F. 2d 1151, 1154 (7th Cir. 1986).

26 **Contrary to the allegations of the government, this is not a case of “*differing points view***
27 ***as to what was said to Special Agent Brana on November 4, 2004 by Mr. Harrington.*”** This is
28 about objectively perjured/false statements.

1 Agent Brana's declaration states that "*We did not search any offices known to us to be*
2 *attorney offices...*" and "*We did not search ... any areas known to contain attorney client records.*"
3 The government, through AUSA Devine, states in its Opposition that "*law enforcement agents did*
4 *not search any offices or premises that were occupied by lawyers.*" These are clear, simple,
5 definitive statements not subject to "*differing points of view.*"

6 Both the statements of AUSA Devine and Agent Brana are objectively false. This falsity can
7 be shown through the government's own documents and the declarations provided to the Court.

8 Agent Brana's own declaration states that she knew attorney Silas Harrington was present at
9 the search. It states, "*There were several attorneys present during the execution of the search.*
10 *Among those present were...Silas Harrington.*" (Paragraph #4 Agent Brana's Declaration). Thus
11 Agent Brana and AUSA Devine clearly knew that attorney Silas Harrington was present at the time
12 that they prepared the False Declaration.

13 The search inventory prepared by the government shows that Mr. Harrington's office,
14 computer and laptop were searched. See the extract attached as Exhibit 2 to the Defendant's Reply
15 to the Government Opposition that shows the following search inventory Control #s:

- 16 • A81 "*Silas Harrington's Fujitsu Laptop...*"
- 17 • A104 "*Image of computer (C1) found in room G (Silas' Office)...*"

18 Thus Agent Brana and AUSA Devine clearly knew that attorney locations and property were
19 searched at the time that they prepared the False Declaration.

20 **These government-created documents, by themselves, clearly show that the statements**
21 **of AUSA Devine and Agent Brana are knowingly false and not merely a "*differing point of***
22 ***view.*"**

23 Moreover, there are additional facts that further prove that statements of AUSA Devine and
24 Agent Brana are false.

25 Silas Harrington, a licensed attorney, submitted a declaration that he was present and
26 objected to the search. There is nothing in the record to suggest that Mr. Harrington was untruthful
27 about being present or that his office and that his office and laptop were searched. In fact, Agent
28 Brana's own declaration and the search inventory corroborate Mr. Harrington's statements.
Likewise, there is no reason to believe that Mr. Harrington's statement that he objected to the search
is untruthful.

1 The agents searching the location somehow knew that “Room G” was “Silas’ Office,” as this
2 is listed on the search inventory as Control # A104. The government has produced no evidence as to
3 how they knew that Room G was Silas’ Office, or how they knew who were the occupants of the
4 other offices listed in the Search Inventory. However, the Defendant has produced unrefuted
5 evidence in the record to explain this. Silas Harrington’s declaration states that he escorted agent(s)
6 through the suite and told them who was the occupant of the various offices.

7 The declaration of Silas Harrington is corroborated by one of the government’s own
8 witnesses, Cheryl Bartley who states that she heard Mr. Harrington identify himself as an attorney to
9 an agent and object to the seizure of his laptop. The government clearly does not want to have to
10 impeach their own witness, so they did not attempt to refute the specific factual allegations, but
11 rather attempted to dismiss their lies by broadly stating that there are “*differing points of view.*”

12 In summary, the government’s own documents and the unrefuted declarations (described
13 above) unmistakably show that Agent Brana’s statements that “*We did not search any offices known
14 to us to be attorney offices...*” and “*We did not search ... any areas known to contain attorney client
15 records*” are false. It further shows that AUSA Devine’s statements in her Opposition that “*law
16 enforcement agents did not search any offices or premises that were occupied by lawyers*” is false.
17 AUSA Devine knowingly submitted this false evidence against the Defendant. This is not a case of
18 mere “*differing points of view.*”

19 **Contrary to the allegations of the government, this is not a case of “*differing views on
20 what constitutes privileged information.*”** Again, this is about objectively provable perjured/false
21 evidence. The search inventory shows that some information was treated as privileged and allegedly
22 sealed and not reviewed by the government. However, the search inventory shows a significant
23 amount of information that should clearly be classified as “*potentially privileged*”.

24 Agent Brana states in the False Declaration that “*... none of the members of the prosecution
25 team has reviewed the boxes*” of potentially privileged records. AUSA Devine in her Opposition
26 states “*“All potentially privileged items have been segregated and not reviewed by members of the
27 prosecution team.”* These are clear, simple, definitive statements not subject to “*differing points of
28 view.*” It is important to note that both AUSA Devine and Agent Brana speak of “*potentially
privileged records*” and not privileged records.

Both the statements of AUSA Devine and Agent Brana are objectively false. This falsity can
be shown through the government’s own documents and the declarations provided to the Court.

1 Clearly within the category of “*potentially privileged records*” are Silas Harrington’s
2 computer and laptop. As stated in his declaration, Mr. Harrington was a former associate attorney in
3 the Defendant’s law firm and his computer contained, amongst other things, client files and other
4 materials that were the property of the Defendant’s law firm. In modern legal practice, the computer
5 records of attorneys contain vast amounts of privileged information. Clearly the computers of an
6 attorney must be deemed to contain “*potentially privileged records.*” The government’s own search
7 inventory shows that these items were seized and **placed on the general inventory**, not on the
8 allegedly segregated and sealed inventory.

8 Also within the category of “*potentially privileged records*” are numerous individual General
9 Counsel Memos and the binder of General Counsel Memos. These General Counsel Memos are
10 memorandums from the Defendant’s law firm to its client and are clearly “*potentially privileged*
11 *records.*” The government’s own search inventory shows that these items were seized and **placed on**
12 **the general inventory**, not on the allegedly segregated and sealed inventory.

12 More examples of items on the search inventory can be considered “*potentially privileged*
13 *records.*” However in the interest of brevity, they will not be addressed. However if the Court
14 desires further analysis, the Defendant will gladly provide it.

15 AUSA Devine states in her Opposition that Agent Weeks had a computer with **images**
16 **of every document seized** (Page 6 Line 23). Additionally, AUSA Devine states that Agent
17 Weeks has access to all the original documents . Agent Weeks was the investigating Agent of
18 the Defendant. Therefore the statement that no one on the prosecution team has reviewed
19 potentially privileged records is false because the Agent investigating the Defendant was the
20 custodian of every document seized including the “*potentially privileged records*” consisting
21 of attorney Silas Harrington’s computer and the Defendant’s General Counsel Memorandums.

21 **The government’s own search inventory and the statements of AUSA Devine in**
22 **her Opposition clearly show that the statements by AUSA Devine and Agent Brana**
23 **regarding “*potentially privileged records*” are knowingly false and not merely a “*differing***
24 ***point of view.*”**

25 The government completely misses the point on the forged letter they submitted. As
26 stated in Defendant’s Motion for Sanctions, the fact that the letter appears on the Defendant’s
27 law firm letterhead makes it a “*potentially privileged record.*” This letter was **not** listed on
28 the search inventory so it is impossible to tell if it was stored in the general items searched or
in the allegedly segregated and sealed records. This letter was obviously reviewed by AUSA

1 Devine, Agent Brana and likely by other Agents on the “prosecution team” before it was
2 attached to the Opposition. In order for AUSA Devine to know that it exists and know the
3 contents of it, she, Agent Brana and/or other members of the prosecution team needed to
4 review it. Therefore the statements made by **both** AUSA Devine and Agent Brana that no one
5 on the prosecution team has reviewed “*potentially privileged records*” is false.

6 As previously stated and as supported by the Declaration of Silas Harrington, this letter
7 is a forgery. The Defendant’s law firm uses a computer template for letterhead. This template
8 was altered by Michael Suverkrubbe as described in the Defendant’s previous Reply. At no
9 time did the Defendant ever produce any correspondence that indicated in his letterhead that he
10 was “formerly at” 401 West A Street, Suite 2210, San Diego, CA 92101 or that he was “IN
11 TRANSIT TO A NEW LOCATION!”

12 Legal Errors.

13 **The government’s claim that the Court declined to rule on this matter at the 8**
14 **September hearing is misleading.** The Defendant agrees that the issue was partially raised in the
15 Reply to the government Opposition to the Suppression Motion. However, the Court disposed of the
16 said Suppression Motion by dismissal without prejudice. Moreover, Agent Brana’s declaration was
17 attached to the government’s Opposition and the Defendant could not file a Sanctions Motion for the
18 hearing scheduled only a few days later. Therefore the Sanctions Motion was filed for the next
19 hearing.

20 The government’s Opposition seems to not take seriously the gravity of their actions. They
21 simply want to brush this aside as business as usual. In fact, this illegal act is business as usual for
22 the government in this case. This is yet another incident in a long string of government misconduct
23 in this investigation. This history of misconduct (including the theft by Agent Wong and other
24 deceit) is described in the Defendant’s Statement of Facts and support by his declaration and will not
25 be fully repeated here. However, the Defendant does want to emphasis that this is not the first time
26 that AUSA Devine has submitted false declarations against the Defendant. In the TRO proceedings
27 that were conducted simultaneous to the search in this case, AUSA Devine submitted declarations
28 that resulted in the seizure of all of the Defendant’s assets and forfeiture of his passport. He also
suffered damage to his reputation, damage to his law practice, damage to his livelihood, and severe
emotional distress due to the extensive publicity campaign launched by the government. As more

1 fully described in the Sanctions Motion, the declarations supporting the TRO were found by Judge
2 burns to be false.

3 **The government's submission of the False Declaration is a serious Due Process violation**
4 **that warrants sanctions.** Two recent 9th Circuit cases address this issue. Due Process is violated
5 when there has been a fraud on the Court. Dixon v. Commissioner of Internal Revenue, 316 F. 3rd
6 1041 (9th Cir. 2003). Due Process is also violated when the prosecution knows or should have
7 known that false evidence has been submitted and takes no steps to correct the wrongdoing. Hayes v.
8 Brown. 399 F. 3rd 972 (9th Cir 2005).

9 Fraud on the Court

10 *"Fraud on the Court occurs when the misconduct harms the integrity of the judicial*
11 *process..."* Alexander v. Robertson, 882 F.2d 421, 424 (9th Cir. 1989).

12 Agent Brana's knowingly false declaration is a fraud on the Court. Intentional submission of
13 the False Declaration by a supervisory law enforcement agent to justify an alleged illegal search is
14 clearly misconduct that harms the integrity of the judicial process.

15 Moreover, Agent Brana's perjured declaration is part of a long pattern of government
16 misconduct, and such pattern of misconduct is also a fraud on the Court. The 9th Circuit held that a
17 **pattern of misconduct by IRS employees** was a fraud on the Court in Dixon v. Commissioner of
18 Internal Revenue, 316 F. 3rd 1041 (9th Cir. 2003). In the case at hand, there is a long pattern of
19 misconduct by IRS employees and other government agents. See the Defendant's Statement of Facts
20 and supporting Declaration for a description of the pattern of government abuses in this matter.
21 Additionally, see the Motion for Sanctions, paragraph 8 for a description of previous filings of false
22 declarations by AUSA Devine against the Defendant. The pattern of misconduct by the government
23 in this case is misconduct that harms the integrity of the judicial process.

24 Lastly, AUSA Devine's knowing submission of the False Declaration and her intentional
25 preparation and submission of the false pleadings are also a fraud on the Court that harms the
26 integrity of the judicial process. This conduct is misconduct that harms the integrity of the judicial
27 process.

28 When there has been a fraud on the Court, no showing of prejudice to the Defendant is
required for dismissal. Hazel-Atlas Glass Co. V. Hartford Empire Co., 322 U.S. 238 (1944);
Pumphrey v. K.W. Tompson Tool Co. 62 F. 3d 1128, 1132-33 (9th Cir 1995); Dixon v.

1 Commissioner of Internal Revenue, 316 F. 3rd 1041 (9th Cir. 2003). Since there has been fraud on the
2 Court in this matter, this case should be dismissed.

3
4 Prosecutorial Misconduct

5 One of the bedrock principles of our democracy is “*that the State may not use false evidence*
6 *to obtain a criminal conviction*” Hayes v. Brown. 399 F. 3rd 972 (9th Cir 2005). Specifically, Due
7 Process is violated when there has been prosecutorial misconduct in which:

- 8 1. There is false evidence used
- 9 2. The prosecutor knew or should have known it to be false, and
- 10 3. The false evidence is material

11 Each of these three elements will be examined below.

12 1. The Evidence is False. “*Due Process protects defendants against the use of any false*
13 *evidence by the State, whether it be by document, testimony, or any other form of admissible*
14 *evidence.*” Hayes v. Brown. 399 F. 3rd 972 (9th Cir 2005); Phillips v. Woolford, 267 F.3d 966 at
15 984-85 (9th Cir 2001). This protection from false evidence includes perjured evidence such as the
16 False Declaration but also includes all other forms of false evidence and even applies when a witness
17 fails to be entirely truthful. Alcorta v Texas, 355 U.S. 28 (1957). Subornation of perjury is not
18 required for a due process violation. See Napue v. Illinois, 360 U.S. 264 (1959). No reasonable
19 conclusion is possible that the False Declaration and pleadings are truthful. Since the False
20 Declaration and pleadings were submitted to the Court, false evidence was used.

21 2. AUSA Devine knew or should have known the False Declaration and pleadings were
22 false. As described in the Motion for Sanctions, paragraph 12, AUSA Devine clearly knew that the
23 False Declaration and pleadings were untruthful. Even if AUSA Devine claims she didn’t know the
24 False Declaration was false, she should have. It is a Due Process violation when the prosecutor knew
25 or should have known that the evidence is false. U.S. v. Agurs, 427 U.S. 97 (1976). The Motion for
26 Sanctions describes facts that would cause any reasonable person to believe that the False
27 Declaration and pleadings were false. Therefore, AUSA Devine should have known that the False
28 Declaration was false.

29 3. The False Evidence is Material. The standard for materiality is that the false evidence is
30 material if there is any reasonable likelihood that the false evidence could affect the outcome of the
31 case. Hayes v. Brown. 399 F. 3rd 972 (9th Cir 2005). Stated another way, Due Process is violated:

1 “unless the misconduct can be proven to be harmless beyond a reasonable doubt.” Brown v. Borg,
2 951 F.2d 1011, 1015 (9th Cir 1991). Specifically, the false evidence in this case is material for two
3 reasons as it impacts the:

- 4 • Validity of the Search, and
- 5 • Credibility of a government witness

6 Validity of the Search. The validity of the search is a critical element of the case. According
7 to the government’s proffer in its previous Opposition, accounting records taken during the search
8 will be a significant portion of the government’s case in chief. (See pages 4 to 6 in the government’s
9 original Opposition.) In fact, if the validity of the search was not material, why is the government
10 opposing the Suppression Motion and why have they refused to turn over the search affidavits? The
11 validity of the search was challenged based on two major grounds:

- 11 • False affidavits
- 12 • Misuse of privileged attorney client information

13 The government’s response to these challenges was creation and submission of more false
14 documents, namely the False Declaration. The false information in the False Declaration was
15 designed to support the validity and conduct of the search, and in particular, treatment of privileged
16 attorney client information.

17 Credibility of Government Witness. Even if the credibility of Agent Brana is the only
18 issue, Due Process is still violated. The Supreme Court stated in the Napue case:

19 *The principle that a State may not knowingly use false evidence, including false*
20 *testimony, to obtain a tainted conviction, implicit in any concept of ordered*
21 *liberty, does not cease to apply merely because the false testimony goes only to*
22 *the credibility of the witness.* Napue v. Illinois, 360 U.S. 264 (1959).

23 Thus the fact that “*the false evidence presented by the State dealt only with credibility does not*
24 *change the materiality calculus.*” Hayes v. Brown, 399 F. 3rd 972 (9th Cir 2005). Here the
25 credibility of Agent Brana is material. She is a Supervisory agent and supervised the search. She is
26 listed as a significant witness in the government proffer of their case. Her Declaration is in direct
27 contradiction to government witness Cheryl Bartley. Undoubtedly, perjury by an important
28 government witness is material.

1 The outcome of this case could be affected by the validity of the search and the credibility of
2 Agent Brana. The validity of the search is clearly a material issue. There is a more than reasonable
3 likelihood that submission of false evidence to attempt to justify the search could impact the
4 Suppression Motion. Likewise there is more than a reasonable likelihood that the outcome of the
5 Suppression Motion could impact the outcome of the case. The credibility of Agent Brana is also
6 clearly material. There is more than a reasonable likelihood that perjury of a government witness
7 could impact the case. Therefore the submission of the False Declaration meets the materiality
8 requirement.

9 Failure to Correct. As a separate and distinct Due Process violation, AUSA Devine did not
10 correct the error when it was brought to her attention. At the hearing on 8 September 2008 the falsity
11 of the declaration was raised. The Motion for Sanctions was filed on 6 January 2009, approximately
12 16 weeks later. During this 16 week period, AUSA Devine took no steps to correct the falsehood as
13 required by the U.S. Supreme Court rulings. In Alcorta v Texas, 355 U.S. 28 (1957) the U.S.
14 Supreme Court held that it is a violation of a criminal defendant's Due Process rights when the
15 government allows false evidence to go uncorrected when it appears. See also Pyle v. Kansas 317
16 U.S. 213 (1942); Hayes v. Brown. 399 F. 3rd 972 (9th Cir 2005). Even after the false evidence was
17 described in detail in the Sanctions Motion, AUSA Devine did not correct the error. In fact, rather
18 than correct the error, AUSA Devine did just the opposite, stating in her Opposition that the
19 “government confirms the statements made in the declaration and submits that they are truthful”.

20 Remedy for Prosecutorial Misconduct.

21 In regards to the sanctions to be imposed:

22 “...it is established that a conviction obtained through the use of false evidence,
23 known to be such by representatives of the State, must fall...” Napue v. Illinois, 360
24 U.S. 264 at 269 (1959).

25 Indeed if it is established that the government knowingly permitted the introduction
26 of false testimony reversal is “*virtually automatic.*” United States v. Wallach, 935
27 F.2d 445, 456 (2d Cir.1991) (quoting United States v. Stofsky, 527 F.2d 237, 243 (2d
28 Cir.1975)

The case law clearly holds that dismissal or reversal is the appropriate sanction. As described
in paragraphs 5 and 6 of the Motion for Sanctions and unrefuted by the government, suppression of
search evidence may also be imposed.

1 Conclusion

2 The government wants the Court to ignore their misconduct by labeling it as “*differing points*
3 *of view.*” Due Process requires that the Court does not grant the government their wish. The pattern
4 of government misconduct must be stopped. A defendant cannot hope to prevail in a case where the
5 government is allowed to submit fraudulent evidence. This Defendant, at great cost, has already
6 prevailed over the government’s submission of false declarations in the TRO proceedings.
7 Fortunately, this Defendant had the documentation available to show that Agent Brana’s declaration
8 and AUSA Devine’s pleadings were false. But the Defendant does not have the resources, nor does
9 the law provide the tools (via discovery, etc.) for the Defendant to be able to investigate and disprove
10 future government lies. Moreover, Due Process and the governing case law provide that he should
11 not have to. The Constitution simply will not stand idly by while the government lies and steals in
12 the course of their investigation and prosecution.

13 **The law is clear.** Fraud on the Court and knowing submission of false evidence by the
14 government violates Due Process. **The facts are clear.** The government’s own documents clearly
15 show that the False Declaration was knowingly false and that AUSA Devine knowingly submitted
16 such false declaration and pleadings to the Court. When confronted with the falsity of the
17 declaration, the government did not correct their error, but rather reaffirmed it.

18 **“All it takes for evil to thrive is for good men to do nothing.”ⁱ** Doing nothing is what the
19 government wants this Court to do and just treat their illegal conduct as “*differing points of view.*”
20 The Defendant urges this Court to not let evil thrive and to send a strong message to the government
21 that this type of conduct will not be tolerated. The Defendant urges this Court to sanction the
22 government by dismissing the case or at a minimum suppress evidence seized during the search.
23 Likewise the Defendant urges the Court to sanction the participants and impose whatever other relief
24 it deems appropriate.

25 Dated: January 15, 2009

26 Respectfully Submitted,

27 /s/ Daniel Jenkins

28 Daniel Jenkins

Attorney for the Defendant

ⁱ Edmund Burke (1729-97)

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that I am over 18 years of age, am employed in the county of San Diego,
4 California, am not a party to the within action, and my business address is 7777 Alvarado Road,
5 Suite 259, La Mesa, CA 91941.

6 On January 15, 2009, I electronically filed with the Clerk of the Court using the CM/ECF
7 system the foregoing document described as:

8
9 REPLY: Motion for Sanctions

10 which will send electronic notification of such filing to the following individual(s):

11
12 Karen P. Hewitt
13 United States Attorney
14 Faith A. Devine
15 Faith.Devine@usdoj.com
16 Counsel for United States of America

17 Executed on January 15, 2009, at La Mesa, California.

18 /s/ Daniel A. Jenkins