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Superior Court of California
County of Los Angeles

SEP 19 2022

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
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15 IN RE

16 SEARCH WARRANT SERVED ON THE
17 HOME AND OFFICE OF LOS ANGELES
18 COUNTY SUPERVISOR SHEILA KUEHL
ON SEPTEMBER 14, 2022
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Case No.

BH014167

EMERGENCY EX PARTE
APPLICATION FOR ORDER QUASHING
SEARCH WARRANT AND DIRECTING
LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT TO (1) RETURN ALL
SEIZED PROPERTY FORTHWITH, (2)
CEASE SEARCHING ANY AND ALL
COMPUTERS AND ELECTRONIC
DEVICES, AND (3) APPOINT A
SPECIAL MASTER TO REVIEW A
FORENSICALLY IMAGED COPY OF
THE DEVICES FOR ALL APPLICABLE
PRIVILEGES WITH THE ORIGINALS
RETURNED FORTHWITH

1 TO THE COURT, THE LOS ANGELES SHERIFF'S DEPARTMENT, AND THE
2 PEOPLE OF THE COUNTY OF LOS ANGELES, AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE THAT on September 19, 2022, or as soon thereafter as the
4 matter may be heard, in Department 100 of the above-entitled Court at 1:30 p.m., located at 210
5 W. Temple Street, Los Angeles, California 90012, Los Angeles County Supervisor Sheila J.
6 Kuehl will and hereby does move *ex parte* for an emergency order quashing a search warrant
7 served at Supervisor Kuehl's home and office on September 14, 2022, and directing the Los
8 Angeles County Sheriff's Department (the "LASD") to (1) return all seized property to
9 Supervisor Kuehl forthwith; (2) cease searching and/or imaging all materials, including but not
10 limited to, all cellular telephones, laptop computers, and electronic storage devices seized from
11 Supervisor Kuehl's home and office on September 14, 2022; and (3) appoint a special master to
12 review a forensically imaged copy of the devices for all applicable privileges with the originals
13 returned forthwith (the "Application").

14 This Application is based on Penal Code §§ 1524 and 1540 and the legal authorities set
15 forth in the attached Memorandum of Points and Authorities, which are incorporated herein by
16 reference. This Motion is made on the grounds that the search warrant executed at Supervisor
17 Kuehl's home and office on September 14, 2022 should be quashed because (a) it fails to
18 establish probable cause that a crime was committed or that evidence of a crime would be found
19 at the locations to be searched; (b) it is impermissibly overbroad; and (c) it contains false
20 statements and omits material facts, both of which undermine the purported statement of probable
21 cause.

22 Additionally, the warrant must be quashed or, at a minimum, the LASD must be ordered
23 to immediately cease searching the seized materials unless and until a special master is appointed
24 to review a forensically imaged copy of the devices for all applicable privileges with the originals
25 returned. As set forth in the attached Memorandum of Points and Authorities and declarations,
26 the seized items almost certainly contain attorney-client privileged communications between
27 Supervisor Kuehl and County Counsel; attorney-client privileged communications between
28 Supervisor Kuehl and the LA County Office of Inspector General; attorney-client privileged

1 communications between Supervisor Kuehl and Jones Day; as well as materials subject to the
2 deliberative process and official information privileges, materials subject to the informant identity
3 privilege, and other applicable privileges.

4 The Application is based on this Notice; the attached Memorandum of Points and
5 Authorities and Declarations of Cheryl L. O'Connor and Sheila J. Kuehl; all documents and
6 records on file herein; all other matters of which the Court must and may properly take judicial
7 notice; and such further evidence and argument as counsel may present at or before the hearing
8 on this matter. A proposed order is respectfully lodged herewith with the Court.

9 This emergency application is submitted without prejudice to Supervisor Kuehl
10 submitting additional briefing or seeking the same or additional relief from the Court if the
11 Application is not granted.

12
13 Dated: September 19, 2022

JONES DAY

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15 By: _____
16 Cheryl L. O'Connor

17 Attorney for Supervisor Kuehl
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Like a scene straight out of “L.A. Confidential,” on September 14, 2022, the Los Angeles
4 Sheriff’s Department executed a politically-motivated and retaliatory early-morning raid at the
5 home and office of Los Angeles County Supervisor Sheila J. Kuehl, one of the fiercest and most
6 vocal critics of Sheriff Alex Villanueva and the LASD itself. The affidavit in support of the
7 search warrant is plainly insufficient, as any neutral magistrate who reviewed it should have
8 immediately seen. It lacks any evidence, much less probable cause, that Supervisor Kuehl was
9 involved in, influenced, or benefitted in any way from the award of Los Angeles County
10 Metropolitan Transit Authority (“MTA”) contracts for the It’s Off Limits hotline to Peace Over
11 Violence. It likewise lacks probable cause that the ordinary process for awarding these
12 comparatively small contracts was violated. Indeed, as the LASD either knew or should have
13 known, the contracts at issue, which amounted to approximately 0.01% the MTA’s \$7 billion
14 annual budget, were properly awarded under the discretionary authority of MTA Chief Executive
15 Officer Phillip Washington. But rather than disclosing publicly-available applicable MTA
16 acquisition policy, the LASD instead only presented the magistrate with rumor and innuendo
17 from a disgruntled MTA employee, Jennifer Loew, without disclosing any of her myriad of
18 motives to lie and biases, or explaining why these highly-trained law enforcement officers hand-
19 selected by the LASD for a special investigative unit would submissively defer to this layperson’s
20 legal analysis and “beliefs” about criminal law.

21 The search warrant also omits other critical information, as well. For example, it fails to
22 mention that neither the MTA Board of Directors nor Supervisor Kuehl, specifically, voted to
23 approve the POV contracts. It fails to disclose that a judge previously ruled that a special master
24 was required to protect against invasion of the attorney-client privilege for an identical warrant
25 served on MTA and the MTA-OIG. And it directly contradicts the prior multiple statement by
26 the affiant, Sgt. Fernandez, that he does not believe the evidence demonstrates that any crime was
27 committed.

1 The warrant and items to be seized are shockingly overbroad—for example, covering *any*
2 communications between Supervisor Kuehl and her lifelong friend Patricia Giggans, without
3 limitation as to subject matter. And as Sheriff Villanueva and the LASD are undoubtedly aware,
4 in the ordinary course of her official duties, Supervisor Kuehl sends and receives attorney-client
5 privileged communications to and from both County Counsel and the LASD Office of Inspector
6 General, including privileged communications about ongoing investigations into both Sheriff
7 Villanueva himself and the LASD. Yet the search warrant contains no protocol to protect against
8 invasion of the attorney-client privilege, such as a request for a special master or use of a filter
9 team to review items seized from Supervisor Kuehl’s home or office.

10 The execution of the search warrant was similarly lawless and unrestrained. Sheriff’s
11 deputies seized material far outside the scope of the warrant, including recordings of the
12 television series Supervisor Kuehl starred in as an actor in the 1960s, and material related to a
13 UCLA camp where she was once a student counselor. It is well-known that Supervisor Kuehl
14 was an actor before she became an elected official, and had the searching officers simply Googled
15 “BROADSIDE” and “UNICAMP,” the meaning of these terms would have been clear. No
16 legitimate investigator could have a good faith belief that these recordings contained evidence
17 related to contracts entered into more than *five decades* later.

18 Simply put, this search warrant should be seen for what it is: a flagrant abuse of power
19 and an offense to the rule of law. The warrant must be quashed and the Supervisor’s property
20 must be returned forthwith so that she can continue to fulfill her official duties to the citizens of
21 District Three and all of Los Angeles County. At a minimum, the LASD must be ordered to
22 immediately cease any searching any of the Supervisor’s telephones, computers, and electronic
23 storage devices, unless and until a special master has been appointed to review a forensically
24 imaged copy of the devices for all applicable privileges with the originals returned in order to
25 prevent invasion of the multiple privileges at stake here.

1 **II. STATEMENT OF FACTS**

2 **A. The Peace Over Violence Contracts Were Within The Routine Authority**
3 **Delegated To The MTA Chief Executive Officer**

4 On February 1, 2010—more than four years before Supervisor Kuehl was elected—the
5 MTA Board of Directors adopted Acquisition Policy Statement ACQ-01, which, among other
6 things, delegated authority to the Chief Executive Officer to make required statutory findings and
7 to approve and award sole source contracts for less than \$500,000. Declaration of Cheryl L.
8 O'Connor ("O'Connor Decl."), ¶ 20, Exhibit 7. In other words, contrary to disgruntled MTA
9 employee Jennifer Loew's complaint that sole source contracts are "exceptional in nature," which
10 the affidavit uncritically accepts as true, contracts for less than \$500,000, like the Peace Over
11 Violence ones at issue here, are routinely awarded pursuant to this policy without the Board of
12 Directors' knowledge, involvement, or approval. When the MTA Policy was revised in 2018, the
13 delegation of authority to the MTA CEO to award sole source contracts for less than \$500,000
14 remained unchanged. O'Connor Decl., ¶ 19, Ex. 5. Therefore, the three-year extension awarded
15 in 2019 was also within the delegated authority of the MTA CEO. Despite the clear relevance
16 and exculpatory nature of this policy, the LASD failed to disclose it anywhere in the 39-page
17 sworn affidavit presented to the magistrate to gain entry to the Supervisor's home and office.¹

18 **B. The September 14, 2022 Search And Seizure**

19 At approximately 7:00 a.m., the LASD executed a raid at the home and office of
20 Supervisor Kuehl. The Supervisor was removed from her home in her bare feet by armed
21 deputies. Her official and personal cellular telephones, her computers, and multiple electronic
22 storage devices were seized pursuant to a procedurally and substantively improper search warrant,
23 which wholly lacked probable cause and contained numerous misstatements and material
24 omissions. Items wholly unrelated to the allegations in the supporting affidavit were seized, such

25 ¹ Neither Supervisor Kuehl nor the undersigned counsel has received a full copy of the affidavit
26 in support of the search warrant, despite multiple requests to Sgt. Fernandez, counsel for the
27 LASD, and the Los Angeles County District Attorney's Office. This motion is based on the
28 redacted version of the affidavit posted on the LASD website, although that version not include
any of the five attachments specifically referenced in the affidavit. Indeed, it is entirely unclear
whether those attachments were actually presented to the authorizing magistrate. LASD must be
compelled to provide a complete and unredacted copy of the warrant and affidavit.

1 as electronic storage devices containing materials from a television show Supervisor Kuehl
2 starred in as an actor in the 1960s and materials related to a UCLA camp at which she worked as
3 a student counselor decades ago. No reasonable investigator could possibly have a good faith
4 basis that these items were related to an purported impropriety in the MTA's award of contracts
5 for a sexual abuse hotline five decades later. Inexplicably, officers failed to leave an inventory of
6 the items seized from her office, but it appears that only one item was taken—a manilla envelope
7 marked "Metro."

8 The affidavit in support of the search warrant is fatally defective and was obtained under
9 highly suspicious circumstances. It lacks probable cause that any crime was committed, much
10 less probable cause Supervisor Kuehl was aware of or involved in any way in a crime or in the
11 award of the POV contracts. It omits and conceals critical information about (1) past proceedings
12 involving search warrants based on the same faulty investigation and targeting the MTA and the
13 MTA-OIG, including prior judicial rulings requiring the use of a special master to protect
14 privileged material; (2) that the complaining "witness" Jennifer Loew, whose unsupported gossip
15 the affiant accepts at face value, bungled her responsibility to manage and promote the hotline—
16 directly resulting in the "failures" of which she now complains—and only trumped up false
17 accusations about Supervisor Kuehl after she was disciplined for the mistreatment of her
18 subordinates at the MTA; (3) that the lead investigator, Sergeant Fernandez, has admitted on
19 multiple occasions that he does not believe there is evidence of a corrupt relationship between the
20 MTA and Peace Over Violence; and (4) the District Attorney's Office rejected the prosecution of
21 related charges over a year ago, did not review or approve the search warrant at issue here, and
22 has publicly stated that it will not defend this warrant, if challenged.

23 **1. Privileged Communications Were Seized**

24 As a result of the Covid-19 pandemic, the Board of Supervisors has been conducting its
25 meetings and business remotely since 2020. Supervisor Kuehl's office in the County's Hall of
26 Administration has remained closed. Declaration of Supervisor Sheila Kuehl ("Kuehl Decl.") at ¶
27 4. Since then Supervisor Kuehl has fulfilled her official duties and responsibilities to her
28 constituents in the Third District from her private home in Los Angeles County. *Id.* Supervisor

1 Kuehl has had official County documents sent from her office to her home. *Id.* She has
2 conducted official County business remotely by use of her personal laptops and mobile
3 telephones that were in her home until the search executed on September 14, 2022. *Id.* During
4 the search executed at her home, LASD deputies seized multiple laptops, mobile telephones and
5 electronic storage devices (collectively, “Electronic Devices”) that Supervisor Kuehl routinely
6 used in the performance of her official duties as a Supervisor. *Id.* at ¶ 5., Ex. A.

7 The Electronic Devices seized from Supervisor Kuehl’s home almost certainly contain
8 privileged and confidential attorney-client communications and related materials. In the ordinary
9 course of exercising her duties and responsibilities to constituents in the Third District,
10 Supervisor Kuehl routinely engaged in email and written communications with County Counsel
11 in order to obtain legal advice from County attorneys regarding a wide range of official matters
12 before the Board of Supervisors. *Id.* at ¶ 8. She also routinely had email communications with
13 Los Angeles County Inspector General Max Huntsman seeking legal advice on a variety of
14 topics. *Id.* The Los Angeles County Inspector General is an attorney that serves as special
15 counsel to the Board of Supervisors and, upon request, “provide[s] privileged legal advice
16 pertaining to a claim, lawsuit, or matter giving rise to significant exposure to litigation arising out
17 of the actions of the Departments or their personnel.” LA Cnty. Code § 644.190(H) (stating the
18 existence of an attorney-client relationship when the Inspector General acts in that legal capacity).
19 Those communications are protected by the attorney-client privilege and that privilege belongs to
20 the County of Los Angeles. *Id.* at ¶ 8. That attorney-client privilege may only be waived by
21 official action of the Board of Supervisors, which to date has not waived the privilege as to any
22 privileged and confidential attorney-client communications or documents on the Electronic
23 Devices seized from of Supervisor Kuehl. *Id.* These materials are also protected by the
24 informant identity privilege. This is due to the Inspector General’s likely use of confidential
25 informants and especially so regarding the possible wrongdoing within the LASD.

26 In addition, the Electronic Devices almost certainly contain privileged and confidential
27 attorney-client communications and materials related to another matter in which the Supervisor is
28 represented by a private law firm. *Id.* at ¶ 9. That privilege belongs to Supervisor Kuehl and to

1 date she has not waived the privilege as to any privileged and confidential attorney-client
2 communications or documents on the Electronic Devices seized from of Supervisor Kuehl related
3 to that matter. *Id.*

4 Finally, the Electronic Devices almost certainly include confidential information that is
5 protected by the Supervisor's deliberative process or official information privilege. *Id.* at ¶ 4.
6 Supervisor Kuehl's work involves close daily consultation with her professional staff to analyze
7 and consider the merits of a multitude of proposals that are submitted to the Board of Supervisors
8 for consideration and approval in any given month. *Id.* at ¶ 4. Supervisor Kuehl and her staff (i)
9 review and analyze information obtained from a wide variety of sources, including information
10 acquired in confidence from entities throughout the County government and third parties, (ii)
11 consult with individuals and organizations with knowledge, expertise, or interest in a particular
12 issue, and (iii) engage in quantitative and qualitative analysis of all relevant materials in order to
13 inform Supervisor Kuehl's final determination of how to proceed on any particular issue. All of
14 those activities are conducted between Supervisor Kuehl and her staff in a private and
15 confidential manner until a particular item or proposal is made public for discussion and review
16 by the Board of Supervisors at an official meeting. Accordingly, email communications between
17 and among the Supervisor and her staff as well as all of the related documents, notes, memoranda,
18 and analyses created and maintained electronically in the course of those deliberations are almost
19 certainly to be found on the Electronic Devices seized in the search.

20 **C. Imminent Risk of Harm**

21 **1. The LASD Ignores Requests to Protect Privileged Communications**
22 **That Were Seized**

23 Supervisor Kuehl faces an imminent risk of harm that privileged and confidential
24 communications and related documents seized during the search will be reviewed by the LASD
25 thereby resulting in the invasion of any applicable attorney-client or deliberative process or
26 official information privilege or informant identity privilege. At the time the search was
27 executed, the LASD did not take any precautions to ensure the protection of the above described
28 privileged and confidential documents which are almost certainly contained on the Electronic

1 Devices. *Id.* at ¶ 10. The LASD deputies executing the search did not inform Supervisor Kuehl
2 of any process that had been put in place to filter out privileged material before anyone in the
3 LASD reviews the material for investigatory purposes such as use of a filter team or whether a
4 special master appointment had been sought. *Id.*

5 Immediately after the search and in the 48 hours thereafter, Supervisor Kuehl's attorneys
6 reached out to Sergeant Fernandez, the designated LASD representative who led the search, as
7 well as Undersheriff Tim Murakami, the LASD employee purportedly supervising the
8 investigation, demanding that the Department confirm the steps that it has or will take to protect
9 against the unwarranted invasion and possible waiver of any applicable privilege. O'Connor
10 Decl., ¶ 4–11, Ex. 1, 3. To date, the LASD has failed to respond or provide any information as to
11 the steps it is or will take to protect privileged materials. *Id.* Instead, on September 14, 2002,
12 Sheriff Villanueva publicly disclosed a letter he wrote to Attorney General Rob Bonta
13 acknowledging the attorney-client relationship between Supervisor Kuehl and County Counsel.
14 Office of the Sheriff, Letter to Attorney General Bonta, Sept. 14, 2002
15 (https://lasd.org/wpcontent/uploads/2022/09/Post_SW_letter_AG.pdf). The letter also suggested
16 that the LASD nevertheless planned to search the Electronic Devices and other records seized
17 from Supervisor Kuehl for evidence of unidentified "criminal, administrative, and ethical laws"
18 that allegedly occurred after the warrant was issued but before it was executed. *Id.*

19 The failure of the LASD to take even the most basic steps to protect applicable attorney-
20 client, deliberative process, official information, informant identity, and any other applicable
21 privileges related to documents seized from Supervisor Kuehl's home is particularly outrageous
22 because the affidavit in support of the search warrant submitted to the court expressly recognizes
23 the possibility of violating attorney-client or other privileges during the search and the need for
24 the LASD to take specific steps to avoid invading those privileges. In particular, the affidavit in
25 support of the search warrant includes the following statement (in bold) assuring the court that the
26 Department intended to avoid invasion of the attorney-client privilege during the proposed search
27 of the offices of OIG for LA Metro: **"To avoid the possibility of violating attorney-client**
28 **privileges your affiant requests the court to assign a special master to accompany the**

1 Sheriff's Department during the execution of this search warrant, for the purposes of
2 protecting privileged materials, and assisting in the securing of evidence of suspected
3 criminal activity.” O'Connor Decl., ¶ 20, Ex. 6.

4 Finally, and most alarming, despite assuring the court approving the search warrant that
5 the Department would assign a special master to accompany it during the search of LA Metro
6 OIG's office to avoid the possibility of violating attorney-client privileges, it did not do so. *Id.*
7 This is particularly noteworthy given that the LASD was on notice of a need for a special matter
8 in this investigation. On September 1, 2022, Judge Eleanor Hunter of the Los Angeles Superior
9 Court issued an order on a Motion to Quash and Traverse a different warrant relating to LA Metro
10 OIG finding that a special master was required to protect privileged information requested by the
11 LASD in connection with this investigation. In a public statement released by LASD on
12 September 14, 2022, LASD conceded that the appointment of a special master was required, but
13 there is no evidence that LASD ever did move for the appointment of a special master. Public
14 Corruption Investigation (01:56-02:04), Los Angeles County Sheriff's Department (Sept. 14,
15 2022), <https://lasd.org/public-corruption-investigation>.

16 In sum, the LASD failed to take any steps to protect privileged and confidential materials
17 seized from Supervisor Kuehl's home. Its refusal to respond to the demands of Supervisor Kuehl
18 for an explanation of the steps the Department has or will take to protect all privileged materials
19 demonstrates the imminent risk of waiver of those privileges as a result of the search and the need
20 for immediate judicial intervention.

21 **2. Sheriff Villanueva Intends to Search Privileged Material for Evidence**
22 **of Conduct That Occurred After the Warrant was Issued**

23 In contrast with the Department's notable refusal to explain to Supervisor Kuehl what
24 steps it has or will take to protect the attorney-client, deliberative process, official information, or
25 informant identity privileged communications and materials contained on the Electronic Devices
26 seized during execution of the search, Sheriff Villanueva—who is purportedly recused from this
27 investigation—released a letter to California Attorney General Rob Bonta dated September 14,
28 2022, in which he acknowledged the attorney-client relationship between Supervisor Kuehl and

1 County Counsel and further stated that “[t]he investigation has been shared with other agencies
2 and a special master has been appointed.” Office of the Sheriff, Letter to Attorney General
3 Bonta, Sept. 14, 2022 (https://lasd.org/wpcontent/uploads/2022/09/Post_SW_letter_AG.pdf). As
4 a preliminary matter, there is no evidence whatsoever that a special master has been appointed
5 and the Department has repeatedly refused to respond to Supervisor Kuehl’s inquiries on that
6 topic. Second, far from taking steps to avoid violating Supervisor Kuehl’s attorney-client,
7 deliberative process, official process, or identity informant and any other applicable privileges,
8 the LASD admits to disclosure of materials relating to the investigation to other unidentified
9 agencies, further demonstrating the imminent harm of waiver of those privileges. Finally, the
10 September 14 letter states that the Department intends to search for text messages relating to
11 certain unspecified violations of law that allegedly occurred after execution of the warrant. *Id.* It
12 would be gross miscarriage of justice for privileged and confidential communications and
13 material contained on the Electronic Devices seized from Supervisor Kuehl to be used for
14 investigation of alleged violations of unspecified laws that purportedly occurred after issuance of
15 the warrant at issue in this emergency motion.

16 **3. Supervisor Kuehl’s Ability to Exercise Her Official Duties is Impaired**

17 The Sheriff’s Department seizure of her Electronic Devices has impaired Supervisor
18 Kuehl’s ability to exercise her official duties as the duly elected Supervisor for District Three of
19 Los Angeles County. The population of District Three is nearly two million residents and its
20 population is larger than 14 States and the District of Columbia. The Board of Supervisors is the
21 governing body of the County of Los Angeles, a charter county. It serves as the executive and
22 legislative head of the largest and most complex county government in the United States and
23 serves a population of more than ten million people. The Board of Supervisors has continued to
24 exercise its executive, legislative, and judicial functions throughout the pandemic and is currently
25 conducting hybrid in-person and virtual Board meetings. Supervisor Kuehl continues to work
26 remotely and appears virtually for Board meetings. The LASD’s seizure of the Supervisor’s
27 Electronic Devices has prevented Supervisor Kuehl from exercising her duties and
28

responsibilities as the elected representative of District Three to the detriment of her constituents and the larger population of Los Angeles County served by the Board of Supervisors.

III. ARGUMENT

A. The Warrant Must Be Quashed Because It Was Issued In Violation of the Electronic Communications Privacy Act

The Electronic Communications Privacy Act (ECPA) imposes mandatory safeguards on warrants targeting electronic information. Cal. Penal Code § 1546. “Electronic information” is defined broadly. It includes “any information stored on or generated through the operation of an electronic device” as well as “any information about an electronic communication or the use of an electronic communication service.” *Id.* § 1546(d)–(h). The Penal Code sweeps broad categories of information into this definition stating that such information includes—but is not limited to—the contents of that electronic information and details regarding the sender, recipients, format, location data, and the date and time of the communication. *Id.*

Under ECPA, a warrant seeking any of this electronic information must comply with all of the following: (1) The warrant shall describe with particularity the information to be seized by specifying: The time periods covered, the target individuals or accounts, the applications or services covered, and the types of information sought; (2) The warrant shall require that any information obtained through the execution of the warrant that is unrelated to the objective of the warrant to be sealed and not subject to further review, use, or disclosure; (3) And the warrant shall comply with all other provisions of California and federal law including provisions applicable to search warrants. *Id.* § 1546.1(d). Finally, during the execution of the warrant, the executing party is required to serve the recipient a notice outlining the information that has been compelled or obtained. This notice must also state with “reasonable specificity the nature of the government investigation under which the information is sought.” This notice must be “provided contemporaneously with the execution of a warrant, or, in the case of an emergency, within three court days after obtaining the electronic information” *Id.* § 1546.2(a)(1). ECPA also grants standing to the target of the warrant to “petition the issuing court to void or modify the warrant,

1 order, or process or to order the destruction of any information obtained in violation of this
2 chapter, or the California Constitution, or the United States Constitution.” *Id.* § 1546.1(c).

3 At the outset, almost all of the electronic devices seized contain the exact type of
4 electronic information that ECPA was intended to protect. LASD seized multiple cellular
5 telephones, computers, and numerous electronic devices capable of sending, receiving, and
6 generating electronic communication information. Most, if not all, of the property seized is
7 therefore subject to ECPA protection. Yet the LASD failed to comply with ECPA’s protections
8 in every respect. As set forth below in Section III.B, the warrant failed each of ECPA’s prongs—
9 it lacks probable cause and particularity, and fails to impose procedural safeguards to prevent a
10 general search. As a result, the warrant is void, must be quashed, and this Court should order the
11 destruction of all information obtained in violation of ECPA pursuant to Penal Code § 1546.4(c).

12 **B. The Search Warrant Must Be Quashed Because It Lacks Probable Cause, It**
13 **Contained Material Omissions Which Misled the Magistrate, and It Does Not**
14 **Support Seizure Under Penal Code § 1524**

15 **1. The Search Warrant Must Be Quashed Because It Lacks Probable**
16 **Cause**

17 The United States Constitution and the California Constitution mandate that search
18 warrants only be issued upon probable cause. U.S. Const. amend. IV.; Cal. Const. art. I, § 13;
19 Cal. Penal Code § 1525 (“A search warrant cannot be issued but upon probable cause.”). “[A]n
20 affidavit based on mere suspicion or belief, or stating a conclusion with no supporting facts, is
21 wholly insufficient.” *Garcia*, 111 Cal. App. 4th at 721; *see also Fenwick & West v. Superior Ct.*,
22 43 Cal. App. 4th 1272, 1279 (1996) (“A statement that the affiant ‘has cause to suspect and does
23 believe’ that the evidence is located at the targeted premises is insufficient.”).

24 “For the purpose of issuing a search warrant, the standard for probable cause is as
25 follows: whether the affidavit [1] states facts [2] that make it substantially probable [3] that there
26 is specific property [4] lawfully subject to seizure [5] presently located [6] in the particular place
27 for which the warrant is sought. The first of these requirements is a precondition of all the others,
28 and has been separately codified in our statutes: ‘The affidavit or affidavits must set forth the

1 facts tending to establish the grounds of the application, or probable cause for believing that they
2 exist.” *People v. Frank*, 700 P.2d 415, 423–24 (1985) (citing Cal. Penal Code § 1527) (holding
3 that the warrant lacked probable cause because “nowhere” in the 24 page affidavit “was there
4 alleged *one single fact* that gave probable cause to believe that any of the boilerplate allegations
5 of the warrant were true”). The affidavit also “must establish a nexus between the criminal
6 activities and the place to be searched.” *Garcia*, 111 Cal. App. 4th at 721; *see also People v.*
7 *Albrittan*, 138 Cal. App. 3d 79, 86 (1982) (explaining that even for contraband or items in plain
8 view, “police officers are foreclosed from seizing items indiscriminately; they must show a nexus
9 between the item to be seized and criminal behavior”). The concept of probable cause for a
10 search warrant requires a statement of facts that would lead a man of ordinary caution or
11 prudence to believe and conscientiously entertain a strong suspicion of the guilt of the accused.
12 *Williams v. Justice Court*, 40 Cal. Rptr. 724, 729 (1964).

13 Far from satisfying these standards, the affidavit in support of the search warrant at issue
14 here utterly failed to establish probable cause that any crime was committed, much less any nexus
15 between the alleged criminal activities and the Supervisor, her home, or her office. The affidavit
16 does not establish any impropriety in the award of the contracts to Peace Over Violence.
17 Although it uncritically relies on disgruntled MTA employee Jennifer Loew to contend that sole
18 source contracts are “exceptional in nature,” it fails to disclose that MTA Acquisition Policy
19 ACQ-01 delegates authority to the MTA CEO to approve sole source contracts under \$500,000,
20 like the POV contracts. O’Connor Decl., ¶ 21, Ex. 7. What the warrant *does* disclose about the
21 POV contracts indicates that protocols for sole source contracts *were* followed here. Relying
22 again on Loew, without attesting that she has any legal expertise or familiarity with the MTA
23 acquisition requirements, the affidavit states that a sole source contract is “normally”
24 accompanied by a justification form. O’Connor Decl., ¶ 20, Ex. 6.² But it then *acknowledges*
25 that the required justification forms for sole source contracts were included with each of the
26 purportedly improper contracts provided by Loew. *Id.*

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28 ² The justification form is one of the five “attachments” that are missing from the publicly posted affidavit.

1 The affidavit also accepts at face value Loew's "opinion" that there was "no legitimate
2 reason" for MTA to award the sole source contract to POV, despite MTA's assertion that they
3 "recognized POV's decades of leadership in the field and trusted expertise in the areas of sexual
4 and domestic violence and emergency response." *Id.* And it noticeably fails to quote or
5 otherwise identify the justification submitted with each contract.

6 With respect to Supervisor Kuehl, the affidavit provides zero evidence that she knew
7 about, was involved in, influenced, or benefitted in any way from the award of the contracts to
8 POV. And although the words "bribery," "perjury," and "conflict of interest" are recklessly
9 bandied about, the affidavit presents nothing other than unsubstantiated rumor and innuendo to
10 attempt to connect those words to Supervisor Kuehl. There is no corroboration for Loew's belief
11 that Philip Washington "pushed forward" the POV contract in order to "remain in 'good graces'"
12 with Supervisor Kuehl, nor does that belief incriminate the Supervisor. Likewise, Loew's claim
13 that Washington told her he intended to parlay the \$75,000 POV payment into a political favor
14 from the Supervisor at some point *in the future* does not demonstrate the Supervisor knew of that
15 intention or would have acquiesced in providing the future favor, if asked.

16 At most, the affidavit demonstrates that Supervisor Kuehl had a decades-long close
17 friendship with Patricia Giggans, a woman who dedicated her life to advocating for victims of
18 sexual harassment and assault, and who was also highly critical of Sheriff Villanueva's rogue
19 antics and the LASD as a member of the Civilian Oversight Committee. The affidavit
20 uncritically accepts Loew's unqualified legal opinion that "if" their friendship became public (it
21 already was³), and if Giggans' campaign contributions became public (they already were⁴), that
22 Supervisor Kuehl would "by law" have to recuse herself from any "dealings involving monetary
23 contracts with Peace Over Violence." *Id.* But there is no evidence that Supervisor Kuehl *was*
24 involved in any MTA "dealings" with POV, nor that she would have failed to recuse herself if she
25 were asked to vote on any such "dealings." Loew's assertion that a purchase order was used to

26 ³ Three pages of the affidavit chronicle the public friendship between Supervisor Kuehl and
27 Giggans, including photographs obtained from internet searches, public appearances, and publicly
available Facebook posts. O'Connor Decl., ¶ 20, Ex. 6.

28 ⁴ As the affidavit acknowledges these and other contributions to the Supervisor's campaigns are
publicly available on the LA County Register-Recorder website. *Id.*

1 pay the \$75,000 POV invoice “to avoid any chance of an auditor noting the large unauthorized
2 payment”—like all of her assertions—utterly lacks credibility. The amount was neither large (it
3 is 0.001% of MTA’s total budget) nor unauthorized.

4 The LASD’s reliance on Loew’s *belief* that there was a “corrupt agreement” between
5 Supervisor Kuehl and Giggans to exchange the sole source POV contracts for campaign
6 contributions, and the assertion that there “may” be evidence of such an agreement at the
7 locations to be searched, fail to establish probable cause, as well. As the LASD concedes in the
8 affidavit, campaign contributions are protected First Amendment activity. *McCormick v. United*
9 *States*, 500 U.S. 257, 272 (1991) (holding that in order to base a quid pro quo charge on a
10 campaign contribution, there must be an explicit agreement regarding that contribution). And
11 Giggans has a history of contributions to Supervisor Kuehl as far back as at least 2004, when
12 Supervisor Kuehl served in the California State Senate Legislature. Moreover, Supervisor Kuehl
13 and Giggans would have had to be clairvoyant to foresee that two years *after* Giggans’ relatively
14 small campaign contributions, an MTA survey would reveal that a large percentage of women
15 feared sexual assault or harassment, and that as a result, MTA would invite POV to help combat
16 the problem. Even if Giggans’ ethics declaration was incorrect, that in no way implicates
17 Supervisor Kuehl, nor does the affidavit assert that Supervisor Kuehl ever reviewed or approved
18 the declaration.

19 The affidavit also falsely represents the procedures to be followed regarding the search
20 and the seizure of electronic devices. Sergeant Fernandez falsely swore that he intended “to serve
21 this warrant with assistance from Special Agents from the FBI,” but no one from the FBI was
22 present at the search of either the Supervisor’s home or office. Sergeant Fernandez also
23 represented that he intended “to have specially trained and equipped technically proficient law
24 enforcement agents from the [LASD] and/or the FBI” to image the computers and electronic
25 storage devices onsite, but did not do so at either the Supervisor’s home or office. These false
26 statements were intended to reassure the approving magistrate that the integrity of the
27 Supervisor’s electronic devices would be protected, and that the intrusion into her right privacy to
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1 the contents thereof would be minimized. But after the magistrate relied on these false promises
2 the LASD immediately broke them.

3 The above examples are by far not an exhaustive list of the inaccuracies and material
4 omissions with which the affidavit is riddled. But they are more than sufficient to demonstrate
5 that the warrant must be quashed, and the seized material must be returned to the Supervisor
6 forthwith.

7 2. The Search Warrant Must Be Quashed Because It Is Overbroad

8 The Fourth Amendment to the United States Constitution, article I, section 13 of the
9 California Constitution, and Penal Code section 1525 all require The Penal Code explicitly
10 requires that a warrant be supported by affidavit and that the warrant may not be issued without
11 “naming or describing the person to be searched or searched for, and particularly describing the
12 property, thing, or things and the place to be searched.” Cal. Penal Code § 1525; *People v.*
13 *Albitron*, 138 Cal. App. 3d 79, 86 (1982). “The requirement of particularity is designed to
14 prevent general exculpatory searches which unreasonably interfere with a person’s right to
15 privacy [T]his requirement is held to be satisfied if the warrant imposes a meaningful
16 restriction on the objects to be seized.” *Burrows*, 13 Cal. App. 3d at 249. It is axiomatic that a
17 warrant may not authorize a search broader than the facts supporting its issuance. *Frank*, 700
18 P.2d at 423 (1985); *Burrows*, 13 Cal. at 250. The search warrant at issue here here does not
19 satisfy the particularity requirement because the warrant “imposes [no] meaningful restriction
20 upon the objections to be seized. *Id.* at 249.

21 The description of the property to be seized from the office and home of Supervisor Kuehl
22 is set forth on page 8 of the affidavit. Page 8 of the affidavit contains a general description of
23 “any computer hardware,” any “computer software,” any “computer-related documentation,” any
24 “computer passwords and other data security devices,” and “any cellular phones, answering
25 machines, storage devices for answering machines, facsimile machines used to facilitate the
26 commission of a crime. The descriptions on page 8 contain no reference to particular crimes or
27 any particular facts relating to the investigation. The broad categories of places to be searched at
28 Supervisor Kuehl’s office and home described on page 8 amount to little more than a request to

1 search every electronic file on any electronic device found in Supervisor Kuehl's office and
2 home. On its face that amounts to a general exculpatory search that will burden the privacy of
3 Supervisor Kuehl and fails to satisfy the particularity requirement.

4 While the affidavit includes a specific description of the categories of forensic
5 examination to be undertaken relating to data found on computer/digital media seized from LA
6 Metro (page 9), Peace Over Violence (page 10), and OIG of LA Metro (page 11), the affidavit
7 contains no such particular description of the categories of forensic examination to be undertaken
8 with respect to Electronic Devices seized from Supervisor Kuehl. The affidavit includes a single
9 page describing the categories of forensic examination of data to be found on the "above
10 mentioned computer/digital related media" without a reference to a particular subject of the
11 warrant or Supervisor Kuehl. O'Connor Decl., ¶ 19, Ex. 5. Even assuming that non-specific
12 description applies to the parameters of a forensic search of the Electronic Devices seized from
13 Supervisor Kuehl, that description does not satisfy the particularity requirement under California
14 law. For example, paragraph 5 of that description calls for forensic examination of "[a]ny letters,
15 emails (including emails sent via personal accounts, recordings, memos, notes, messages, or other
16 communications between the following persons: Philip Washington, Alex Wiggins, Sheila Ann
17 Kuehl, Patricia Ochiuzzo, Giggans, Madeline Moore, Stephanie LaRue, Glenn Becerra, Daniel
18 Rodman, Imelda Hernandez, Bob Green and Jennifer Loew from January 14, 2014 to the
19 present." O'Connor Decl., ¶ 19, Ex. 5. Madeline Moore is a Deputy for Special Projects to
20 Supervisor Kuehl and works with her on a multitude of issues and projects that are unrelated to
21 the Department's investigation. Likewise, to the extent that the other names in this paragraph are
22 deputies to other members of the Board of Supervisors or employees of LA Metro, Ms. Moore
23 would likely have had communications with them on a multitude of issues and projects having
24 nothing to do with the Department's investigation at issue in the affidavit. In addition, the
25 affidavit points out that Supervisor Kuehl and Ms. Giggans have been lifelong friends who have
26 collaborated on a variety of important projects and issues. Yet the declaration does not even
27 attempt to limit the search to communications relating to the POV contracts at issue.

1 **3. The Search Warrant Must Be Quashed Because Sergeant Fernandez**
2 **Misled the Magistrate**

3 A warrant must be quashed where the affidavit contains reckless falsehoods or deliberate
4 lies. *Id.* Quashal is required regardless of whether the false statements were necessary to
5 establish probable cause. *Id.* at 735–36 (upholding the warrant where the alleged inconsistencies
6 in the affidavits and supporting documents—a slight date misstatement and the omission of
7 pending charges against one of the declarants—were “trivial”). An omission is material if the
8 affidavit was rendered substantially misleading. *Id.* For example, the assertion is material where
9 there is a substantial possibility that the omitted facts would have altered a reasonable
10 magistrate’s probable cause determination. *Id.*

11 For purposes of this motion, it does not matter whether Sergeant Fernandez’s material
12 misstatements and omissions were knowingly or recklessly made. His concealment and
13 mischaracterization of critical information regarding the credibility of Loew, the requirements of
14 applicable policies and laws, his own disbelief in the veracity of the criminal allegations
15 contained in the affidavit, and the highly suspicious procedure⁵ by which his affidavit was
16 presented to Judge Richman all would have altered a reasonable magistrate’s probable cause
17 determination. In fact, Judge Ryan recognized these significant concerns when, on September 15,
18 2022, he issued an Order halting the search of MTA-OIG computers and setting a hearing at
19 which the LASD must answer for their dubious maneuvers.

20 **C. The Search Warrant Must Be Quashed because a Warrant May Not**
21 **Authorize the Search of Privileged Material**

22 The California Supreme Court has held that the custodian of materials protected by an
23 evidentiary privilege owes a duty to the holder of the privilege to claim the privilege and to take
24 actions necessary to ensure that the materials are not disclosed improperly. *People v. Superior*
25 *Court (Laff)*, 25 Cal. 4th 703, 742 (2001) (affirming *People v. Superior Court (Bauman & Rose)*,

26 ⁵ Supervisor Kuehl is continuing to investigate the corrupt practices that led to the issuance of this
27 warrant. That investigation may uncover additional bases for the quashal of the warrant,
28 including whether the warrant was rejected, in whole or in part, by any other judicial officer
 before it was presented to Judge Richman. The Supervisor reserves all rights to present such
 additional information when it is uncovered.

1 37 Cal. App. 4th. 1757 (1995). “Even if the custodian is suspected of a crime, when privileged
2 material is in the custodian’s possession and seized pursuant to a search warrant, he or she still
3 owes a duty to take appropriate steps to protect the interest of the privilege holders in not
4 disclosing the material to law enforcement authorities or others.” *Id.* at 713.

5 Penal Code section 1536 authorizes the court to conduct a hearing to determine whether
6 materials seized pursuant to a search warrant should be disclosed to the authorities. Penal Code
7 section 1536. “All property or things taken on a warrant must be obtained by the officer in
8 custody, *subject to the order of the court*, to which he is required to return the proceedings before
9 him. *Id.* (emphasis in original). It is settled law that law enforcement officials who seize
10 property pursuant to a warrant issued by the court do so on behalf of the court. *Id.*, citing *People*
11 *v. Von Vilas*, 10 Cal. App. 4th 201, 239 (1992). Section 1536 was enacted in order to provide
12 controls over those officials in possession of property seized pursuant to a search warrant pending
13 resolution of the disposition of the property. *Id.* The Supreme Court in *Laff* held that the court’s
14 authority to appoint a special master arises from its inherent power to control and prevent the
15 abuse of its process. *Id.*

16 In *Laff*, the Supreme Court explained that “[p]rotecting the confidentiality of
17 communications between attorney and client is fundamental to our legal system. The attorney-
18 client privilege is a hallmark of our jurisprudence that furthers the public policy of ensuring the
19 right of every person to freely and fully confer and confide in one having knowledge of the laws,
20 and skilled in its practice, in order that the former may have a defense.” *Id.* at 715. (citations
21 omitted). Moreover, the obligation to protect attorney-client communications is not limited to
22 proceedings at which testimony may be compelled by law. *Id.*; *Gordon v. Superior Court*, 55
23 Cal. App. 4th 1546, 1547 (1997) (even if no criminal proceeding is pending, materials protected
24 by the attorney-client privilege is not subject to disclosure pursuant to a search warrant.). *Laff*
25 further held that the superior court has inherent authority to appoint a special master to review the
26 seized materials to determine what materials are protected by the attorney-client or other privilege
27 and should not be inspected or disclosed to law enforcement authorities. *Laff*, 25 Cal. 4th at 742.

1 In addition, the California Supreme Court has recognized the deliberative process
2 privilege protecting certain communications and information about public office holders from the
3 public. *See Times Mirror Corp. v. Superior Court*, 53 Cal 3rd 1325 (1991) ("The deliberative
4 process privilege is grounded in the unromantic reality of politics; it rests on the understanding
5 that if the public and the Governor were entitled to precisely the same information, neither would
6 likely receive it.").

7 In addition, information the Office of Inspector General has provided to Supervisor Kuehl
8 in her role as a member of the Board of Supervisors, as well as Ms. Giggans in her role as a
9 member of the Civilian Oversight Commission, has included information concerning confidential
10 informants the Inspector General's Office has utilized in its investigations of alleged wrongdoing
11 within the LASD. This highly confidential information is also privileged under California law
12 and governed by strict non-disclosure rules. *See* Cal. Evid. Code § 1041 (providing that a public
13 entity has a privilege to refuse to disclose the identity of a person who has furnished information
14 to a representative of an administrative agency charged with administration or enforcement of the
15 law).

16 Finally, Evidence Code section 1040 establishes an official information privilege in
17 California. Under that section, a public entity has a privilege to refuse to disclose official
18 information, and to prevent another from discovery of official information if the privilege is
19 claimed by a person authorized to do so and disclosure of the information is against the public
20 interest because there is a necessity for preserving the confidentiality of the information that
21 outweighs the necessity for disclosure in the interest of justice.

22 As described above, in her capacity as a member of the Board of Supervisors, Supervisor
23 Kuehl routinely seeks and receives legal advice from County Counsel and Los Angeles County
24 Inspector General Max Huntsman and such communications and related materials almost
25 certainly on the Electronic Devices that were seized during the search of her home. The LASD
26 has not only seemingly made no plans to safeguard such privileged information and protect its
27 disclosure from the LASD during its searches of Supervisor Kuehl's and Ms. Giggans' electronic
28 devices; since this confidential and privileged information concerns instances involving

1 investigations of potential wrongdoing by LASD personnel being conducted by the Inspector
2 General's Office, the LASD is seemingly incentivized to disregard the privileged nature of these
3 communications and review them. Accordingly, the appointment of a Special Master to review a
4 forensically imaged copy of the devices for all applicable privileges is particularly vital to protect
5 these confidential, privileged communications. The owner of that attorney-client privilege is the
6 County of Los Angeles, which has not waived its privilege. In addition, the seized Electronic
7 Devices contain attorney-client privileged communications regarding an unrelated matter in
8 which Supervisor Kuehl is represented by a private law firm. Supervisor Kuehl is the owner of
9 that attorney-client privilege and has not agreed to waive it. Finally, communications and
10 materials on the Electronic Devices seized from Supervisor Kuehl almost certainly contain
11 communications and materials protected by the deliberative process privilege, privilege against
12 disclosure of official information, and the informant identity privilege that have nothing
13 whatsoever to do with the investigation described in the search warrant affidavit.

14 Given the Department's failure to put in place any procedure to prevent invasion of those
15 privileges, such as a filter team or appointment of a special master, and the Department's
16 concession that a special master should be appointed, this court should conduct a hearing pursuant
17 to Penal Code section 1536 and invoke its inherent authority to appoint a special master to review
18 a forensically imaged copy of the devices to determine what materials are subject to the attorney-
19 client, deliberative process or official information privilege and may not be inspected by law
20 enforcement authorities.

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1 **IV. CONCLUSION**

2 For all the foregoing reasons, Supervisor Kuehl respectfully requests that the Court issue
3 an order quashing the search warrant and directing the LASD to (1) return all seized property
4 forthwith, (2) cease searching any and all computers and electronic devices, and (3) appoint a
5 special master to review a forensically imaged copy of the devices for all applicable privileges
6 with the originals returned forthwith.
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9 Dated: September 19, 2022 JONES DAY

10
11 By: /s/ CHERYL O'CONNOR

12 CHERYL O'CONNOR

13 Attorney for Supervisor Sheila Kuehl
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I declare under penalty of perjury under the laws of the State of California that the above
is true and correct. Executed on **September 19, 2022**, at Irvine, California.

/s/Jenice Thakur

Jenice Thakur